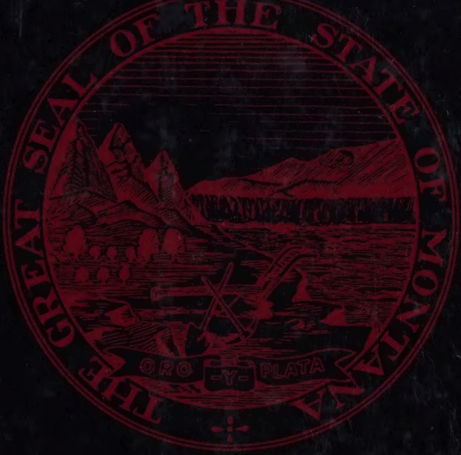
Montana Code Annotated

ANNOTATIONS

2024



Taxation • Alcohol, Tobacco & Marijuana • State Finance
Public Contracts • Public Retirement Systems • Education
Libraries, Arts & Antiquities

VOLUME 3

2024
ANNOTATIONS
to the
MONTANA CODE ANNOTATED

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Website: leg.mt.gov

Printed and Bound by
West, a Thomson Reuters business
610 Opperman Dr
Eagan MN 55123

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Annotations to this volume include:

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- public domain citation 2023 MT 177
- volume 413 Montana Reports page 356
- volume 535 Pacific Reporter (3rd Series) page 1133

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- volume 59 opinion number 1 of the Report and Official Opinions of Attorney General

Amendment notes listed under compiler's comments are intended to explain only amendments made in the year indicated and may not accurately reflect current statutory language because of subsequent amendment.

The annotations are provided as a convenience to the user and are not intended to be an exhaustive compilation of the law under a given statute or in a given area.

TITLE 15
TAXATION

Title Law Review Articles

State v. Yang: Excessive Fine or Unconstitutional Tax?, Redeen, 82 Mont. L. Rev. 467 (2021).

Revenue and Finance Under Montana's 1972 Constitution, Towe, 51 Mont. L. Rev. 399 (1990).

The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).

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HJ 6 Coal Severance Tax Trust Fund Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj6-final-report-edited.pdf.

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From Liquor Stores to Burlington Northern Railroad: Issues Before the Revenue Oversight Committee, 1986 Interim Report, Montana Legislative Council.

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Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

Reappraising Montana's Coal Severance Tax, 1984 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Income Tax Indexing, 1977-78 Interim Report, Montana Legislative Council.

Motor Vehicle Fee System, 1977-78 Interim Report, Montana Legislative Council.

Report of the Coal Tax Oversight Committee, 1977-1978 Interim Report, Montana Legislative Council.

Revision of Montana's Property Tax Classification System, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Montana's Financial Institutions, 1977-78 Interim Report, Montana Legislative Council.

Timber Taxation in Montana, 1977-78 Interim Report, Montana Legislative Council.

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Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

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Property Taxation—Right of Entry, 1969-70 Interim Report, Montana Legislative Council.

Montana Corporation License Tax, 1967-1968 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

CHAPTER 1
TAX ADMINISTRATION

Chapter Compiler's Comments

Extension of Deadlines Relating to 2009 Property Taxes: Section 12, Ch. 483, L. 2009 provided: "As a result of the changes in the mitigation strategy of reappraisal for class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Attorney General's Opinions

State Participation in Spraying Program — Environmental Policy Act Triggered: State participation in a grasshopper spraying program in which the state paid up to one-third of the costs and provided financial management and technical expertise was a major state action in which compliance with the Montana Environmental Policy Act was required. 42 A.G. Op. 62 (1988).

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Collateral References

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: "Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to ~~[section 1 of Senate Bill No. 79]~~ 15-10-107 [now terminated], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to ~~current~~ the prior ~~year~~ year's mill levies. Except as provided in ~~subsections~~ subsection (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 [now repealed] may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, ~~shall~~ must be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in ~~[section 1]~~ 15-10-420, is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)."

Calculating Levy: Section 165, Ch. 584, L. 1999, provided: "Extension of 1999 deadlines relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 56th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1999, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107, now terminated], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 [now repealed] may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding—Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding—appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107, now terminated].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299 [now repealed].

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Task Force — Review of Taxation and Local Government Funding: Chapter 570, L. 1995, provided: "Section 3. Task force — review of taxation and local government funding. (1) There is a Montana tax policy task force to study all aspects of taxation in Montana and to make findings regarding the burden of state and local taxation borne by various segments of the state's economy and by various categories of individual taxpayers. The task force in its study shall consider but not limit itself to:

(a) the existing sources and levels of taxation, with particular attention given to the classification of property and the taxable percentages applied to that property, and an evaluation of the sources and levels of taxation;

(b) the relationship between federal income tax laws and state income tax laws and the impact of federal tax laws on the state;

(c) the relative portion of the total amount of taxes that is collected from each segment of the business community and each category of individual taxpayer;

(d) the impact of state and local taxation on economic development;

(e) the relationship between taxes and the revenue needs of the state and local governments;

(f) the relationship between tax burden, ability to pay, and benefits received from government;

(g) alternative methods of taxation from existing sources as well as new sources of revenue and an evaluation of the alternative methods and new sources; and

(h) funding for local governments, other than public schools, because local governments have come under increasing financial pressures over the last several years and it is clear that viable solutions to funding issues must be found in order for Montana citizens to continue to receive those services traditionally provided by local governments.

(2) Based on the findings pursuant to the study required under subsection (1), the task force shall develop recommendations, alternatives, or both, for 2-year, 10-year, and 25-year tax policy strategies for Montana.

(3) The task force, in its deliberations, shall solicit the knowledge and advice of economists, tax policy experts, representatives of tax reform coalitions, local governments, small business organizations, large industries, agriculture, the Montana chamber of commerce, appropriate state agencies, and the general public.

(4) In reviewing local government funding, the task force shall study:

(a) the current sources of funding for local government services, other than public schools;

(b) the continued viability of current funding sources;

(c) the need for additional or alternative funding sources;

(d) the financial and funding restraints currently imposed on local governments;

(e) the challenges facing local governments in providing traditional services in the future;

(f) the need for more flexibility in meeting future financial challenges;

(g) the ability of local governments to meet their budget requirements in the future; and

(h) other issues related to local government finances.

(5) The task force is allocated to the department of revenue for administrative purposes only as provided in 2-15-121.

Section 4. Membership — appointment — vacancies. (1) The task force created by [section 3] [not codified] is composed of the following members:

(a) eight members appointed by the governor, who are broadly representative of taxpayer groups, business and industry, labor organizations, local government, and consumers of governmental services;

(b) four members of the house of representatives, of which no more than two may be of the same political party, appointed by the speaker of the house; and

(c) four members of the senate, of which no more than two may be of the same political party, appointed by the committee on committees.

(2) Task force members must be appointed and designated no later than July 15, 1995.

(3) The task force shall elect its presiding officer.

(4) A vacancy occurring on the task force must be filled in the same manner as the original appointment.

Section 5. Remuneration. (1) Each member of the task force provided for in [section 3] [not codified], except the legislative members, is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) Each legislative member of the task force is entitled to compensation as provided in 5-2-301 and 5-2-302, as applicable.

(3) In addition to expenditures referred to in subsections (1) and (2), task force funds may be spent for staff support, contracted services, and other expenses required to fulfill the purpose and needs of the task force.

Section 6. Meetings — report to governor and legislature. (1) The task force provided for in [section 3] [not codified] shall meet by September 15, 1995, and at the request of the presiding officer thereafter.

(2) The task force shall submit its findings and recommendations to the governor and the legislature on or before October 1, 1996.

Section 7. Gifts and grants. The task force provided for in [section 3] [not codified] may accept payments, contributions, gifts, and grants, in money or otherwise, for the purposes set forth in [section 3] [not codified]. All payments, monetary contributions, gifts, and grants received by the task force must be deposited in an account in the state special revenue fund provided for in [section 8] [not codified].

Section 8. Special revenue account. There is an account in the state special revenue fund. The account consists of all payments, monetary contributions, gifts, and grants received pursuant to [section 7] [not codified]." Terminates June 30, 1997.

Appropriation: Section 16, Ch. 570, L. 1995, provided: "There is appropriated from the general fund to the department of revenue $15,000 for the use of the task force provided for in [section 3] [not codified]".

15-1-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 344, L. 2023. Amendment effective May 2, 2023.

Preamble: The preamble attached to Ch. 344, L. 2023, provided: "WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide."

2021 Amendment: Chapter 142 in (3) after ""state board"" inserted ""Montana board"" and at end substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 361 in definition of commercial in (i) inserted "including industrial property defined in subsection (1)(j)"; inserted definitions of industrial property, market value, and taxes; in definition of taxable value substituted "market value multiplied by the classification tax rate" for "percentage of market or assessed value"; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2005 Amendments — Composite Section: Chapter 542 in definition of manufactured home in (ii) in two places substituted "61-1-101" for "61-1-501"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendment by Ch. 542 void.

Chapter 596 in definition of manufactured home in (ii) near middle after "defined in" substituted "in subsection (1)(m)" for "61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 577 in definition of agricultural in (a)(i) inserted "biological control insects". Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 285 in definition of commercial deleted former (ii)(F) that read: "(F) all property described in 15-6-136"; and made minor changes in style. Amendment effective January 1, 2003.

Chapter 583 at end of definition of personal property inserted "and "intangible personal property" as that term is defined in 15-6-218". Amendment effective May 10, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Section 13, Ch. 583, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendments: Chapter 49 inserted definition of recreational; and made minor changes in style. Amendment effective March 13, 1997.

Chapter 200 in definition of commercial, in (d)(ii)(D) after "mobile homes", inserted "and manufactured homes" and after "dealer" deleted "of trailers or mobile homes"; in definition of improvements, in (i) in three places after "mobile home", inserted "manufactured home"; inserted definition of the term manufactured home; inserted definition of the term stock in trade; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Retroactive Applicability: Section 3, Ch. 49, L. 1997, provided: "[This act] is effective on passage and approval [approved March 13, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendments: Chapter 206 in definition of livestock inserted "ostriches, rheas, emus"; and made minor changes in style.

Chapter 561 in definition of Department, in (i), inserted exception clause and inserted (ii) regarding definition of Department; and made minor changes in style. Amendment effective July 1, 1995.

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 inserted definition of Department; in definition of improvements, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 379 inserted definitions of gas and natural gas; and made minor changes in style.

Chapter 417 in definition of livestock inserted "llamas, alpacas, bison, and domestic ungulates"; and made minor changes in style.

Saving Clause: Section 6, Ch. 379, L. 1993, was a saving clause.

1991 Amendments: Chapter 411 in (1)(d)(i), near middle before "corporation", deleted "nonprofit" and substituted "35-2-114" for "35-2-102". Amendment effective January 1, 1992.

Chapter 680 deleted (1)(q) that read: "(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum". Amendment effective July 1, 1993.

Chapter 705 inserted (1)(a)(i) defining as agricultural certain production for commercial purposes; and in (1)(a)(ii), after "raising of", deleted "livestock, poultry, bees, and other species of" and after "environment" deleted "and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber". Amendment effective April 29, 1991.

Chapter 783 in (1)(d)(ii)(B), after "timberlands", inserted language concerning inclusion of forest lands as property designated as not commercial beginning January 1, 1994. Amendment effective July 1, 1991.

Applicability: Section 13(2), Ch. 680, L. 1991, provided that this section applies to all taxable years beginning after December 31, 1993.

Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 705, L. 1991, provided: "[This act] is effective on passage and approval [approved April 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;
(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;
(4) the notification of landowners who may be eligible for forest land classification under this bill;
(5) the process by which a landowner may appeal the valuation of the owner's forest land; and
(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

1989 Special Session Amendment: Deleted former (1)(d)(ii)(G) referring to property described in 15-6-146; and in (1)(p) substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendments: Chapter 370 at end of definition of taxable value changed "15-6-140" to "15-6-149".

Chapter 613 inserted definition of weighted mean assessment ratio. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 659 inserted definition of research and development firm.

1985 Amendments: Chapter 20 in (1)(n)(ii) substituted "Title 15, chapter 23, part 8" for "15-23-801".

Chapter 570 in (1) at beginning inserted "Except as otherwise specifically provided"; in (1)(a) after "livestock", deleted "swine", and after "poultry", inserted "bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of"; and inserted definition of livestock.

Chapter 743 inserted definitions of commercial and comparable property; and in definition of improvements, after "structures", deleted "fixtures". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 488, in definition of mobile home, increased length limit from 32 feet to 45 feet and inserted "or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence".

Chapter 632 made the following changes: in definition of improvements substituted "A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed" for "If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement"; and inserted definition of leasehold improvements.

1981 Amendment: Inserted the definition of "average wholesale value" in (1).

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 42.20.156 Land classification change criteria.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.20.701 Forestland — definitions.

Case Notes

Restrictive Covenant Prohibiting Mobile Homes — Application to Manufactured Home — "Mobile Home" Used in Ordinary and Popular Sense: Wittmers purchased a 26- by 60-foot manufactured home that was capable of being put on wheels and moved it to a subdivision in Gallatin County. The plaintiffs brought an action to restrain Wittmers from maintaining the home within the subdivision because it was in violation of a restrictive covenant that prohibited the use of "mobile homes". The Supreme Court held that the covenant was not ambiguous and that the term "mobile home", which was undefined in the covenants, should be understood in its ordinary and popular sense. The Supreme Court noted that other statutory definitions of the term "mobile home" could be looked to for guidance in determining the meaning of the term for the purposes of the covenants and that those other definitions include structures such as Wittmers'. The Supreme Court held that the District Court correctly construed the term "mobile home" to include the Wittmers' manufactured home because their home fell within other definitions of the term "mobile home", because the Supreme Court had previously construed the term to include homes such as the Wittmers' in two other cases before the court, and because the Wittmers' home had the characteristics of a mobile home. (Case decided prior to 1997 amendment of this section defining "manufactured home". See also 2005 amendment.) Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996), followed in Toavs v. Sayre, 281 M 243, 934 P2d 165, 54 St. Rep. 155 (1997), and Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79, 54 St. Rep. 1142 (1997).

Coal Seam Methane Gas Not Part of Coal Estate — Ownership of and Right to Develop: In 1984, Carbon County gave a deed to Reserve's predecessor in interest conveying all "coal and coal rights with the right of ingress and egress to mine and remove the same" on certain lands within the county. In 1990, the county gave an oil and gas lease to Florentine, giving Florentine the right to operate for and produce from the disputed property "oil and all gas including coal seam methane of whatsoever nature or kind". Carbon County filed a quiet title action against Reserve, asserting the county's claims to all of the mineral and mineral rights, excluding the coal and coal rights, on the disputed property. The District Court held that the coal seam methane gas was part of the coal estate and was included in the conveyance of coal and coal rights by the county to Reserve's predecessor in interest. The Supreme Court held that coal seam methane gas is not a constituent part of coal. Thus, it may be severed from the coal estate. As the lessee of Carbon County, the owner of the gas estate, Florentine has the right to drill for and to produce coal seam methane gas either in advance of or during coal mining operations. Reserve has a mutual, simultaneous right to extract and to capture the gas for safety purposes, incident to its coal operations. Carbon County v. Union Reserve Coal Co., Inc., 271 M 459, 898 P2d 680, 52 St. Rep. 529 (1995).

New Legislative Definitions — Not Unlawful Taking of Coal Seam Methane Gas From Owners of Coal or Coal Lands: In a dispute between the county, the gas lessee of the county, and the owner of coal rights, the latter claimed that 1993 legislative changes in the definitions of gas, oil, and coal either were regulatory in nature only and did not affect rights or, in the alternative, that if the amendments did remove coal seam methane gas ownership from coal owners, then the removal was without compensation and so constituted an unconstitutional taking. The Supreme Court held that the question of taking without compensation was moot because the legislation was prospective in nature and there was a severance of the gas estate from the coal estate under the plain language of the grant. Carbon County v. Union Reserve Coal Co., Inc., 271 M 459, 898 P2d 680, 52 St. Rep. 529 (1995).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Improvements: The term improvement is used in the sense of an addition to the property, rather than in the restrictive sense of repairs made on a building. Interstate Lumber Co. v. Rider, 93 M 489, 19 P2d 644 (1933).

Real Estate:

So long as petroleum and gas remain in the ground they are part of the realty and as such subject to the owner's control. Williard v. Fed. Sur. Co., 91 M 465, 8 P2d 633 (1932).

The right reserved in a deed of a railway company to such use of the surface of the land as may be found necessary for the exploration, mining, and carrying away of the coal that may be found below is a valuable interest in the land itself and as such properly subject to taxation under this section and 15-6-101. The taxable value of the right to the use of the surface of the land for such purposes, omitting the deposit from the estimate, is to be ascertained as if the entire estate or land was vested in the grantee, the Assessor to make an equitable apportionment of this value between the grantee and the railway company. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

The provision of this section, that "the term 'real estate' includes the possession of, claim to, ownership of, or right to the possession of land", declares a rule independent of statute. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913).

Coal deposits underlying land form a part of the real estate within the definition of that term given in this section, and the reservation of those deposits in a deed, with the right to mine, constitutes an interest in real estate. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913), explained and overruled in part in N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Credits:

Individually owned shares of state bank stock are not credits as defined by this section. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691 (1928).

An option to purchase real and personal property created no indebtedness that could be enforced, and therefore the amount due and unpaid under the contract was not a "credit" within the meaning of this section, namely a solvent debt which could properly be taxed. Read v. Lewis & Clark County, 55 M 412, 178 P 177 (1919).

Money due a bank from other banks is credit within the definition of the term given in this section. Clark v. Maher, 34 M 391, 87 P 272 (1906).

Personal Property:

Annual crops growing upon land are not part of the land under the statutes of this state, but where the owner of the land sells it with the right of immediate possession in the purchaser and without reserving the crop thereon and the purchaser takes possession before severance, title passes to the crop as well, and this principle is applicable where the land is sold at decretal or execution sale. Kester v. Amon, 81 M 1, 261 P 288 (1927), distinguished in Hamilton v. Rock, 121 M 245, 191 P2d 663 (1948).

Where an occupant of land, be he a purchaser, tenant, or mere trespasser holding it adversely to the owner, plants and cultivates crops, they are his personal property provided he remains in possession until after they are harvested. Kester v. Amon, 81 M 1, 261 P 288 (1927), distinguished in Hamilton v. Rock, 121 M 245, 191 P2d 663 (1948).

For purposes of taxation, a water right is personal property. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Personal property owned by a national bank is not subject to taxation under state laws. First Nat'l Bank v. Province, 20 M 374, 51 P 821 (1898).

Property:

If unpatented mining claims are not taxable, it is not because they are not property within the definition of this section but because they have been exempted from the general provisions of the revenue laws. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Stocks of a state bank or trust company fall within the definition of the term "property" as given in this section. Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

For the purposes of taxation, the word "property" includes "real estate", and within the definition of "real estate" is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to taxation as the property of the purchaser. Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Classification of Property: A predecessor to this section determined the classification of property for purposes of taxation, and courts were limited by that classification in determining how property should be assessed. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Attorney General's Opinions

County Rural Property Not Taxing Unit: County rural property is not a taxing unit as defined in this section. 43 A.G. Op. 74 (1990).

"Property" to Include Real and Personal Property: The term "property" as used in 7-33-2109 applies to all forms of real and personal property ordinarily subject to ad valorem taxation by counties. 42 A.G. Op. 109 (1988).

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Sugar Refinery's Piled Sugar Beets Exempt From Tax — Business Inventory: If the products of a sugar refinery qualify as business inventory under 15-6-202, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods". While not defined by the Legislature, the term "raw materials" is generally defined as the material or substance out of which other products or the final product is made. 40 A.G. Op. 82 (1984).

Definition of "Real Property": "Real property" for purposes of taxation means both real estate and improvements. 37 A.G. Op. 76 (1977).

Collateral References

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-1-102. Person defined.

Compiler's Comments

Part of Section Not Codified: A part of section 84-1401, R.C.M. 1947, which defines "person" and is redundant with 15-1-102, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 3, L. 1921.

15-1-103. Disposal of tax records — procedure.

Compiler's Comments

2015 Amendment: Chapter 348 in (3) substituted "2-6-1107" for "2-6-208". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2011 Amendment: Chapter 206 in (1) inserted current language authorizing department to dispose of certain tax records for former language that read: "Notwithstanding the provisions of any other chapter of this code, the department of revenue is authorized to destroy tax records more than 3 years old as shall be determined to be of no further value"; in (2) after "Authorization for" substituted "disposal" for "destruction" and in second sentence after "list" inserted "of the records"; inserted (3) providing for disposal of original tax records after records have been reproduced; and made minor changes in style. Amendment effective January 1, 2012.

Retroactive Applicability: Section 4, Ch. 206, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax records that exist on [the effective date of this section]." Section 3(2), Ch. 206, L. 2011, provided that this section is effective on passage and approval. Approved April 18, 2011.

15-1-104. Treasurers to destroy certain tax records.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

15-1-106. Federal tax return information.

Compiler's Comments

Effective Date: Section 8, Ch. 70, L. 2007, provided: "[This act] is effective on passage and approval." Effective March 27, 2007.

Administrative Rules

ARM 42.2.325 Access to information.

15-1-108. Prohibition on sales — restrictions on certain disclosures and uses.

Compiler's Comments

2021 Amendment: Chapter 535 in (3)(b) at end deleted "or in the Montana first judicial district". Amendment effective October 1, 2021.

Effective Date: Section 5, Ch. 447, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 8, 2007.

15-1-109. Prohibition on tax return preparation services — filing electronic returns.

Compiler's Comments

Effective Date: Section 5, Ch. 447, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 8, 2007.

15-1-110. Rulemaking authority.

Compiler's Comments

Effective Date: Section 5, Ch. 447, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 8, 2007.

15-1-116. Manufactured home considered as improvement to real property — requirements.

Compiler's Comments

2005 Amendment: Chapter 450 in (1)(b) near middle after "foundation" inserted "so that it is no longer capable of being drawn over public highways and it is placed" and near end after "person" inserted "it is placed on the land"; inserted (1)(c) regarding recording of statement of intent; in (2)(a) near middle after "owner" substituted "shall record the statement" for "may file a statement" and at end substituted "as provided in subsection (3)" for "on a form furnished by the department of justice"; in (2)(b)(iv) near end after "certificate" inserted "of origin or certificate"; inserted (2)(b)(v) regarding acknowledgment of signature; in (3)(a) in first sentence near beginning substituted "owner shall record" for "owner shall present", substituted "in the office of" for "to", substituted "clerk and recorder" for "treasurer", substituted "real property" for "manufactured home", after "located and" inserted "the owner", inserted "of origin or certificate", and at end inserted "and a certified copy of the recorded statement of intent to the county treasurer" and in second sentence at beginning substituted "Within 10 days of receipt" for "Upon payment"; in (3)(a)(iii) near beginning before "the statement" inserted "a certified copy of", inserted "a copy of the receipt for the fee required in 61-3-203", and near end inserted "of origin or certificate"; inserted (3)(b) regarding surrender of certificate of origin; in (3)(c) in first sentence near middle after "receipt" inserted "for the fee referred to in subsection (3)(a)"; in (4) near middle substituted "and the statement of title acceptance provided for in subsection (3)(b)" for "and the receipt of surrender" and at end substituted "complying with the provisions of 15-1-118" for "the consent of all persons who have an interest in the manufactured home"; in (5) at end inserted "to real property"; and made minor changes in style. Amendment effective October 1, 2005.

The amendment to this section by sec. 10, Ch. 596, L. 2005, was rendered void by sec. 130, Ch. 596, L. 2005, a coordination section.

2003 Amendment: Chapter 477 in (2) near beginning after "eliminate" substituted "a manufacturer's certificate of origin properly assigned to an owner or a certificate of title" for "the certificate of ownership"; in (3)(d) near end before "title" inserted "certificate of"; in (4)(a) in first sentence at end substituted "title" for "ownership" and in second sentence at beginning of introductory clause substituted "Upon payment of the fee required in 61-3-203" for "Upon receipt of a titling fee of $5"; inserted (4)(a)(i) requiring entry of transfer of interest on the electronic record; in (4)(a)(ii) after "owner" substituted "a transaction summary receipt" for "a duplicate receipt for the surrendered certificate"; in (4)(a)(iii) near beginning after "forward" deleted "a copy of", after "intent" deleted "the original receipt", and after "certificate" inserted "of title"; in (4)(b) near middle of second sentence before "fee" deleted "titling"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 in (4) in last sentence after "shall" deleted former (4)(a) that read: "(a) deposit $1.50 of the titling fee in the county general fund" and after "remit" deleted "$3.50 of"; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendment: Chapter 257 in (4)(b) substituted reference to department (of revenue) for reference to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Effective Date: Section 26, Ch. 200, L. 1997, provided: "[This act] is effective January 1, 1998."

15-1-118. Reversal of declaration that manufactured home is real property.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-1-119. Classification of mobile home, manufactured home, or housetrailer — property records.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

15-1-120. Policy and purpose.

Compiler's Comments

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Law Review Articles

Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place, Pruitt, 71 Mont. L. Rev. 1 (2010).

15-1-121. Entitlement share payment — purpose — appropriation.

Compiler's Comments

2021 Amendment: Chapter 506 in (6)(a) near beginning substituted "distributed under 15-1-123(4)" for "determined under 15-1-123(2)" and near middle substituted "distributed under 15-1-123(5)" for "determined under 15-1-123(3)"; in (7)(b) at end of first sentence and near beginning of last sentence substituted "15-1-123(1) and (2) for "15-1-123(2)" and at end of last sentence substituted "15-1-123(3)" for "15-1-123(2)"; in (7)(c) near middle substituted "15-1-123(3)" for "15-1-123(2)"; and in (8)(a) near beginning substituted "15-1-123(5)" for "15-1-123(3)". Amendment effective July 1, 2021.

Severability: Section 11, Ch. 506, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 3 in (4)(b)(i) in first sentence substituted "statewide accounting, budgeting, and human resource system" for "statewide budgeting and accounting system". Amendment effective October 1, 2019.

Chapter 268 in (12)(b)(ii) after "15-1-504" deleted "or any other amounts owed to the state or another taxing jurisdiction"; and made minor changes in style. Amendment effective May 2, 2019.

Retroactive Applicability: Section 12, Ch. 268, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to local government actions and duties required under [this act] occurring on or after July 1, 2018."

Saving Clause: Section 9, Ch. 268, L. 2019, was a saving clause.

Severability: Section 10, Ch. 268, L. 2019, was a severability clause.

2017 Special Session Amendment: Chapter 2 in (6)(a) near middle and in (8)(a) near beginning substituted "15-1-123(3)" for "15-1-123(4)"; in (9) at end deleted "from countywide transportation block grants, or from countywide retirement block grants"; and made minor changes in style. Amendment effective July 1, 2018.

2017 Amendments — Composite Section: Chapter 144 in (2)(o) before "Title 77" inserted "former". Amendment effective October 1, 2017.

Chapter 173 inserted (12)(b) and (12)(c) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 332 in (3) in first sentence in exception clause substituted "subsection (7)(b)" for "subsection (3)(b)" and in last sentence at beginning deleted "Subject to subsection (3)(b)"; deleted former (3)(b) that read: "(b) For fiscal year 2016, the fiscal year entitlement share pool is reduced by $1,049,904"; in (4)(a) at beginning substituted "Except as provided in subsections (4)(b)(iv) and (7)(b)" for "Subject to subsection (3)(b)"; in (4)(b)(ii) in introductory clause inserted reference to subsection (4)(b)(iv); in (4)(b)(iv) substituted current text concerning entitlement share growth rate for former text that read: "For fiscal year 2016, the entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment minus $1,049,904 to determine the subsequent fiscal year payment"; in (6)(a) deleted former last sentence that read: "Except for the distribution made under 15-1-123(2)(b), the distributions must be made on a quarterly basis"; inserted (7)(b) concerning portion of entitlement share pool attributable to reimbursement provided for in 15-1-123(2); inserted (7)(c) concerning allocation of growth amount resulting from application of growth rate in 15-1-123(2); in (8)(b) in first sentence at start deleted "Except for the reimbursement made under 15-1-123(4)(b)" and in table deleted amounts for Deer Lodge and Silver Bow (see 2017 Session Law for former text); in (12)(a) at beginning inserted exception clause; inserted (12)(b) and (12)(c) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style. Amendment effective May 4, 2017.

Preamble: The preamble attached to Ch. 144, L. 2017, provided: "WHEREAS, a 2016 legislative audit found that legislation in 2001 replaced state land equalization entitlements with a share of the general fund; and

WHEREAS, statutes requiring reporting on state land equalization entitlements still exist but are not necessary or used."

2015 Amendments — Composite Section: Chapter 2 in (4)(b) substituted "next fiscal year" for "current year"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 403 in (3)(a) substituted "the prior fiscal year" for "fiscal year 2010", substituted "subsequent fiscal year" for "fiscal year 2011", and in last sentence at beginning inserted "Subject to subsection (3)(b)"; in (3)(b) substituted "For fiscal year 2016, the fiscal year entitlement share pool is reduced by $1,049,904" for "The total amount received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7), is each local government's base component. The sum of all local governments' base components is the fiscal year entitlement share pool"; in (4)(a) at beginning and at end deleted "with the exception of fiscal years 2012 and 2013" and at beginning inserted "Subject to subsection (3)(b)"; in (4)(b)(iii) in second sentence at beginning inserted "Subject to subsection (4)(b)(iv)"; inserted (4)(b)(iv) concerning the entitlement share growth rate for fiscal year 2016; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendments — Composite Section: Chapter 22 in (8)(b) reduced entitlement share payment for Missoula tax increment financing district 1-1C from $250,279 to $225,251. Amendment effective October 1, 2013.

Chapter 268 in (4)(b)(i) in last sentence substituted "corporate income tax" for "corporation income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2011 Amendments — Composite Section — Code Commissioner Correction: Chapters 393 and 411 substituted current language concerning entitlement share for former text (see 2011 Session Law for former text). Amendments effective July 1, 2011.

The Code Commissioner inserted the exception clause at the beginning of (3)(a) to reflect the coordination of Ch. 393 and Ch. 411.

Two different amounts were enacted from the entitlement share for the Missoula 1-1C tax increment district in (8)(b). Chapter 393 provided for $225,251 and Ch. 411 provided for $250,279. Based up a review of the calculations used in determining the entitlement shares, the amount enacted in Ch. 411 was correct and the amount of $250,279 was used.

Saving Clause: Section 3, Ch. 393, L. 2011, was a saving clause.

Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 5, Ch. 393, L. 2011, provided: "[This act] applies to fiscal years beginning after June 30, 2011."

Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 2 in (7) at end after "grants" deleted "or from countywide retirement block grants". Amendment effective October 1, 2009.

2007 Amendment: Chapter 210 in (3)(a)(i) adjusted the amount to be subtracted from the fiscal year 2006 entitlement share payments for counties in the following manner: Cascade amount decreased from $157,151 to $100,000, Flathead amount increased from $33,655 to $100,000, Gallatin amount decreased from $222,029 to $160,000, Lewis and Clark amount decreased from $247,886 to $160,000, Missoula amount increased from $172,600 to $200,000, and Yellowstone amount increased from $266,644 to $270,000. Amendment effective April 17, 2007.

Code Commissioner Correction: The code commissioner deleted subsection (1)(d)(iii) that referred to 25-1-1103 to reflect the repeal of that section by Ch. 405, L. 2007.

Preamble: The preamble attached to Ch. 210, L. 2007, provided: "WHEREAS, the Legislature established the statewide Montana public defender system by the passage of Senate Bill No. 146, Chapter 449, Laws of 2005; and

WHEREAS, the Legislature provided that funding responsibilities for public defender services through the statewide system will be shared by state and local government and that the counties', consolidated governments', and cities' share of costs will be paid through a reduction in the county's, consolidated government's, or city's base entitlement share under section 15-1-121, MCA; and

WHEREAS, the Legislature provided for an audit of the actual costs for public defender services in District Court and Justice's Court proceedings incurred from July 1, 1998, through June 30, 2004, in Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County and required that the audit results be reported to the Governor's budget office, the Legislative Audit Committee, the Legislative Finance Committee, and the Law and Justice Interim Committee; and

WHEREAS, the Legislature directed the Law and Justice Interim Committee to prepare legislation to be introduced in the 2007 legislative session to amend section 15-1-121, MCA, to provide that the base entitlement share for Cascade County, Flathead County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County be adjusted by an appropriate amount arrived at based on the audit and in consultation with the Legislative Audit Committee, the Legislative Finance Committee, representatives of the counties, the Governor's budget office, the American Civil Liberties Union, the Attorney General's office, and all other interested and participating parties; and

WHEREAS, the audit was performed and reported as required; and

WHEREAS, the Law and Justice Interim Committee, in consultation with interested parties, has determined the appropriate amounts to be used to adjust the base entitlement share for each of the named counties; and

WHEREAS, the Law and Justice Interim Committee recommends the adjustments to the base entitlement share for each of the named counties as proposed in this act."

Applicability: Section 3, Ch. 210, L. 2007, provided: "[This act] applies to entitlement share payments under 15-1-121 made in fiscal year 2007 and subsequent fiscal years. The department of revenue shall adjust the fourth quarterly payments for fiscal year 2007 to reflect the base entitlement share for each county as adjusted in [this act]."

2005 Amendments — Composite Section — Coordination: Chapter 114 in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences that read: "For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments", and at beginning of third sentence deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) that read: "(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)"; in (3)(b)(i) at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) in third sentence at end deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences that read: "For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component" and in first sentence at beginning deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) that read: "(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool"; deleted former (6)(c) through (6)(e) that read: "(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula County	Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year"; deleted former (8) that read: "(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001"; and made minor changes in style. Amendment effective July 1, 2005.

Pursuant to sec. 77(4), Ch. 449, L. 2005, a coordination section, the amendment deleting subsection (3)(a)(i) was rendered void.

Chapter 130 in (1)(b) after "boat" inserted "and aircraft"; in (1)(f) after "taxes" inserted "collected" and after "pursuant to" inserted "the former provisions of"; deleted former (1)(g) that read: "(g) coal severance taxes allocated for county land planning pursuant to 15-35-108"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences (see Ch. 114 note), and at beginning of third sentence deleted "Beginning with calendar year 2002"; at end of (3)(a)(i) substituted "supervisory fee" for "probation and parole fee"; in (5)(a) at end of third sentence after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) at beginning deleted former first two sentences (see Ch. 114 note); deleted former (5)(b)(vi) and (5)(b)(vii) (see Ch. 114 note); deleted former (6)(c)(i) (see Ch. 114 note); in (6)(c)(i) at beginning after "fiscal" substituted "year" for "years 2004 and"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 163 deleted former (1)(d)(v) that read: "(v) 25-9-804"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences (see Ch. 114 note), and in third sentence at beginning deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) (see Ch. 114 note), in (3)(b)(i) in introductory clause at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) in third sentence at end after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences (see Ch. 114 note) and in first sentence at beginning deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) (see Ch. 114 note); deleted (6)(c), (6)(d), and (6)(e) (see Ch. 114 note); deleted former (8) (see Ch. 114 note); and made minor changes in style. Amendment effective October 1, 2005.

Pursuant to sec. 77(1), Ch. 449, L. 2005, a coordination section, the amendment deleting subsection (3)(a)(i) was rendered void.

Chapter 449 in (1) in first sentence inserted "as adjusted pursuant to subsection (3)(a)(i)"; in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and in each succeeding fiscal year", deleted former third and fourth sentences (see Ch. 114 note), and at beginning of third sentence deleted "Beginning with calendar year 2002"; in (3)(a)(i) in introductory clause near beginning in two places after "fiscal year" deleted "2004" and inserted "2007", in two places after "entitlement share" deleted "pool" and inserted "payments", after "department shall" deleted "add to" and inserted "subtract from", after "fiscal year" deleted "2003" and inserted "2006", and at end substituted "the following amounts" for "the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)" and inserted table containing entitlement share amounts for individual counties, consolidated governments, and cities; in (3)(b)(i) at beginning deleted "For fiscal year 2004 and subsequent fiscal years"; in (5)(a) at end after "basis" deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first two sentences (see Ch. 114 note) and at beginning of first sentence deleted "For fiscal year 2003 and each succeeding fiscal year"; deleted former (5)(b)(vi) and (5)(b)(vii) (see Ch. 114 note); deleted former (6)(c) through (6)(e) (see Ch. 114 note); deleted former (8) (see Ch. 114 note); and made minor changes in style. Amendment effective April 28, 2005.

Chapter 596 in (3)(a) at beginning of first sentence deleted "Beginning with fiscal year 2002 and", deleted former third and fourth sentences (see Ch. 114 note), and at beginning of third sentence deleted "Beginning with calendar year 2002"; deleted former (3)(a)(i) (see Ch. 114 note); in (5)(a) at end deleted "beginning September 15, 2001"; in (5)(b)(i) deleted former first and second sentences (see Ch. 114 note) and at beginning of first sentence after "For" deleted "fiscal year 2003 and"; deleted former (5)(b)(vi) and (5)(b)(vii) (see Ch. 114 note); deleted former (6)(c)(i) (see Ch. 114 note); in (6)(c)(i) at beginning substituted "fiscal year" for "fiscal years 2004 and"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 77(3), Ch. 449, L. 2005, a coordination section, the deletion of subsection (3)(a)(i) by Ch. 596 was rendered void.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2003 Amendments — Composite Section: Chapter 236 inserted (13) providing that a payment may not be offset by a debt owed to a state agency by a local government. Amendment effective April 7, 2003.

Chapter 252 in (3)(a) in introductory clause near beginning of fifth sentence substituted "2002" for "2004". Amendment effective April 8, 2003.

Chapter 399 in (1)(k) at beginning substituted "veterans' cemetery license plate fees" for "disabled veterans' flat license plate fees and purple heart license plate fees" and at end substituted "61-3-459" for "61-3-332". Amendment effective January 1, 2004.

Chapter 477 in (1)(e) at beginning substituted "certificate of title" for "certificate of ownership"; and in (1)(i) substituted "61-3-220" for "61-3-201". Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Retroactive Applicability: Section 3, Ch. 252, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to December 31, 2001."

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 inserted (1)(b)(iv) relating to 61-3-317; at end of (1)(b)(vi) deleted "61-3-537"; inserted (1)(b)(viii) relating to 5% of fees under 61-10-122; inserted (1)(b)(ix) relating to 61-10-130; inserted (1)(b)(x) relating to 61-10-148; inserted (1)(b)(xi) relating to 67-3-205; in (2)(b) inserted last sentence relating to a zero base year component; in (3)(a) in third sentence deleted 2003 from the 3% growth rate and inserted fourth sentence providing specific growth rates for 2003; inserted (3)(a)(i) relating to computation for the marriage license and probation and parole fees; in (5)(b)(i) inserted second and fourth sentences relating to a negative base year component; inserted (5)(b)(vii) relating to subtracting district court fees in fiscal year 2002; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Administrative Rules

ARM 42.21.158 Property reporting requirements.

Attorney General's Opinions

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting this section, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under 15-10-420, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under this section and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

15-1-122. Fund transfers.

Compiler's Comments

2021 Amendment: Chapter 181 in (3) at beginning inserted "In each fiscal year"; in (3)(a) near middle after "fund to the livestock loss" deleted bracketed language that read: "reduction and" and at end after "81-1-112" deleted "in each fiscal year"; inserted (3)(b) concerning $100,000 transfer from general fund to the livestock loss reduction restricted account; and made minor changes in style. Amendment effective July 1, 2021.

Repeal of Termination Dates: Section 2, Ch. 181, L. 2021, repealed sec. 8, Ch. 349, L. 2015 and sec. 6, Ch. 284, L. 2017, which terminated the Ch. 349, L. 2015, amendments to this section June 30, 2023. Effective July 1, 2021.

2019 Amendments — Composite Section: (Temporary version) Chapter 343 in (6) near beginning substituted "subsection (4)" for "subsections (2) and (5)".

(Version effective July 1, 2021) Chapter 343 in (5) at beginning deleted "Except as provided in subsection (2)".

(Both versions) Chapter 201 in (3) substituted "$300,000" for "$200,000". Amendment effective July 1, 2019.

Chapter 343 deleted former (2) that read: "(2) For fiscal years 2016 through 2019, there is transferred $1.275 million on an annual basis from the state general fund to the research and commercialization state special revenue account provided for in 90-3-1002"; and made minor changes in style. Amendments in temporary version effective July 1, 2019.

2017 Amendment: Chapter 360 inserted (5) concerning transfer of funds to sage grouse stewardship account; in (7) in exception clause substituted "subsections (2) and (5)" for "subsection (2)"; and made minor changes in style. Amendment effective May 8, 2017, and terminates June 30, 2021.

Extension of Termination Date: Section 6, Ch. 284, L. 2017, amended sec. 8, Ch. 349, L. 2015, by extending the termination date imposed by that section to June 30, 2023. Effective May 4, 2017.

2015 Amendments — Composite Section: Chapter 347 inserted (2) regarding fund transfers for fiscal years 2016 through 2019; in (6) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2015.

Chapter 349 in (4) substituted "livestock loss mitigation" for "livestock loss reduction and mitigation". Amendment effective July 1, 2015, and terminates June 30, 2021.

Chapter 416 in (3)(c)(ii) substituted "Title 23, chapter 2, part 6" for "23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644". Amendment effective October 1, 2015.

Chapter 430 deleted former (2)(e) that read: "(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 430, L. 2015, provided: "[This act] applies to rental car sales and use taxes levied after December 31, 2015."

2013 Amendments — Composite Section: Chapter 123 in (2)(c)(ii) substituted "23-2-614 through 23-2-617" for "23-2-614 through 23-2-618". Amendment effective October 1, 2013.

Chapter 376 in (2)(d) substituted "0.81%" for "0.64%". Amendment effective July 1, 2013.

2011 Amendment: Chapter 339 inserted (3) regarding transfer from state general fund each fiscal year; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendments — Composite Section: Chapter 183 in (1) near middle increased base amount from $36,764 to $59,209; and in (2) near middle increased base amount from $3,050,205 to $3,142,397. Amendment effective July 1, 2009. The amendment by Ch. 486 rendered the amendment in (2) by Ch. 183 void.

Chapter 486 deleted former (2) that read: "(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account a base amount of $3,050,205, increased by 1.5% in each succeeding fiscal year"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 329 in (1) substituted "a base amount of $36,764" for "$36,764 for fiscal year 2003. Beginning with fiscal year 2004"; in (2) substituted "a base amount of $3,050,205" for "the following amounts:

(a) $3,050,205 in fiscal year 2006; and

(b) in each succeeding fiscal year, the amount in subsection (2)(a)"; in (3)(a) in first sentence after "part 5" deleted "1.62% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and" and at end substituted "each fiscal year" for "succeeding fiscal years" and in second sentence substituted "9.48% of the allocation in each fiscal year" for "8.75% of the allocation in fiscal year 2006 and 9.48% of the allocation in fiscal year 2007 and succeeding years"; in (3)(b) after "80-7-816" deleted "1.53% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and" and at end substituted "each fiscal year" for "succeeding fiscal years"; in (3)(c)(i) at beginning deleted "0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years"; in (3)(c)(i)(A)(I) substituted "4.8% in each fiscal year" for "5.2% in fiscal year 2006 and 4.8% in fiscal year 2007 and succeeding years"; in (3)(c)(i)(A)(II) substituted "19.1% in each fiscal year" for "20.8% in fiscal year 2006 and 19.1% in fiscal year 2007 and succeeding years"; in (3)(c)(i)(A)(III) substituted "11.1% in each fiscal year" for "12.1% in fiscal year 2006 and 11.1% in fiscal year 2007 and succeeding fiscal years"; in (3)(c)(i)(A)(IV) substituted "16.7% in each fiscal year" for "18.1% in fiscal year 2006 and 16.7% in fiscal year 2007 and succeeding fiscal years"; in (3)(c)(i)(B) substituted "48.3% in each fiscal year" for "43.8% in fiscal year 2006 and 48.3% in fiscal year 2007 and succeeding fiscal years"; in (3)(c)(ii) at beginning deleted "0.12% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and", after "each" deleted "subsequent", and after "23-2-614 through" substituted "23-2-618" for "23-2-619"; in (3)(c)(iii) at beginning deleted "0.5% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and" and after "each" deleted "succeeding"; in (3)(d) at beginning deleted "0.75% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and", after "each" deleted "succeeding", substituted "24.55%" for "21.30% in fiscal year 2006 and 24.55% in fiscal year 2007 and succeeding fiscal years", and substituted "75.45%" for "78.70% in fiscal year 2006 and 75.45% in fiscal year 2007 and succeeding fiscal years"; in (3)(e) at beginning deleted "0.59% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and" and after "each" deleted "succeeding"; in (3)(f) near middle after "10-3-801" deleted "0.20% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and" and after "each" deleted "succeeding"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Coordination: Chapter 130 deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; in (2)(a) after "fiscal" substituted "year" for "years 2004 and"; in (3)(g)(i) after "vessel" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; in (3)(g)(ii) after "snowmobile" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; in (3)(g)(iii) after "vehicle" substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; and made minor changes in style. Amendment effective October 1, 2005. Amendments in (3) rendered void by Ch. 542 amendments.

Chapter 325 deleted former (2)(a) and (2)(b) that read: "(a) $75,000 in fiscal year 2003;

(b) $0 in fiscal years 2004 and 2005"; in (3)(b)(i), (3)(b)(ii)(B), (3)(c)(i), (3)(c)(ii), (3)(c)(iv), and (3)(c)(v) near beginning substituted "through" for "in"; in (3)(g)(i), (3)(g)(ii), and (3)(g)(iii) substituted "subject to the fee" for "[subject to the search and rescue surcharge]"; and made minor changes in style. Amendment effective April 21, 2005. Amendments in (3) rendered void by Ch. 542 amendments.

Chapter 464 deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; deleted former (3)(e) that read: "(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562"; and made minor changes in style. Amendment effective July 1, 2005.

Section 4, Ch. 542, deleted former (2)(a) that read: "(a) $75,000 in fiscal year 2003"; substituted (3)(a) concerning percentage allocation to motor vehicle recycling and disposal program for former text that read: "(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and $5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532"; substituted (3)(b) concerning percentage allocation to noxious weed state special revenue account for former text that read: "(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 in fiscal year 2006 and, in each subsequent year, $2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) $1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) $1.50 in fiscal year 2006 and, in each subsequent year, $3.65 for each motorcycle and quadricycle; and

(C) $7.50 for each permanently registered light vehicle"; substituted (3)(c) concerning percentage allocation to department of fish, wildlife, and parks for former text that read: "(c) to the department of fish, wildlife, and parks:

(i) $2.50 in fiscal year 2006 and, in each subsequent year, $14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 in fiscal year 2006 and, in each subsequent year, $19 for each snowmobile registered under 23-2-616, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) $5 in fiscal year 2006 and, in each subsequent year, $13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 in fiscal year 2006 and, in each subsequent year, $8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, $4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with $3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City"; substituted (3)(d) concerning percentage allocation to veterans' cemetery account for former text that read: "(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate subject to the fee in 61-3-459"; deleted former (3)(e) that read: "(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562"; in (3)(e) substituted percentage allocation to state special revenue fund to the credit of senior citizens and persons with disabilities transportation services account for former text that read: "25 cents a year for each registered vehicle and $1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112"; in (3)(f) substituted percentage allocation to the search and rescue account for former text that read: "to the search and rescue account provided for in 10-3-801:

(i) $2 a year for each vessel [subject to the search and rescue surcharge] in 23-2-517;

(ii) $2 a year for each snowmobile [subject to the search and rescue surcharge] in 23-2-615(1)(b) and 23-2-616(3); and

(iii) $2 a year for each off-highway vehicle [subject to the search and rescue surcharge] in 23-2-803"; deleted former (3)(h) that read: "(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1)"; substituted (4) defining motor vehicle revenue deposited in the state general fund for former text that read: "For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners"; and made minor changes in style. Amendment effective July 1, 2005.

Pursuant to sec. 131, Ch. 596, L. 2005, a coordination section, in (3)(a) in first sentence the percentages were reduced from 1.63% to 1.62% and from 1.5% to 1.48%; in (3)(b) the percentages were reduced from 1.54% to 1.53% and from 1.52% to 1.50%; in (3)(c)(i) substituted "0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years, 0.46% of the motor vehicle revenue deposited in the state general fund" for "0.47% of the motor vehicle revenue deposited in the state general fund in each fiscal year"; in (3)(d) reduced percentage from 0.65% to 0.64%; in (3)(e) reduced second percentage from 0.31% to 0.30%; and in (3)(f) reduced second percentage from 0.05% to 0.04%. Amendment effective January 1, 2006.

2005 Amendments Void: The amendment to this section made by sec. 1, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

Section 131, Ch. 596, L. 2005, a coordination section, rendered the amendment made by sec. 13, Ch. 596, L. 2005, void.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section — Coordination: Chapter 48 in (2)(b) substituted "$0 in fiscal years 2004 and 2005" for "$2,960,715 in fiscal year 2004"; inserted (2)(c) transferring $3,050,205 in fiscal year 2006; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 399 in (3)(d) after "10-2-603" substituted "$10 for each veteran's license plate subject to the fee in 61-3-459" for "$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h)". Amendment effective January 1, 2004.

Chapter 477 in (3)(c)(ii) after "23-2-601" inserted "23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 491 inserted (3)(h) transferring 50 cents a year for each vehicle subject to the 61-3-321(7) fee to the veterans' services account. Amendment effective January 1, 2004.

Chapter 534 inserted (3)(g) transferring various amounts to the search and rescue account; deleted former (4) that read: "(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001"; in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002" and deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000"; and made minor changes in style. Amendment effective January 1, 2004.

Pursuant to sec. 47(3)(a), Ch. 592, L. 2003, a coordination section, in (3)(g)(i), (3)(g)(ii), and (3)(g)(iii) substituted "$2" for "50 cents".

Chapter 592 in (3) at beginning after "For" deleted "fiscal year 2002 and for" and after "each" deleted "succeeding"; in (3)(a)(ii) at end of first sentence inserted "and $5 for each permanently registered light vehicle"; in (3)(b)(i) at beginning after "$1" inserted "in fiscal year 2006 and, in each subsequent year, $2.75"; in (3)(b)(ii) inserted introductory clause concerning vehicles registered pursuant to 61-3-321; in (3)(b)(ii)(A) near beginning after "each" inserted "registered" and at end after "1 ton" inserted "and motor home"; in (3)(b)(ii)(B) at beginning inserted "$1.50 in fiscal year 2006 and, in each subsequent year, $3.65 for each" and at end after "quadricycle" deleted "and motor home subject to registration or reregistration pursuant to 61-3-321"; inserted (3)(b)(ii)(C) transferring $7.50 for each permanently registered light vehicle; in (3)(c)(i) at beginning after "$2.50" inserted "in fiscal year 2006 and, in each subsequent year, $14.50"; in (3)(c)(ii) at beginning after "$5" inserted "in fiscal year 2006 and, in each subsequent year, $19", near middle after "with" substituted "50% of the amount" for "$2.50", and after "23-2-644 and" substituted "50% of the amount" for "$2.50"; in (3)(c)(iii) after "snowmobile" inserted "registration"; in (3)(c)(iv) at beginning after "$5" inserted "in fiscal year 2006 and, in each subsequent year, $13.25"; in (3)(c)(v) near middle after "$3.50" inserted "in fiscal year 2006 and, in each subsequent year, $8", after "vehicle" deleted "camper", and at end after "61-3-321" deleted "or 61-3-524"; inserted (3)(e)(ii) concerning vehicles registered under 61-3-527, 61-3-530, and 61-3-562; in (3)(f) near beginning after "each" inserted "registered" and after "vehicle" inserted "and $1.25 for each permanently registered vehicle"; deleted former (4) (see Ch. 534 note); in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002", deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000", inserted second and third sentences concerning counts of permanently registered vehicles, in fourth sentence near beginning after "each" deleted "succeeding", and inserted fifth sentence allowing vehicles that are permanently registered to be included in vehicle counts only in the year in which the vehicles are registered by new owners; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 601 inserted (3)(c)(vii) relating to transfers for state parks, fishing access sites, and state facilities at Virginia City and Nevada City; deleted former (4) (see Ch. 534 note); in (4) near beginning of first sentence after "year" deleted "beginning with fiscal year 2002", deleted former second sentence that read: "Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000", and near beginning of second sentence after "each" deleted "succeeding"; and made minor changes in style. Amendment effective January 1, 2004.

Code Commissioner Correction: In (3)(g) the bracketed language was rendered erroneous when the coordination instruction in sec. 47(3)(b), Ch. 592, L. 2003, rendered the amendments to 23-2-517 (now repealed), 23-2-616, and 23-2-803 (now repealed) in Ch. 534, L. 2003, void.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Preamble: The preamble attached to Ch. 491, L. 2003, provided: "WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about $175 million in Montana during fiscal year 2000, which ranked Montana 37th nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America."

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Saving Clause: Section 4, Ch. 601, L. 2003, was a saving clause.

Severability: Section 5, Ch. 601, L. 2003, was a severability clause.

2002 Amendment: Chapter 9 deleted former (2)(a) that read: "(a) $2,873,853 in fiscal year 2002"; in (2)(a) decreased fiscal year 2003 transfer amount from $2,916,961 to $75,000; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 4, Ch. 9, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to transfers in fiscal years beginning July 1, 2001."

Coordination Instruction Not Implemented: Section 5(1), Ch. 95, L. 2001, a coordination section, provided that if House Bill No. 124 was passed and approved and if it included a revision of county funding of the motorboat account, then the allocation to the department of fish, wildlife, and parks in [section 3(4)] [15-1-122] of House Bill No. 124 was to be increased by $337,500. House Bill No. 124 was passed and approved as Chapter 574, L. 2001. The coordination instruction in Ch. 95, L. 2001, was written to reflect a prior version of House Bill No. 124 in which agencies received lump-sum allocations to replace lost funding. The version of House Bill No. 124 that was passed and approved allocates a specific dollar amount to the motorboat account for each boat registered or receiving a decal. Therefore, the coordination provision in Ch. 95, L. 2001, has not been implemented because it no longer reflects the content of Ch. 574, L. 2001.

Effective Date: Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

15-1-123. Reimbursement for class eight rate reduction and exemption — distribution — appropriations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 45, L. 2023. Amendment effective October 1, 2023.

2021 Amendment Revised: Section 5, Ch. 45, L. 2023, amended sec. 12, Ch. 506, L. 2021, by revising the January 1, 2026, effective date of the sec. 3, Ch. 506, L. 2021, amendment to this section to July 1, 2021.

Section 7, Ch. 45, L. 2023, repealed the amendment to this section made by sec. 2, Ch. 506, L. 2021.

Applicability: Section 9, Ch. 45, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

2021 Amendment: Chapter 506 in (1) at beginning of first sentence inserted exception clause and near beginning of last sentence after "The difference" inserted "plus the amount calculated in subsection (2)"; inserted (2) first and second sentences concerning increased exemption amount and the difference calculated added to the annual reimbursement amount, and in temporary version inserted last sentence concerning lowering the reimbursement due to the American Rescue Plan Act; inserted (3) concerning growth rate applied to the reimbursements; in (4) near middle of first sentence substituted "subsections (1) and (2)" for "subsection (1)" in (4) after "distribute the reimbursements calculated in" substituted "subsections" for "subsection"; and deleted former last sentence that read: "The growth rate applied to the reimbursement is one-half of the average rate of inflation for the prior 3 years"; in (5) near beginning of first sentence after "amount determined under" substituted "subsections (1) and (2)" for "subsection (1)"; in (6)(a) near beginning substituted "subsections (1) and (2)" for "subsection (1)"; and made minor changes in style. Amendment in temporary version effective July 1, 2021, and terminates December 31, 2025.

Effective Dates — Applicability: Section 12, Ch. 506, L. 2021 (amended by sec. 5, Ch. 45, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Section 3] [amendments to 15-1-123] is effective January 1, 2026.

(3) [Section 4] [first temporary amendment to 15-6-138(4)] is effective October 1, 2021, and applies to the tax year beginning after December 31, 2021.

(4) [Section 5] [second temporary amendment to 15-6-138(4)] is effective October 1, 2022, and applies to the tax year beginning after December 31, 2022.

(5) [Section 6] [third temporary amendment to 15-6-138(4)] is effective October 1, 2023, and applies to the tax year beginning after December 31, 2023.

(6) [Section 7] [fourth temporary amendment to 15-6-138(4)] is effective October 1, 2024, and applies to the tax year beginning after December 31, 2024.

(7) [Section 8] [final permanent amendment to 15-6-138(4)] is effective July 1, 2025, and applies to the tax years beginning after December 31, 2025."

Severability: Section 11, Ch. 506, L. 2021, was a severability clause.

2019 Amendment: Chapter 3 in (1) in two places, (4)(a), and (4)(b) substituted "15-10-109" for "15-10-108"; in (2) at beginning of second sentence deleted "For fiscal year 2018 and thereafter"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Special Session Amendment: Chapter 2 in (1) near middle after "as defined in 15-1-121(5)" deleted "each school district, the county retirement fund under 20-9-501, the countywide school transportation reimbursement under 20-10-146" and in last sentence after "each local government" deleted "each school district"; deleted former (3) that read: "(3) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to school districts with the block grants pursuant to 20-9-630. School district reimbursements for subsequent fiscal years are made pursuant to 20-9-630"; deleted former (6) and (7) that read: "(6) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to the countywide retirement fund under 20-9-501. One-half of the amount must be distributed in November and the remainder in May.

(7) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to the county transportation fund reimbursement under 20-10-146. The reimbursement must be made at the same time as countywide school transportation block grants are distributed under 20-9-632"; and made minor changes in style. Amendment effective July 1, 2018.

2017 Amendment: Chapter 332 in (1) in first sentence near middle after "the department shall" substituted "reimburse" for "for the fiscal years ending June 30, 2014, and June 30, 2015, estimate for"; in (2) in first sentence substituted "For fiscal year 2018 and thereafter, the growth rate applied to the reimbursement is one-half of the average rate of inflation for the prior 3 years" for "for the fiscal year ending June 30, 2015. Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6)"; deleted former (2)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each local government. By June 15, 2014, the department shall distribute the amount determined under this subsection (2)(b) for local governments as provided in 15-1-121(6)(a)"; in (3) in first sentence after "20-9-630" deleted "for the fiscal year ending June 30, 2015"; deleted former (3)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each school district. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (3)(b) in the same manner as the block grant is distributed by fund under 20-9-630"; in (4) in first sentence at beginning deleted "For the fiscal year ending June 30, 2015"; deleted former (4)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each tax increment financing district. By June 15, 2014, the department shall distribute the amount determined under this subsection (4)(b) to each tax increment financing district as provided in 15-1-121(8) and to any other tax increment financing district that is entitled to a reimbursement under this section"; in (5)(a) at beginning deleted "For the fiscal year ending June 30, 2015"; in (5)(b) at beginning deleted "Beginning in fiscal year 2013"; deleted former (5)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for the 6-mill university levy. By June 15, 2014, the department of administration shall transfer the amount determined under this subsection (5)(b) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108"; in (6) in first sentence at end deleted "for the fiscal year ending June 30, 2015"; deleted former (6)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (6)(b) to the countywide retirement fund"; in (7) in first sentence after "transportation" inserted "fund" and at end deleted "for the fiscal year ending June 30, 2015"; deleted former (7)(b) that read: "(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (7)(b) to the county transportation reimbursement"; and made minor changes in style. Amendment effective May 4, 2017.

2013 Amendment: Chapter 396 in (1) substituted "15-6-138(3), the increased exemption amount in 15-6-138(4)" for "15-6-138 and for", after "Laws of 2011" inserted "and section 2, Chapter 396, Laws of 2013, and the effective tax rate reductions on property under 15-6-145 because of the increased exemption amount required by the amendment of 15-6-138 in section 2, Chapter 396, Laws of 2013", substituted "for the fiscal years ending June 30, 2014, and June 30, 2015" for "by June 1, 2012, and for each calendar year that the tax rate is adjusted under 15-6-138(4)", and near end in two places after "Laws of 2011" inserted "and section 2, Chapter 396, Laws of 2013"; in (2)(a), (3)(a), (5)(a), (6)(a), and (7)(a) substituted "the fiscal year ending June 30, 2015" for "fiscal year 2012 and all other fiscal years in which rate reductions occur"; in (2)(a), (3)(a), (6)(a), and (7)(a) substituted "reimbursements calculated in subsection (1)" for "reimbursement"; in (2)(b), (3)(b), (4)(b), (5)(b), (6)(b), and (7)(b) substituted "the fiscal year ending June 30, 2014" for "fiscal year 2012 and all other fiscal years in which rate reductions occur"; in (2)(b), (4)(b), and (5)(b) substituted "By June 15, 2014" for "By August 1 following each of those fiscal years"; in (3)(b), (6)(b), and (7)(b) substituted "By November 30, 2014" for "By November 30 following each of those fiscal years"; in (4)(a) substituted "For the fiscal year ending June 30, 2015" for "For each fiscal year beginning after fiscal year 2012 and all other fiscal years in which rate reductions occur"; and made minor changes in style. Amendment effective May 6, 2013.

Saving Clause: Section 8, Ch. 396, L. 2013, was a saving clause.

Applicability: Section 10, Ch. 396, L. 2013, provided: "[This act] applies to property tax years beginning after December 31, 2013."

2011 Enactment — Coordination: Section 14(3), Ch. 411, L. 2011, provided that subsections (3)(c), (6)(c), and (7)(c) of this section as enacted by sec. 3, Ch. 411, L. 2011, are void. See 2011 Session Law for text.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Effective Date: Section 16, Ch. 411, L. 2011, provided that this section is effective July 1, 2011.

Applicability: Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

15-1-142. Montana surplus rebate account.

Compiler's Comments

Effective Date: Section 8, Ch. 44, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 13, 2023.

Termination: Section 9, Ch. 44, L. 2023, provided: "[This act] terminates December 31, 2025."

Severability: Section 6, Ch. 44, L. 2023, was a severability clause.

15-1-143. Supplemental Montana surplus rebate account fund transfer.

Compiler's Comments

Effective Date: Section 9, Ch. 764, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 5, 2023.

Termination: Section 10, Ch. 764, L. 2023, provided that this section terminates December 31, 2025.

Severability: Section 8, Ch. 764, L. 2023, was a severability clause.

15-1-150. Digital assets taxation.

Compiler's Comments

Effective Date: Section 7, Ch. 344, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 2, 2023.

Preamble: The preamble attached to Ch. 344, L. 2023, provided: "WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide."

Part 2
Department of Revenue

Part Administrative Rules

ARM 42.1.101 Organizational rule for Department of Revenue.

Part Case Notes

Authority of Department of Revenue to Adopt Rules Regarding Tax Increment Financing: Administrative rules adopted by the Department of Revenue regarding tax increment financing districts are designed to obtain information necessary for the Department to confirm that a local government has created a qualified tax increment financing district, as well as the information necessary for the Department to certify base taxable value. Therefore, the Department has the authority to develop rules relating to increment financing laws. Fallon County v. St., 2009 MT 454, 354 M 347, 223 P3d 886 (2009).

Powers Transferred to Department: The Department of Revenue was granted the administrative powers previously held by the State Board of Equalization, but the appellate power of the former Board was transferred to the State Tax Appeal Board (now Montana Tax Appeal Board) under the provisions of 15-2-201. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

15-1-201. Administration of revenue laws.

Compiler's Comments

2015 Amendment: Chapter 338 inserted (1)(d) permitting contracts with internal revenue service for tax collection services; and made minor changes in style. Amendment effective April 28, 2015.

2007 Special Session Amendment: Chapter 6 inserted (1)(b) concerning provision of social security number, federal employee identification number, or taxpayer identification number; and made minor changes in style. Amendment effective June 1, 2007.

1999 Amendment: Chapter 314 inserted (1)(b) authorizing department to contract with United States department of the interior or other federal agency to perform royalty audits, collection services, and other mining-related operations on federal lands in Montana; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 561 in (1)(a), near beginning, inserted "and 71"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 27 in (1)(a), after "and over", deleted "its agents and"; in (1)(c), after "adopt rules", deleted "specifying the methodology to be used in conducting sales assessment ratio studies and in"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 10 in (1)(a) removed brackets around reference to Title 15, chapter 70; and made minor changes in style.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to Title 15, chapter 1, part 1.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

Administrative Rules

Title 42, ARM Department of Revenue rules.

Title 42, chapter 2, subchapter 3, ARM Public participation.

ARM 42.2.501 Application of partial payments.

ARM 42.2.511 Review of centrally assessed property appraisals.

Title 42, chapter 2, subchapter 6, ARM Dispute resolution.

Title 42, chapter 2, subchapter 8, ARM Ethics rules.

Title 42, chapter 4, ARM Tax credits.

ARM 42.9.106 Composite return, withholding, or waiver for partners, shareholders, managers, and members that are second-tier pass-through entities.

ARM 42.9.204 Composite returns — net operating loss.

Title 42, chapter 10, ARM Agency debt collection service.

ARM 42.15.316 Extensions.

ARM 42.15.326 Request for adjustment of joint return.

ARM 42.15.327 Statement required for adjustment of joint return.

ARM 42.15.415 Deductions for sale of land to beginning farmer.

Title 42, chapter 15, subchapter 9, ARM First-time home buyer deductions.
Title 42, chapter 18, ARM Montana appraisal plan.
Title 42, chapter 19, ARM General property tax provisions.
Title 42, chapter 19, subchapter 4, ARM Property tax assistance programs.
ARM 42.19.601 Notification of classification and appraisal to owners of multiple undivided ownerships.
ARM 42.20.156 Land classification change criteria.
Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.23.424 Sale of land to beginning farmer — corporation license tax deduction.
Title 42, chapter 25, subchapter 15, ARM Resource indemnity trust tax.
Title 42, chapter 31, subchapter 4, ARM Emergency telephone service.
ARM 42.31.902 Reporting requirements for Public Service Commission and Consumer Council.

Case Notes

Authority of Department of Revenue to Adopt Rules Regarding Tax Increment Financing: Administrative rules adopted by the Department of Revenue regarding tax increment financing districts are designed to obtain information necessary for the Department to confirm that a local government has created a qualified tax increment financing district, as well as the information necessary for the Department to certify base taxable value. Therefore, the Department has the authority to develop rules relating to increment financing laws. Fallon County v. St., 2009 MT 454, 354 M 347, 223 P3d 886 (2009).

Supervisory Role of Department of Revenue Over County Assessor's Employees — No Duty Owed to Assessor: Geiger sued the Department of Revenue, alleging that the Department was negligent in its management of the Dawson County Assessor's Office. The District Court granted the Department's motion for a directed verdict. The Supreme Court affirmed the District Court decision, holding that the Department had no duty to Geiger from which negligence could arise. The actions taken by the Department in reducing the number of employees in the Assessor's Office, supervising employees in the Office, withdrawing the delegation to the Assessor to hire and fire state employees, and issuing an audit report examining deficiencies in the Assessor's Office were all done pursuant to the statutory authority of the Department, which it carried out in a nonnegligent fashion. Geiger v. Dept. of Revenue, 260 M 294, 858 P2d 1250, 50 St. Rep. 1050 (1993).

Attorney General's Opinions

No Authority for Department of Revenue to Collect 9-1-1 Fees for Prepaid Wireless Phone Service — No Authority to Adopt Administrative Rules: The Legislature has not authorized the collection of 9-1-1 fees for prepaid wireless services purchased from independent retail stores. Absent this legislative authority, the Department of Revenue is not allowed to promulgate rules under 10-4-203 to allow for the collection of fees on these sales. 55 A.G. Op. 2 (2014).

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

15-1-202. Enforcement of revenue laws.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "complaints to be made against", deleted "assessors and other"; at end of (1) and (2) deleted "or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106"; deleted (3) that read: "(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 10 in (1) removed brackets around reference to Title 15, chapter 70.

1989 Amendment: At end of (1) and (2) inserted reference to failure to comply with 15-8-106; and inserted (3) relating to removal from office. Amendment effective January 1, 1991.

Administrative Rules

Title 42, chapter 2, subchapter 8, ARM Ethics rules.

Law Review Articles

A Legal Response to the Sovereign Citizen Movement, Kalinowski, 80 Mont. L. Rev. 153 (2019).

15-1-203. Study of other tax systems.

Case Notes

Department of Revenue's Activity in Proposing Tax Legislation Not Violation of Separation of Powers: In 1994 and 1995, the Department of Revenue engaged in a project to build a consensus between various parties on how best to achieve a simplification of oil and natural gas taxes. The Department proposed legislation to the 1995 Legislature, and it was passed as the Montana Oil and Natural Gas Production Tax Act. Certain counties and taxpayers challenged the law on the basis that neither the Legislature nor the Governor had granted the Department any power to conduct the project and that the Department's actions violated the doctrine of separation of powers. The Supreme Court upheld the tax law on the basis that the constitution requires the Governor to provide the Legislature with information and to recommend measures that the Governor considers necessary and further that this section is an enabling statute allowing the Department to formulate and recommend legislation. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

15-1-204. Consultation with governor.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-1-205. Biennial report — contents.

Compiler's Comments

2013 Amendment: Chapter 268 in (3)(a)(i) and (3)(a)(iv) substituted "corporate income tax" for "corporation license tax"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2011 Amendment: Chapter 379 in (1) after "available to the legislature" inserted "and the public" and at end inserted "for the legislature"; in (3) in introductory clause changed "may" to "must"; inserted (3)(d) concerning provision granting tax benefits; inserted (3)(e) pertaining to the number of benefiting taxpayers; in (4) at beginning inserted "A distribution analysis of", after "(3)" deleted "if reported", and after "income" inserted "level"; inserted (9) requiring internet version of report; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendment: Chapter 199 inserted (2) concerning statewide effective tax rate for each class of property; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 61 deleted (8) that read: "(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report." Amendment effective March 17, 1997.

1995 Amendment: Chapter 9 in (1), at end of first sentence, deleted "in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature".

1993 Special Session Amendment: Chapter 27 in (2)(a)(ii), after "department", deleted "or its agent". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 10 in (7), after "report", inserted "prepared by the department of transportation"; and made minor changes in style.

Chapter 349 near beginning of first sentence of (1) substituted "make available" for "as provided in 5-11-210, submit" and inserted second sentence that read: "The department shall follow the provisions of 5-11-210 in preparing the report"; inserted (8) requiring inclusion of inheritance tax information; and made minor changes in style.

1991 Amendment: Near beginning of (1), after "governor", inserted "20 days before the meeting of the legislature", substituted "as provided in 5-11-210, submit to" for "upon request to each member of", and after "legislature" deleted "20 days before the meeting of the legislature". Amendment effective March 20, 1991.

1987 Amendment: In (1), requiring report, near end inserted "alternative" before "measures"; and inserted (2) through (6) listing items that may be included in report and requiring certain information (see Ch. 500, L. 1987, for full text).

Composite Section — Conflicting Amendments: Section 84-708.1, R.C.M. 1947, was amended twice in 1977, once by Ch. 98 and once by Ch. 566. The amendments conflict in that Ch. 98 made inclusion of the selling price of gasoline in the report mandatory and Ch. 566 made inclusion of the selling price discretionary. The Code Commissioner, 1977, prepared a composite section using the discretionary language found in Ch. 566, L. 1977.

15-1-206. Waiver of penalties — interest.

Compiler's Comments

2015 Amendment: Chapter 308 in (2) substituted "$500 due for each tax period" for "$100 due upon the tax" and inserted second sentence concerning payment plans. Amendment effective January 1, 2017.

Applicability: Section 17(1), Ch. 308, L. 2015, provided that this section applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

2011 Amendment Void: The amendment made to this section by sec. 1, Ch. 353, L. 2011, was rendered void by sec. 3, Ch. 353, L. 2011, a coordination section.

2005 Amendment: Chapter 594 deleted former (3) that read: "(3) Whenever the department is notified of a change in federal taxable income upon filing an amended Montana return, as provided for in 15-30-304, the department shall waive the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendments — Composite Section: Chapter 68 in (3) after "federal taxable income" substituted "upon filing an amended Montana return" for "as the result of a federal adjustment or upon filing an amended federal return"; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 427 in (1) substituted "waive, for reasonable cause, any penalty assessed by the department" for "waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax"; in (2) in two places after references to waive deleted references to abate; in (3) substituted "waive" for "abate"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Inserted (2) relating to abatement of interest; and inserted (3) relating to federal adjustments.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.
ARM 42.14.1106 Penalties and interest.

15-1-207. Writeoff of collection of tax, penalty, or interest — rules.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 84, L. 1991, provided: "A statement of intent is required for this bill because [section 1] [this section] grants the department of revenue authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax."

Administrative Rules

ARM 42.3.120 Delinquent tax accounts and noncollection actions.
ARM 42.14.203 Collecting, reporting, and paying the tax.
ARM 42.14.204 Penalties and interest.

15-1-208. Signature alternatives for electronically filed returns.

Compiler's Comments

2015 Amendment: Chapter 27 in (1) and (2) substituted current text concerning acceptance of electronic returns for "For purposes of Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11, the director of revenue, and for the purposes of Title 15, chapter 70, the director of the department of transportation, may prescribe, by rule, methods for signing, subscribing, or verifying electronically filed tax returns"; in (3) after "Returns" inserted "reports, and documents" and after "in accordance with" inserted "this section or"; and made minor changes in style. Amendment effective February 18, 2015.

1997 Amendment: Chapter 6 near beginning of first sentence substituted "Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11" for "this part", near middle, after "director of revenue", inserted "and for the purposes of Title 15, chapter 70, the director of the department of transportation", and at end deleted "required to be filed by this part"; and made minor changes in style. Amendment effective February 5, 1997.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

15-1-210. Taxpayer right to know — centrally assessed property.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

Effective Date: This section is effective October 1, 2011.

15-1-211. Uniform dispute review procedure — notice — appeal.

Compiler's Comments

2017 Amendment: Chapter 102 in (2)(b) inserted last two sentences regarding informal consultation or communication about discovery prior to use of formal discovery procedures; inserted (2)(c) regarding bypass of review by dispute resolution office for final department decision within 30 days; inserted (4)(d) regarding right to final decision within 30 days of receiving election to bypass dispute resolution office review; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 102, L. 2017, provided: "[This act] applies to proceedings commenced on or after January 1, 2018."

Saving Clause: Section 3, Ch. 102, L. 2017, was a saving clause.

2015 Amendment: Chapter 70 in (1) near beginning of first sentence inserted "dispute"; and in (4)(e) substituted "request" for "have the department consider". Amendment effective February 27, 2015.

2013 Purported Amendment: Although sec. 3, Ch. 419, L. 2013, purported to amend this section, the final version of the text remained unamended except for nonsubstantive style changes.

2000 Amendment by Referendum: Chapter 9 in (1)(a) near middle of first sentence before "estate taxes" deleted "inheritance taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1999 Amendments — Composite Section: Chapter 36 substituted present language regarding dispute review procedure for persons, other entities, and the department for former section that read: "(1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, are due;

(ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final department decision, and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whether an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other information to the administrator of the division that administers the tax or to the administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2402 and 39-51-2410.

(c) Within 60 days after the taxpayer has presented the taxpayer's objections, as provided in subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and any other information to the director of revenue or the director's designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or the designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented the objections, the director or the designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that the director has not had an opportunity to review the administrator's decision and the director believes that a review may be helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide the taxpayer's objections and reasons for the objections to the director so that the director or the director's designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or the director's designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded." Amendment effective February 24, 1999.

Chapter 451 in (4)(c) near middle of second sentence after "director's" inserted "or the designee's" (amendment rendered void by amendment by Ch. 36); in (6)(b) near middle of third sentence after "director's" inserted "or the designee's" (amendment rendered void by amendment by Ch. 36); inserted (6)(a)(ii) providing that the director or the director's designee has no authority to bind a future legislature through the terms of an agreement; in (6)(b) at beginning inserted "Subject to subsection (6)(a)(ii)"; and made minor changes in style. Amendment effective April 22, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

Section 5, Ch. 451, L. 1999, provided: "[This act] applies to any arbitration, compromise, or settlement of actions entered into on or after [the effective date of this act]." Effective April 22, 1999.

1997 Amendment: Chapter 123 in (3)(b)(ii), near end, substituted "39-51-2402" for "39-51-2403"; and made minor changes in style. Amendment effective March 20, 1997.

Retroactive Applicability: Section 8, Ch. 123, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 529 in first sentence of (1)(a), after "department", inserted "and to all issues arising from the administration of taxes" and after "taxes" inserted "the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor"; in (2)(b)(ii), at end, inserted reference to taxpayer's right to a review of employer-employee relationship determinations; in second sentence of (3)(a), at end, inserted "unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2"; inserted (3)(b)(ii) relating to referring taxpayer objections to the Department of Labor and Industry; and made minor changes in style. Amendment effective July 1, 1996.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Effective Dates: Section 32, Ch. 811, L. 1991, provided: "(1) For the purposes of promulgating administrative rules to administer [this act], [section 1] [15-1-211] is effective on passage and approval [approved May 17, 1991].

(2) The remainder of [this act] is effective October 1, 1991."

Administrative Rules

ARM 42.2.510 Review of statement of account notices.

ARM 42.2.511 Review of centrally assessed property appraisals.

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

Title 42, chapter 2, subchapter 6, ARM Dispute resolution.

ARM 42.4.4106 Appeal rights.

ARM 42.10.507 Agency debt collection service — appeal hearings.

ARM 42.15.326 Request for adjustment of joint return.

ARM 42.15.327 Statement required for adjustment of joint return.

ARM 42.31.208 Contested case and judicial review of determinations.

ARM 42.31.504 Collection of tax and hearing rights.

ARM 42.31.810 Nursing facilities — hearing rights.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Collateral References

Tax Appeals and Oversize Loads, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

15-1-212. Mediation of valuation disputes — centrally assessed and industrial properties.

Compiler's Comments

2021 Amendment: Chapter 142 in (2) in three places and in (7) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Effective Date: Section 10(1), Ch. 419, L. 2013, provided that this section is effective on passage and approval. Chapter 419, L. 2013, was enacted into law without the governor's signature on May 6, 2013.

15-1-213. Mediation of valuation disputes — other property taxpayers.

Compiler's Comments

2021 Amendment: Chapter 142 in (2) in three places substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Effective Date: Section 10(2), Ch. 419, L. 2013, provided that this section is effective January 1, 2015.

15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments.

Compiler's Comments

2017 Amendment: Chapter 386 inserted (7)(a)(ii)(B) concerning interest rate for taxes other than individual income taxes; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 308 in (1) in first sentence after "extension of time" inserted "allowed for in Title 15, chapter 30 or 31" and at end deleted "of $50 or the amount of the tax due, whichever is less" and inserted last three sentences concerning calculation of penalties; in (2)(a)(i) substituted "subsections (2)(a)(ii), (2)(b), and (2)(d)" for "15-30-2604(3)(c) and subsection (2)(b) of this section" and substituted "0.5% a month" for "1.2% a month or fraction of a month"; inserted (2)(a)(ii) concerning penalty waivers; in (2)(b) at beginning inserted exception clause, after "chapter 68" inserted "or Title 53, chapter 19, part 3", and after "month" deleted "or fraction of a month"; inserted (2)(b)(ii) concerning waiver of penalty; in (2)(c) at beginning deleted "Except as provided in 15-30-2604(3)(c)" and after "accrues" inserted "daily"; inserted (2)(d) concerning reasonable cause; inserted (3) concerning substantial understatement of tax; in (4)(a) in first sentence inserted exception clause, after first "return" inserted "or report as required under Title 15", after second and third "return" inserted "or report", and substituted "15% of the tax due for each month or fraction of a month during which the person purposely or knowingly fails to file a return or report, but not to exceed 75% of the tax due as determined by the department" for "not less than $1,000 or more than $10,000"; inserted (4)(b) concerning additional penalty and state action to recover penalties and taxes; inserted (5) concerning fraudulent reporting; inserted (6) concerning frivolous returns; in (7)(a) at beginning deleted "Except as provided in 15-30-2604(3)(c)"; inserted (7)(a)(i)(A) concerning applicable interest rate; in (7)(a)(i)(B) at beginning inserted "Beginning January 1, 2018", near end substituted "third quarter" for "fourth quarter", and at end deleted "or 8%, whichever is greater"; in (7)(a)(ii) after "12%" inserted "a year"; in (7)(b) at beginning of second sentence deleted "Except as provided in 15-30-2604(3)(c)"; in (8)(a) after "fees" inserted "remittances" and at end substituted "Title 53, chapter 19, part 3" for "[and the former 85-2-276]"; in (10) at beginning deleted "Except as provided in 15-30-2604(3)(c)"; and made minor changes in style. Amendment effective January 1, 2017, and subsection (7)(a)(i)(A) terminates December 31, 2017.

The amendment to subsection (8)(a) that deleted bracketed language rendered ineffective the termination of the bracketed language by sec. 18, Ch. 288, L. 2005.

Extension of Termination Date — Code Commissioner Explanation: Section 10, Ch. 269, L. 2015, amended sec. 18, Ch. 288, L. 2005, by extending the termination date imposed by Ch. 288 to June 30, 2028. Amendment effective July 1, 2015.

Applicability: Section 17(1), Ch. 308, L. 2015, provided that this section applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

2013 Amendment: Chapter 123 in (2)(a), (2)(c), (4)(a), and (4)(b) substituted "15-30-2604(3)(c)" for "15-30-2604(2)(c)". Amendment effective October 1, 2013.

2011 Amendment: Chapter 381 in (2)(a) inserted "15-30-2604(2)(c) and"; in (2)(c), (4)(a), (4)(b), and (7) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

The amendment made to this section by sec. 2, Ch. 353, L. 2011, was rendered void by sec. 3, Ch. 353, L. 2011, a coordination section.

Applicability: Section 3, Ch. 381, L. 2011, provided: "[This act] applies to tax reporting periods beginning after December 31, 2011."

2007 Amendment: Chapter 319 in (5)(a) at end before "85-2-276" inserted "the former". Amendment effective July 1, 2007.

Contingent Voidness Repealed: Section 9, Ch. 319, L. 2007, repealed sec. 15, Ch. 288, L. 2005, a contingent voidness section concerning fiscal year line item appropriations to fund Montana's water adjudication program. Effective July 1, 2007.

2005 Amendments — Composite Section: Chapter 288 at end of (3)(a) of temporary version and (5)(a) of version effective January 1, 2007, inserted "and 85-2-276". Amendment effective July 1, 2005, and terminates June 30, 2020.

(Temporary version) Chapter 594 in (1)(c) inserted last sentence related to accrual of penalty; in (2) in first sentence after "year" deleted "accrued at 1% a month or fraction of a month, on the unpaid tax" and inserted last sentence related to accrual of interest; and made minor changes in style. Amendment effective July 1, 2005.

(Version effective January 1, 2007) Deleted former (1)(b) that read: "(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less."; inserted (2)(a) related to late payment penalty; in (2)(b) in first sentence inserted reference to chapter 30, part 2, chapter 53, chapter 65, and chapter 68 and in second sentence reduced maximum penalty from 18% to 15%; inserted (2)(c) related to accrual of penalty; deleted former (1)(d) that read: "(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2)"; inserted (3) related to additional penalty for failure to file return; in (4)(a) in first sentence at end after "assessed" substituted "by the department" for "at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax" and inserted second and third sentences related to determination of interest rates and (4)(a)(i) and (4)(a)(ii) related to interest rates; in (4)(b) inserted second sentence related to accrual of interest; deleted former (3)(b)(iii) that read: "(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law"; inserted (6) related to interest rate changes; inserted (7) related to calculation and assessment of penalties and interest; inserted (8) related to due date of deficiency assessments; inserted (9) related to interest allowed for overpayment; and made minor changes in style. Amendment effective January 1, 2007.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Contingent Voidness: Section 15, Ch. 288, L. 2005, provided: "If at least $2 million is not appropriated in a line item for each fiscal year from state sources other than the water adjudication account provided for in [section 7] [85-2-280], for the purposes of funding Montana's water adjudication program, then [this act] is void."

Effective Date —Applicability: Section 57, Ch. 427, L. 1999, provided that this section is effective January 1, 2000, and applies to all tax periods beginning after December 31, 1999.

Administrative Rules

ARM 42.2.504 Penalties.
ARM 42.2.506 Late filing penalty.
ARM 42.2.507 Substantial understatement penalty.
ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.
ARM 42.15.314 Changes in federal taxable income.
ARM 42.15.315 Original and amended returns.
ARM 42.15.316 Extensions.
ARM 42.15.325 Failure to furnish requested information or file delinquent return.
ARM 42.17.221 Due date and application of taxes.
ARM 42.17.222 Demand of payment or reports if employer transfers or discontinues business.
ARM 42.23.607 Computation of quarterly estimated tax underpayment interest.
ARM 42.30.107 Fiduciary — interest and penalties.
ARM 42.31.803 Nursing facilities — estimation and collection of delinquent or unpaid fees.

Case Notes

Failure to File Tax Returns — Statute of Limitations: Prosecution for failure to file state tax returns is a criminal prosecution differing from the civil action under 15-30-322 (now repealed) for collection of unpaid taxes. The failure to file tax returns is a misdemeanor, and as such is subject to the 1-year Statute of Limitations of 45-1-205. The state is barred from prosecuting for failure to file proper returns for the period prior to 1 year before commencing prosecution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Giving of Sandstrom Instruction as Error: The giving of the Sandstrom instruction which states that a person intends the ordinary consequences of his voluntary acts, was prejudicial and harmful in this case, concerning failure to file proper state tax returns. The instruction when read with the body of instructions could be interpreted as allowing the jury no discretion and directing them to find the element of intent. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Judge to Instruct Jury on Law — Testimony of Constitutional Expert Excluded: The interpretation and application of the U.S. Constitution was a question of law and not a fact in issue in a prosecution for failure to file proper state tax returns. It was a determination to be made by the trial judge within his statutory powers. Instructing the jury on the law necessary for the jury's rendering of a verdict in a criminal case is a duty within the exclusive province of the trial judge. It was proper to exclude the testimony of an expert on the U.S. Constitution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Pleading Fifth Amendment as a Defense: State tax returns which are signed, but submitted with a blanket assertion of the persons' fifth amendment privilege, are not properly filed returns as provided by law. Neither is the blanket assertion of privilege under the fifth amendment a proper defense. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Proper Limitation on Voir Dire — Religious Beliefs: In a prosecution for failure to file proper tax returns, it was within the trial court judge's discretion to restrict defendant from inquiring into the religious beliefs of the prospective jurors. Given the wide discretion allowed a trial judge, the lack of relevancy of religion to the issues at bar, and the permitted inquiry into the jurors' general belief in God, the limitation was proper. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Tax Withholding Statement Irrelevant: In a prosecution for failure to file proper tax returns, it was proper for the court to refuse to admit into evidence tax withholding statement, although evidence of defendant's income was admitted. The payment of taxes by withholding was irrelevant to the issue of whether proper returns were filed and could have confused the jury. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Venue for Failure to File Tax Returns: Tax returns are required to be filed with the Department of Revenue. The Department is required to be located in Helena, Montana. Section 46-3-101 (renumbered 46-3-111) provides that in all criminal prosecutions, trial shall be in the county where the offense was committed. The offense charged here was failure to properly file tax returns, so that venue was properly with Lewis and Clark County where Helena is located. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Failure to File Tax Return — Venue: Venue of a criminal action charging intentional failure to file a properly completed Montana individual income tax return would lie in either Lewis and Clark County or the county in which defendants reside. But, since the complaint was filed in the former and no legal justification or prejudice was shown to support transfer, the Supreme Court reversed the District Court's change of venue from Lewis and Clark County. Dept. of Revenue v. Lane, 187 M 230, 609 P2d 300 (1980), following St. v. Bretz, 169 M 505, 548 P2d 949 (1976).

Inadvertent Failure to Pay When Filing Return: The provision of 15-30-2641 (now repealed), prior to the 1955 amendment, that any person failing to pay tax on due date was allowed 60 days in which to pay tax with only a 5% penalty did not prevent assessment of the 100% penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. St., 135 M 323, 340 P2d 151 (1959).

Constitutionality Prior to Amendment: The double penalty imposed under subsection (2) of 15-30-2641 (now repealed), before the 1955 amendment, did not violate Art. III, sec. 20 and 27, 1889 Mont. Const. (now Art. II, sec. 22 and 17, 1972 Mont. Const.) as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. St. Bd. of Equalization, 133 M 43, 319 P2d 1061 (1958).

15-1-217. Rulemaking authority.

Compiler's Comments

Effective Dates — Applicability: Section 57, Ch. 427, L. 1999, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2000, and applies to all tax periods beginning after December 31, 1999.

(2) For the purposes of promulgating administrative rules, [section 2 [15-1-217] and this section] are effective July 1, 1999."

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

ARM 42.3.115 Reasonable cause for waiver of late payment penalty for amended tax returns and payment of debt within 30 days.

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

15-1-218. Out-of-state collections — authority to enter into contracts — statutory appropriation.

Compiler's Comments

2015 Amendment: Chapter 338 near beginning after "other state tax agencies" inserted "the federal government". Amendment effective April 28, 2015.

Effective Date: Section 4, Ch. 327, L. 2007, provided that this section is effective July 1, 2007.

15-1-221. Short title.

Compiler's Comments

Preamble: The preamble attached to Ch. 619, L. 1991, provided: "WHEREAS, the Legislature finds and declares that the administration and collection of taxes is the most sensitive point of contact between citizens and their government;

WHEREAS, the Legislature further declares that it is the intent of the Legislature to ensure that the rights, privacy, and property of Montana taxpayers are adequately protected during the process of assessment and collection of taxes administered or collected by the department of revenue.

THEREFORE, it is the purpose of this bill to enact a Montana taxpayer bill of rights."

15-1-222. Taxpayer bill of rights.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 104 in (9) in last sentence at end inserted "and lawsuits pertaining to an appeal of the value of class four residential property in which the taxpayer substantially prevails, as provided in 15-2-306"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 142 in (9) in middle of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Chapter 503 in (2) near middle of first sentence after "before the department" substituted "a county tax appeal board, or the Montana tax appeal board" for "or any tax appeal board", and inserted second sentence concerning representative not practicing law. Amendment effective January 1, 2024.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2007 Amendment: Chapter 376 inserted (3) pertaining to taxpayer's right to be treated in a similar manner as other similarly situated taxpayers with respect to administration and collection of taxes, imposition of penalties, and available taxpayer remedies; in (5) in first sentence after "department" inserted "upon consideration of all facts relevant to the specific taxpayer"; inserted (10) providing that the taxpayer has the right to expect that the department will adhere to the same tax appeal deadlines as required of the taxpayer; and made minor changes in style. Amendment effective May 3, 2007.

Administrative Rules

ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.2.1002 Purpose.
ARM 42.2.1003 Procedure.

15-1-223. Office of taxpayer assistance.

Compiler's Comments

2007 Amendment: Chapter 376 inserted (4) authorizing the department to charge a fee of $1 for processing a complaint; and made minor changes in style. Amendment effective May 3, 2007.

Administrative Rules

ARM 42.2.1002 Purpose.
ARM 42.2.1003 Procedure.

15-1-230. Report on income tax credit to committee.

Compiler's Comments

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

2019 Amendment: Chapter 163 near beginning substituted "revenue interim committee" for "revenue and transportation interim committee" and after "biennially" inserted "in accordance with 5-11-210"; and made minor changes in style. Amendment effective April 18, 2019.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2015 Amendment: Chapter 3 substituted "biennially" for "at least once each year". Amendment effective October 1, 2015.

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

Extension of Termination Date: Sections 2 through 4, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 266, L. 2001, and sec. 7, Ch. 4, L. 2005, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

2005 Amendment: Chapter 4 near end after "credit claimed" inserted "the total amount of the credit recaptured"; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Code Commissioner Correction: Pursuant to 1-11-101(2), the code commissioner changed "revenue and taxation interim committee" to "revenue and transportation interim committee" to reflect amendments to Senate Bill No. 10 (Ch. 210, L. 2001).

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

1999 Amendment: Chapter 19 substituted "revenue and taxation interim committee" for "revenue oversight committee". Amendment effective February 17, 1999.

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

15-1-231. Payment of taxes by credit card and other commercially acceptable means.

Compiler's Comments

2005 Amendment: Chapter 47 in (1) near beginning after "payment" inserted "of any tax that it administers, including penalties, interest, and fees" and at end after "means" deleted "from a person making a payment to the department of individual income taxes, including penalties, interest, and fees"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: This section is effective October 1, 2001.

Administrative Rules

ARM 42.5.201 Electronic payment.
ARM 42.5.202 Electronic returns, reports, and signatures.

15-1-232. Deposit of money.

Compiler's Comments

2007 Amendment: Chapter 420 before "subject" deleted "not" and at end after "17-6-105(6)" inserted "unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8)" and deleted former second sentence that read: "The department shall deposit all money within a reasonable time after receipt." Amendment effective October 1, 2007.

Effective Date: Section 3, Ch. 51, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 27, 2003.

Part 3

Investigation and Hearings

15-1-301. Investigations by department.

Attorney General's Opinions

Right to Know Not Applicable to Possible Criminal Investigation: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments that were issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301, as public disclosure at this time would serve only to scandalize the investigation and to stigmatize by innuendo those banks which may be innocent of any criminal wrongdoing. 35 A.G. Op. 59 (1974).

15-1-302. Witnesses — oaths, contempt, and fees.

Compiler's Comments

1997 Amendment: Chapter 491 in (2)(a) substituted "the department shall institute proceedings" for "such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings"; inserted (2)(b) requiring department to request court to issue order requiring payment of penalties; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

15-1-303. Penalty for refusal to furnish information.

Compiler's Comments

2021 Amendment: Chapter 142 in (3) in two places and in (4) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1997 Amendments: Chapter 35 in (1), near end of second sentence before "mail", deleted "certified"; and in (2)(a), in third sentence before "mail", deleted "certified". Amendment effective February 24, 1997.

Chapter 36 in (2)(a), at beginning of first sentence after "Within", substituted "30 days" for "15 days"; in (2)(b), near middle of first sentence after "within", substituted "30 days" for "20 days"; and made minor changes in style. Amendment effective February 24, 1997.

Retroactive Applicability: Section 3, Ch. 36, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1997."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "requested by the department", deleted "or its authorized agent"; in (2)(a), after "conference with" and after "the conference", deleted "the agent of"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in (1), near end, deleted provision for registered mail; in (2)(a), near beginning after "assessment", deleted "or by April 1, whichever is later"; in (3) substituted "30 calendar days" for "20 days"; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1985 Amendment: Substituted "(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, or by April 1, whichever is later, he may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of his failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of his failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, he may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of his failure to supply the information which the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 20 days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board must follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303" for former (2) and (3) that read: "(2) Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed shall:

(a) within 20 days after receiving such notice, file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then, from all information presented to it or from its own investigation, make such assessment as to it seems just and equitable; or

(b) within 60 days after receiving such notice, appeal to the district court of Lewis and Clark County from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom, together with a bond conditioned for the payment of such amount as the judgment of said court may require within 30 days after the entry of such judgment.

(3) Upon the hearing of such appeal, the court or the state tax appeal board shall determine whether the department was entitled to inspect such books or records or was entitled to the information requested by the department. If the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department, but if the court or board shall find that the department was not entitled to inspect such books or records or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 42.21.158 Property reporting requirements.

Law Review Articles

A Legal Response to the Sovereign Citizen Movement, Kalinowski, 80 Mont. L. Rev. 153 (2019).

Part 4
Protest Payments, Actions to Recover, and Alternative Remedies

Part Case Notes

No Authority of Court to Order Refund of Taxes Paid Without Protest Absent Legislative Authorization: The District Court ordered that numerous parties who properly petitioned to be excluded from an irrigation district should be reimbursed for back taxes paid by the parties as of the date of their petitions. The irrigation district appealed, and the Supreme Court reversed. Tax refunds are a matter of legislative discretion, and absent specific legislative authorization, a court has no power to refund taxes paid without protest. RSG Holdings v. Missoula Irrigation District, 2004 MT 214, 322 M 369, 96 P3d 1131 (2004), followed in Petitioners I-549 v. Missoula Irrigation District, 2005 MT 100, 326 M 527, 111 P3d 664 (2005). See also Geil v. Missoula Irrigation District, 2004 MT 217, 322 M 388, 96 P3d 1127 (2004).

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Applicability of State Coal Taxes to Crow Coal — Crow Cases: In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Writ of Prohibition Improper Remedy: District Court should have denied application for Writ of Prohibition to restrain Board of Equalization (duties now performed by Department of Revenue) from enforcing amendments to regulations relating to corporation license tax when tax could be paid under protest and action brought to recover under 15-1-401 (now repealed). State ex rel. Fulton v. District Court, 139 M 573, 366 P2d 435 (1961).

Application to Liquor License Fees: It would seem that 15-1-401 (now repealed) afforded the remedy for an applicant for a liquor license that was denied by the State Liquor Board (duty now performed by Department of Revenue) on the ground that the tendered fee was insufficient. The applicant could pay the required fee under protest and then bring an action to recover it back, rather than bring an action in mandamus to compel the Board to issue the license for the fee tendered, the procedure followed in the instant case, wherein the time involved threatened to extend beyond the period for which the license was desired. State ex rel. Putnam v. District Court, 109 M 223, 95 P2d 441 (1939).

Part Law Review Articles

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

15-1-402. Payment of property taxes or fees under protest.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

2021 Amendment: Chapter 142 in (3) in middle of first sentence, in (6)(a) near beginning, and in (6)(d)(i)(A) near beginning substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2019 Amendments — Composite Section: Chapter 3 in (4)(b)(ii) in two places and (6)(d)(ii) substituted "15-10-109" for "15-10-108". Amendment effective October 1, 2019.

Chapter 452 in (4)(b)(ii) in two places and in (6)(d)(iii) substituted "15-10-109" for "15-10-108"; inserted (6)(d)(i) concerning refund of protested taxes; in (6)(d)(iii) after "subsections (4)(b)(ii) and (4)(b)(iii)" deleted "or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005"; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 2, Ch. 452, L. 2019, provided: "[This act] applies to protested taxes paid and appeals adjudicated after December 31, 2019."

2013 Amendment: Chapter 419 in (1)(c) deleted former second sentence that read: "By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211"; and in (2) in first sentence after "that is" inserted "annually assessed by the department or" and in second sentence in two places after "appeal" inserted "or mediation". Amendment effective May 6, 2013.

2011 Amendment: Chapter 261 in (4)(b)(i) after "protested taxes" and in (5)(b) after "15-23-101" inserted reference to industrial property annually assessed by department; in (5)(c) near beginning substituted "subsection (5)(b)" for "subsections (5)(a) and (5)(b)" and after "protested taxes" inserted reference to centrally assessed and industrial property annually assessed by department; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 5(1), Ch. 261, L. 2011, provided "(1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010."

2009 Amendments — Composite Section: Chapter 57 in (4)(b)(ii) in two places and in (6)(d)(ii) at end substituted "15-10-108" for "15-10-107". Amendment effective March 25, 2009.

Chapter 344 in (4)(b)(i) after "15-23-101" inserted "and any protested taxes in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409" and at end after "department" inserted "for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv)"; in (4)(b)(ii) in two places substituted "15-10-108" for "15-10-107"; inserted (4)(b)(iv) regarding deposit of funds; in (5)(a) near beginning of first sentence inserted reference to subsection (5)(c); inserted (5)(c) providing that (5)(a) and (5)(b) do not apply to certain school districts; in (6)(b)(i) inserted second and third sentences regarding refund of protested portions of property taxes and interest; in (6)(d)(ii) at end substituted "15-10-108" for "15-10-107"; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 4, Ch. 344, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2005 Amendment: Chapter 536 inserted (1)(c) providing that if the protested property tax or fee is on property that is subject to central assessment, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made and requiring that by November 1 of each year, the department shall mail a notice stating the requirements of subsection (1)(c) to owners of property subject to central assessment; in (2) near beginning of first sentence after "15" inserted "including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2)"; in (4)(b)(i) at end substituted "department" for "state treasurer"; in (4)(b)(ii) at beginning substituted "department" for "state treasurer", after "deposit" inserted "50% of", after "levied" inserted "for the university system", and at end after "fund" inserted "to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 [now terminated] must be deposited in a centrally assessed property tax state special revenue fund";

in (4)(b)(iii) at beginning substituted "Fifty percent" for "The remainder", after "funds" inserted "remaining after the deposit of university system funds", and at end after "general fund" inserted "and the other 50% must be deposited in a centrally assessed property tax state special revenue fund"; in (6)(a) near middle after "protest fund" inserted "or the centrally assessed property tax state special revenue fund"; in (6)(d)(ii) near beginning of first sentence after "property, the" substituted "department" for "state treasurer", after "refund" inserted "from the centrally assessed property tax state special revenue fund", and after "taxes and" inserted "from the state general fund the amount of" and inserted second and third sentences restricting the amount that may be refunded for an adverse protested action from the centrally assessed property tax state special revenue fund; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 511 in (4) and (5)(a) at beginning of first sentence inserted exception clause; inserted (4)(b) requiring property taxes levied by state against centrally assessed property to be remitted by county treasurer to state treasurer and requiring deposit of portion of funds in state special revenue fund and remainder in state general fund; in (5)(a) near beginning of first sentence substituted "governing body" for "governing board"; inserted (5)(b) allowing governing body of taxing jurisdiction affected by protested taxes on centrally assessed property to demand that county treasurer or municipality pay jurisdiction all or portion of protested payment and providing that taxing jurisdiction is not preluded from demanding payment by decision in previous year to leave protested taxes of centrally assessed property in protest fund; in (6)(b) substituted language requiring municipality, county, or state treasurer, upon final action determined against governmental entity levying tax, to pay person holding judgment the protested portion of property tax or fee plus interest and requiring taxing jurisdiction to pay interest at rate earned by pooled investment fund for former (6)(b) that read: "(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year"; in (6)(d)(i) inserted second sentence providing that treasurer is not responsible for amount required to be refunded by state treasurer; inserted (6)(d)(ii) requiring state treasurer to refund amount of protested taxes and interest for adverse protest action against state for centrally assessed property; in (6)(e) near beginning of first sentence after "jurisdiction" inserted "including the state" and in second sentence after "balance" substituted "at the rate referred to in subsection (6)(b)" for "at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii)"; in (7) after "jurisdiction" inserted "except the state"; and made minor changes in style. Amendment effective April 25, 2003.

Retroactive Applicability: Section 3, Ch. 511, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after October 31, 2000, except for refunds of property taxes made after October 31, 2000, and before [the effective date of this act]." Effective April 25, 2003.

2001 Amendment: Chapter 574 at beginning of (7)(a) deleted "subject to 15-10-420"; in (7)(b) after "general fund" deleted "except that amount generated by the all purpose mill levy"; at beginning of third full sentence of (7)(c) deleted "Subject to 15-10-420"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 448 inserted (8) providing that a refund is not owed if the department revises an assessment that results in a refund of taxes of $5 or less. Amendment effective April 22, 1999.

Chapter 584 in (7)(a) and (7)(c) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 594 throughout section substituted reference to property tax or fee for reference to tax or license fee; in (1), after "may", deleted "proceed under 15-1-406 or may"; substituted (2) requiring payment of tax or fee under protest before a refund may be made for former (2) that read: "After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue"; deleted former (3) that read: "(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed"; deleted former (4) that read: "(4) An action instituted to recover any such portions of tax or license fee paid under protest must be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board"; in (4), at end of first sentence, and in (6)(b) substituted "subsection (5)" for "subsection (7)"; near beginning of (6)(a), after "action", inserted "before the county tax appeal board, state tax appeal board, or district court" and after "in favor of the" inserted "department of revenue"; near beginning of (6)(b), after "adversely to", inserted "the department of revenue"; in (6)(e) substituted "subsection (6)(d)" for "subsection (8)(d)" and substituted "subsections (6)(b)(i) and (6)(b)(ii)" for "subsections (8)(b)(i) and (8)(b)(ii)"; and made minor changes in style.

1989 Amendment: In (5), at end of first sentence, inserted "subsequent installment. The"; near end of (8)(b) deleted "at the rate of 6% a year" and after "protest" inserted "at the greater of"; inserted (8)(b)(i) and (8)(b)(ii) allowing payment of interest at rate generated from pooled investment fund or 6% a year; in two places in (8)(d), after "payments", deleted "interest"; in second sentence in (8)(e) substituted "greater of the rates referred to in subsections (8)(b)(i) and (8)(b)(ii)" for "rate of 6% a year"; in (9)(c) inserted third sentence allowing bonds to be issued without election and in fourth sentence, after "bonds", deleted proviso prohibiting levy from exceeding 10 mills annually; reoutlines section; corrected internal references; made minor changes in style and grammar. Amendment effective March 21, 1989.

Revenue Oversight Committee Bill — 1989: Chapter 213, L. 1989 (SB 118), was introduced by request of the Revenue Oversight Committee. See committee report entitled "Property Taxation and Other Issues Before the Revenue Oversight Committee", Mont. Leg. Council (1988).

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1986 Amendment: Inserted (1)(c) relating to cap on tax paid under protest based on comparison of tax years; in (6) after "designated as a protest fund and shall be" deleted "invested in interest-bearing deposits in local banks or savings and loan associations and", at end of first sentence inserted "unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7)", and at end of second sentence inserted "or in any manner provided in Title 7, chapter 6"; inserted (7) allowing governing board of a taxing jurisdiction to demand Treasurer to pay it a portion of the protest payments; at end of (8)(a) inserted "less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units"; in (8)(b) after "protested portions of the tax or license fee" substituted "deposited in the protest fund, and not released pursuant to subsection (7)" for "with costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest. If such action was commenced for the purpose of recovering the first installment portions of any such tax or license fee and any subsequent installment thereof has been paid under protest as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment, also refund such portion of any subsequent installment", and inserted last sentence relating to insufficient funds to repay taxpayer; inserted (8)(c) relating to the Treasurer billing tax jurisdictions proratably; inserted (8)(d) relating to 1-year repayment period; and inserted (9) enumerating three sources for refund to taxpayers.

Revenue Oversight Committee Bill — 1986: Chapter 26, Sp. L. July 1986, was introduced by request of the Revenue Oversight Committee. See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds", Montana Legislative Council, December 1986.

1981 Amendments: Chapter 463 inserted "may proceed under 15-1-406 or" after "The person upon whom a tax or license fee is being imposed" at the beginning of (1).

Chapter 501 rewrote the entire section. For former text see sec. 1, Ch. 680, L. 1979, and sec. 1, Ch. 281, L. 1979.

Composite Section: Chapter 463, L. 1981, allows a taxpayer to pursue a declaratory judgment proceeding to test the validity of a tax levy in lieu of proceeding under 15-1-402.

Chapter 501, L. 1981, rewrote 15-1-402, making it necessary for the Code Commissioner to insert the amendatory language of Ch. 463 in the most appropriate place within the rewritten language of Ch. 501.

Revenue Oversight Committee Bill — 1981: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Case Notes

Property Tax Proration Must Occur During Condemnation Proceeding — Equitable Doctrine of Unjust Enrichment Inapplicable — Contractual Waiver of Property Tax Relief by Utility: The plaintiff utility appealed the District Court's summary judgment ruling that the equitable doctrine of unjust enrichment precluded the plaintiff's claim under 70-30-315 for a general property tax refund pursuant to 15-1-402 and 15-1-406 on taxes that accrued during the pendency of a condemnation action initiated by the city of Missoula to take the plaintiff's property for public use. The city and Missoula County separately cross-appealed the District Court's related ruling that 70-30-315 entitled the plaintiff to a general property tax refund but for application of the equitable doctrine of unjust enrichment. On appeal, the Supreme Court affirmed on different grounds and held that the District Court erroneously concluded that the equitable doctrine of unjust enrichment precluded or defeated relief on the plaintiff's claim for property tax proration and related relief under 70-30-315. However, the Supreme Court held that 70-30-315 required the specified property tax proration to occur in the condemnation proceeding, without involvement of the Montana Department of Revenue, as an incident of the final judgment and order of condemnation otherwise required by 70-30-304 and 70-30-309. Additionally, the District Court erroneously concluded that, but for application of equitable unjust enrichment, 70-30-315 entitled the plaintiff to a general property tax refund under 15-1-402 and 15-1-406. In that regard, the Supreme Court held further that the plaintiff contractually waived its right to property tax proration and reimbursement from or against the city under 70-30-315. Mtn. Water Co. v. Dept. of Revenue, 2020 MT 194, 400 Mont. 484, 469 P.3d 136.

Right to Refund Not Affected by Failure to File Notice of Second Petition: DeVoe paid taxes under protest for several years but filed a notice of a petition for relief for only the first year and did not file notices for petitions filed for subsequent years. The Department of Revenue argued that he was not entitled to a refund for the years in which he had not filed a notice of the petitions with the County Treasurer. The Supreme Court held that the statutes were clear in indicating that the failure to file subsequent notices did not prohibit DeVoe from receiving refunds for the subsequent years since he did pay the taxes for those years under protest. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under this section then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of 15-16-602 allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under this section. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. Section 15-16-602 permits a taxpayer to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Failure to Pay Penalties and Interest — No Effect on Standing to Proceed With Contested Case: The County Treasurer properly refused to accept payment of delinquent taxes without an accompanying payment of penalties and interest as required under this section. However, both the State Tax Appeal Board (now Montana Tax Appeal Board) and the District Court stayed the payment of penalties and interest, so the Supreme Court held that payment of penalties and interest was required only to the date that payment of taxes was tendered to the County Treasurer and that nonpayment of penalties and interest did not affect petitioner's standing to proceed with his contested case. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Exhaustion of Administrative Remedies:

Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987), followed in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Taxpayer's complaint to recover excessive taxes paid under protest failed to state a cause of action where it failed to allege application to the County Board of Equalization (duty now performed by Montana Tax Appeal Board) for reduction in assessment before resorting to court, or appearance before County Board, State Board of Equalization (duty now performed by Montana Tax Appeal Board), or anyone charged with the equalization of taxes, and defendant's demurrer should have been sustained. Blair v. Potter, 132 M 176, 315 P2d 177 (1957).

Prior Law — Suit Required for Each Year Taxes Protested: Prior to the 1981 amendments to this section, any taxes paid under protest must have been followed by a suit filed within 90 days in order for the County Treasurer to retain the protested funds for future refund. When the defendant paid under protest and filed suit within the required time in 1979 but in 1980 paid under protest but did not file suit, relying on the 1979 suit, the 1980 payment was properly disbursed by the County Treasurer and thus unavailable for refund when the taxpayer later prevailed. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

Property Tax Refund — County Treasurer Not Agent of Department of Revenue: The District Court properly refused a taxpayer's motion to compel a County Treasurer to sign and comply with the terms of a settlement agreement between the Department of Revenue and the taxpayer in a suit over property taxes. A tax refund was at stake, but the taxpayer had failed to comply with the provisions of 15-1-401 (now repealed). The Supreme Court held that rather than being a mere agent of the Department of Revenue, the Treasurer represents a significant part of the tax refund process and cannot be compelled to sign an agreement entitling a taxpayer to a refund without his compliance with 15-1-401 (now repealed). Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

"Subsequent Installment" Clarified: In interpreting this section prior to the 1981 amendments, the Supreme Court held that for purposes of the former requirement of filing suit after a payment under protest, a "subsequent installment" of property taxes does not include protested payments in years subsequent to the tax year in which the suit was filed, but rather, because a separate tax is imposed each year, it refers to the two installments that may be made in paying each year's taxes. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

Assessment to Be Equitable: The city of Billings began an undertaking to improve the city's sewer system. A new method of assessment, classifying land by the zone in which it was situated and by the square footage of the property, was used. Plaintiffs were assessed a tax for a portion of the costs of the storm sewers and paid this tax under protest. At trial, the plaintiffs showed that it was highly unlikely that water running off their property would end up in the sewer system. Therefore, the assessments were not as nearly as possible equitable in proportion to the services rendered and were erroneous. Berger v. Billings, 186 M 326, 607 P2d 558 (1980).

Venue of Action to Recover Taxes: In an action to recover taxes paid under protest, venue existed in the county where the taxpayer was located, audit conducted, additional tax assessment paid, and protest fund maintained. Roundup Nat'l Bank v. Dept. of Revenue, 175 M 133, 572 P2d 910 (1977).

Constitutionality of Amendment: The 1955 amendment to this section properly included additional requirements for bringing actions based on the payment of taxes under protest and the amending act was not unconstitutional as being in contravention of Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.). Van Tighem v. Linnane, 136 M 547, 349 P2d 569 (1960).

Consent Judgment Void: The Boards of County Commissioners have no power, authority, or jurisdiction under the Constitution or statutes to reduce, compromise, remit, release, cancel, diminish, or extinguish any state tax, obligation, or liability, or any assessed tax valuation or percentage assignments of property after the same has been found, determined, and fixed by the State Board of Equalization (duties now performed by Department of Revenue). The County Attorney does not have the power, where an action for refund of tax has been instituted under this section, to consent to a judgment, based upon a resolution and stipulation which extinguished the assessed tax for the taxpayer for the year in question, hence any judgment based on such stipulation is void and erroneous. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

Intervention by State and Former State Board of Equalization: In an action by a taxpayer under this section against the county for a refund of taxes, the State and the State Board of Equalization (duty now performed by Department of Revenue) had an interest in the subject matter of the litigation so as to enable them to intervene in the action, not only because part of the tax collected was a state levy but also because the determinative questions raised were of vital interest and concern as they pertained to the tax laws, the procedure thereto, and the public fiscal policy of the sovereign state. Carlson v. Flathead County, 130 M 24, 293 P2d 273 (1956).

Standard of Review: In an action to recover taxes paid under protest, under complaint alleging overvaluation, and that acts of defendants Assessor and County and State Boards of Equalization (duties now performed by Department of Revenue) were fraudulent in law and showed mistake so gross as to be inconsistent with reasonable judgment and were tyrannical and capricious, the Supreme Court will not substitute its judgment for that of taxing officials and will not notice an alleged overvaluation honestly made, but will grant relief on overvaluation only where it is so gross as to be inconsistent with the exercise of honest judgment. Investors Sec. Co. v. Moore, 113 M 400, 127 P2d 225 (1942).

Taxes Paid Without Protest by Indians — Recovery by Federal Government: When patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. Glacier County v. U.S., 99 F2d 733 (9th Cir. 1938).

Judgment for Amount Unlawfully Collected Only: When plaintiff, in an action to recover taxes unlawfully paid, asks judgment for the full amount of the tax paid under protest, the just tax on the property should be upheld, if possible, he being entitled to recover only that which was unlawfully collected. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Sufficiency of Evidence: An action brought under this section to recover taxes considered to have been unlawfully collected is in effect a proceeding to review the decisions of the County and State Boards of Equalization (duties now performed by Department of Revenue), and in such action, the taxpayer is entitled to show what was before the Boards. The action in effect challenges the sufficiency of the evidence to warrant the orders of the Boards denying him relief, and the court must determine, as a matter of law, whether or not the evidence presented to the Boards was sufficient to sustain their orders. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Remedy Exclusive — Not Limited to Illegal Taxes: An earlier version of this section, under which a taxpayer could, if he considered a tax "unlawful", pay it under protest and bring a direct action for its recovery, while exclusive except in those cases provided for in 15-1-405, where injunction lies for illegality of the tax or the property is exempt, permitted an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and was not open to the construction that the action provided for was confined to one attacking a tax on the ground that it was illegally laid. Johnson v. Johnson, 92 M 512, 15 P2d 842 (1932).

Exclusive Remedy: The legal remedy by action to recover back a tax paid under protest on a levy considered unlawful, provided by this section, when read in connection with 15-1-404, which provides that such action shall supersede all other remedies which might be invoked to prevent the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in 15-1-405, are exclusive. When a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available. To the extent the above holding with reference to the legal remedy conflicts with 15-16-601 (now repealed), the latter section must be considered repealed. First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929), explained in Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937). See also First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930) and Williams v. Harvey, 91 M 168, 6 P2d 418 (1931).

Filing of Claim With County Commissioners Unnecessary: Under this section, one who pays taxes under protest is not required to file a claim with a Board of County Commissioners for the amount paid, before commencing an action to recover them. Story v. Dixson, 64 M 206, 208 P 592 (1922).

Injunction: An injunction lies to restrain the collection of a tax wholly void. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

Unlawful License Fee: An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, was held to be properly brought under this section before its amendment in 1905, and the plaintiff was not required to resort to the remedy given under 15-1-405. Reilly v. Hatheway, 46 M 1, 125 P 417 (1912).

Objection to Assessment: If the owner of the surface of an unpatented mining claim objects to its assessment for townsite purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under 15-1-404, in action at law, and the remedy thus provided is made, by 15-1-404, to supersede all others. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Void Assessment: This section, being construed with 15-1-404, is not restricted to cases brought when an assessment was void, notwithstanding the provisions of 15-1-404. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903).

Attorney General's Opinions

No Authority of County Commissioners to Compromise Unpaid Property Taxes: Following the opinions in Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928), and 25 A.G. Op. 29 (1953), the Attorney General held that 15-16-601 (now repealed) does not confer upon a Board of County Commissioners the authority to compromise unpaid delinquent property taxes and that County Commissioners do not possess inherent authority to compromise unpaid delinquent property taxes. 43 A.G. Op. 28 (1989).

Permissible Alternatives for Deposit — Protest Fund: The permissible alternatives for deposit or investment of protest fund money are governed by this section. 42 A.G. Op. 25 (1987).

Special Tax Protest Refund Levy Not Subject to Voter Approval — Sale of Bonds Subject to Approval: A special tax protest refund levy authorized by this section is not subject to the limitation on property taxes established in 7-6-2501; therefore, the voter approval requirements of 7-6-2531 (now repealed) do not apply to such levy. However, voter approval is required before bonds may be issued and sold for the purpose of making tax protest refunds. 42 A.G. Op. 18 (1987). (See 1989 amendment.)

Distribution of Interest on Protested Tax Payments: Interest accrued on amounts held in a protest fund established under this section must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units. 41 A.G. Op. 60 (1986).

Money Freed by Termination of Tax Protest Litigation — Use and Effect: Once tax money tied up in tax protest litigation is received by a municipality upon completion of litigation, it must be deposited to the credit of the fund or funds to which it would have been credited had it been timely received without protest, and it is then available for use. If money remains in a fund at the end of a fiscal year in which it was received, it is a part of the cash balance and is to be included in the calculations to determine the tax levy for the next year. 39 A.G. Op. 55 (1982).

Payment of Personal Property Taxes Under Protest: The provisions of this section, relating to the payment of taxes under protest before they become delinquent, apply to personal property taxes that are not a lien on real estate. 38 A.G. Op. 6 (1979).

15-1-404. Other remedies superseded.

Compiler's Comments

1981 Amendment: Changed "remedy" to "remedies" and "is" to "are".

Case Notes

Mandamus Unavailable: When the County Assessor refused to enter the valuation filed by a person and increased the valuation, the Writ of Mandamus is not available to the person since the statutory remedy in 15-1-403 (now repealed) was exclusive in the absence of a showing that the remedy provided is inadequate. State ex rel. Niewoehner v. Lutey, 126 M 152, 245 P2d 1042 (1952).

Implied Repeal: Section 15-16-601 (now repealed), as far as it related to illegally collected taxes, was impliedly repealed by 15-1-402 through 15-1-405. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937); First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930); First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929).

Irregularly Levied or Demanded: The phrase "irregularly levied or demanded" was used by the Legislature advisedly, and as prescribing the limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes the collection of which may be restrained by injunction. Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905).

Irregularities in Tax Sale: The publication of the notice of a tax sale 3 weeks prior to the sale, when the statute required 4 weeks, does not render the taxes illegal and authorize the enjoining of the collection of such tax. Nor does the fact that the Treasurer intends to violate certain sections of the law, by exposing for sale, for the delinquent taxes of 1 year a part of the lands purchased by the county at the tax sales of the preceding year, and yet unredeemed, entitle the owner of the equity of redemption to an injunction, since this section provides that the remedy before the Board of Equalization (duty now performed by Montana Tax Appeal Board) shall supersede the remedy of injunction, except in those unusual cases where the remedy thereby provided is considered by the court inadequate. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

15-1-405. Injunction not to be used to restrain enforcement of tax.

Case Notes

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

On-Reservation Taxation: Plaintiffs' request for a prohibitive injunction to preclude on-reservation employers from withholding state taxes was denied because of due process and sovereign immunity considerations. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

Application of Injunctions Against Tax Appraisals: This section permits injunctions against the use of an unconstitutional and illegal tax appraisal method. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Injunction Not Appropriate to Prohibit Valuation: Taxpayers were not entitled to an injunction under this section against County Assessor and County Commissioners to prohibit use of valuations furnished by reclassification office under sections 84-429.7 through 84-429.13, R.C.M. 1947 (see 15-7-101 through 15-7-104 (15-7-104 now repealed), 15-7-216 (now repealed), and 15-8-112) in making up 1965 tax assessment roll, when there was no showing of irreparable injury and the law could furnish all relief to which complainants were entitled. State ex rel. Keast v. Krieg, 145 M 521, 402 P2d 405 (1965).

Injunction Remedy Not Exclusive:

An action to enjoin collection of illegal tax could be maintained even though taxpayer might have paid tax under protest and sued for its recovery. First Nat'l Bank v. Bergan, 119 M 1, 169 P2d 233, 165 ALR 1244 (1946).

In action to enjoin collection of a tax levy claimed to be illegal, defendants' contention that plaintiffs' remedy was to pay the tax under protest and sue for its recovery was incorrect, since such is not the exclusive remedy where the levy is illegal. Rogge v. Petroleum County, 107 M 36, 80 P2d 380 (1938).

Implied Repeal: Section 15-16-601 (now repealed), as far as it related to illegally collected taxes, was impliedly repealed by 15-1-402 through 15-1-405. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937); First Nat'l Bank of Lima v. Beaverhead County, 88 M 577, 294 P 956 (1930); First Nat'l Bank of Plains v. Sanders County, 85 M 450, 279 P 247 (1929).

Injunction Allowed When Illegal Portion of Tax Unascertainable: When a portion of an assessment made in a lump sum to plaintiff railway company was legal and a portion illegal, and the company was unable to ascertain and pay that which was legal, the remedy by injunction to restrain the threatened issuance of a tax deed was available to it. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Injunction Allowed for Void Tax: Injunction will lie if the action of the Assessor or Board of Equalization (duties now performed by Department of Revenue) was such that the tax complained of is manifestly void under any circumstances. If the error complained of is only an irregularity on the part of the Assessor, Board of Equalization (duties now performed by Department of Revenue), or Treasurer, or where the tax is not necessarily void under all circumstances, the remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in 15-1-404. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915); Cobban v. Meagher, 42 M 399, 113 P 290 (1906); Hensley v. Butte, 33 M 206, 83 P 481 (1905); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905), distinguished in Morse v. Jacky, 34 M 165, 85 P 882 (1906).

Remedy Provided by Statute: This section by necessary implication provides a remedy by injunction where the tax demanded is illegal or not authorized by law. Cunningham v. NW. Improvement Co., 44 M 180, 119 P 554 (1911).

No Injunction for Improper Assessment: The court may not restrain the collection of a tax levied on the surface of an unpatented mining claim having a separate and independent value because of its use for other than mining purposes, on the ground that the Assessor failed to set forth in the assessment the fact that the surface ground was assessed for other than mining purposes, but the remedy is by an action at law under 15-1-402 to recover the taxes paid under protest. Cobban v. Meagher, 42 M 399, 113 P 290 (1911).

Purpose: This section prohibits courts and judges from enjoining the sale of the property for nonpayment of any tax, except in those instances where the tax is illegal, or not authorized by law, or where the property is exempt from taxation, and provides the means and remedies whereby the rights of persons who deem the taxes irregularly or improperly demanded of the owners, or sought to be enforced, against the property, may be guarded and protected. Cobban v. Hinds, 23 M 338, 59 P 1 (1899), explained in Danforth v. Livingston, 23 M 558, 59 P 916 (1900). See Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905); Hensley v. Butte, 33 M 206, 83 P 481 (1905); Cobban v. Meagher, 42 M 399, 113 P 290 (1911); and Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

15-1-406. Declaratory judgment.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 in (3) in third and fourth sentences before reference to estate taxes deleted reference to inheritance taxes; in (4)(b) after "property tax" deleted "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1999 Amendment: Chapter 36 in (2) near middle of first sentence and in (3) near middle of third sentence after "uniform" substituted "dispute" for "tax". Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1995 Amendment: Chapter 348 in (3), in first sentence after "paid", inserted "under protest" and inserted third and fourth sentences regarding payment of taxes under protest; and made minor changes in style. Amendment effective April 10, 1995.

1993 Amendments: Chapter 21 at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer" for "imposition of the tax"; and made minor changes in style.

Chapter 594 near beginning of (1), after "taxpayer may", deleted "in lieu of proceeding under 15-1-402 or 15-1-211"; inserted (1)(a) regarding action pertaining to alleged illegal or improper tax; at beginning of (1)(b) substituted "authorized" for "levied"; at end of first sentence of (2) substituted "date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision" for "imposition of the tax"; inserted second sentence of (3) that read: "Property taxes may be paid under protest as provided in 15-1-402"; inserted (4) establishing exceptions to challenges for market value and the legality of certain taxes; inserted (5) clarifying that the remedy in this section is exclusive; and made minor changes in style.

1991 Amendment: Near beginning of (1) inserted reference to 15-1-211.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.2.510 Review of statement of account notices.
ARM 42.2.511 Review of centrally assessed property appraisals.
ARM 42.2.613 Definitions.

Case Notes

Property Tax Proration Must Occur During Condemnation Proceeding — Equitable Doctrine of Unjust Enrichment Inapplicable — Contractual Waiver of Property Tax Relief by Utility: The plaintiff utility appealed the District Court's summary judgment ruling that the equitable doctrine of unjust enrichment precluded the plaintiff's claim under 70-30-315 for a general property tax refund pursuant to 15-1-402 and 15-1-406 on taxes that accrued during the pendency of a condemnation action initiated by the city of Missoula to take the plaintiff's property for public use. The city and Missoula County separately cross-appealed the District Court's related ruling that 70-30-315 entitled the plaintiff to a general property tax refund but for application of the equitable doctrine of unjust enrichment. On appeal, the Supreme Court affirmed on different grounds and held that the District Court erroneously concluded that the equitable doctrine of unjust enrichment precluded or defeated relief on the plaintiff's claim for property tax proration and related relief under 70-30-315. However, the Supreme Court held that 70-30-315 required the specified property tax proration to occur in the condemnation proceeding, without involvement of the Montana Department of Revenue, as an incident of the final judgment and order of condemnation otherwise required by 70-30-304 and 70-30-309. Additionally, the District Court erroneously concluded that, but for application of equitable unjust enrichment, 70-30-315 entitled the plaintiff to a general property tax refund under 15-1-402 and 15-1-406. In that regard, the Supreme Court held further that the plaintiff contractually waived its right to property tax proration and reimbursement from or against the city under 70-30-315. Mtn. Water Co. v. Dept. of Revenue, 2020 MT 194, 400 Mont. 484, 469 P.3d 136.

Order Allowing Utility to Not Pay Taxes During Condemnation Action Improper — Utility to Pay Until Transfer of Title by Final Order: The city of Missoula filed a condemnation action against the plaintiff, a utility. The plaintiff filed an action asking the District Court to declare that it did not need to pay taxes during the condemnation action and that the taxes would instead shift to the city. The District Court granted the plaintiff summary judgment, and the defendant, the Department of Revenue, appealed. The Supreme Court reversed, holding that the District Court had erred in its interpretation of 70-30-315 regarding the proration of taxes. The Supreme Court further agreed with the defendant that the plaintiff would pay taxes on its property until such time as a transfer of the property's title by entry of final order in the other case had been issued. Mtn. Water Co. v. Dept. of Revenue, 2017 MT 117, 387 Mont. 394, 394 P.3d 922.

Availability of Data Affecting Requirements for Multiple Valuation Methods: Dissatisfied with property tax assessments, the plaintiff brought actions under this section. The Department of Revenue (DOR) used a cost approach to valuation of the property, but the plaintiff contended that DOR was also required to adjust property values for market influence. Thus, DOR should use three approaches: the cost approach, the income approach, and the comparable sales approach. Claiming that the plaintiff needed to bring the challenges to the administrative tax appeal board rather than under this section, DOR moved for summary judgment. The District Court granted summary judgment, finding that the plaintiff's witness established facts concerning valuation, not illegal taxation. The Supreme Court affirmed summary judgment, finding that the plaintiff had failed to provide DOR with income information sufficient to use the income approach and that DOR had not been able to locate any comparable sales to use the comparable sale approach.

Thus, because of the circumstances, DOR had not used an "illegal or improper" assessment procedure, and the plaintiff's claims needed to be raised in administrative proceedings. CHS, Inc. v. Dept. of Revenue, 2013 MT 100, 369 Mont. 505, 299 P.3d 813.

Lack of Genuine Issue of Material Fact Concerning Failure to Equalize Valuation: The plaintiff claimed that tax valuations for its refinery were higher than for other refineries in Yellowstone County. The plaintiff alleged that the Department of Revenue had failed to equalize its valuation of the plaintiff's property in violation of Art. VIII, sec. 3, Mont. Const., and it brought an action under 15-1-406. However, the Department established that it used the same method of valuation for all three properties, and the plaintiff failed to establish any issues of material fact showing that the Department had acted illegally or improperly. Thus, the Supreme Court affirmed summary judgment for the Department on the claim, finding that the action was not within the scope of declaratory actions under 15-1-406 without first appealing to administrative tax appeal boards. CHS, Inc. v. Dept. of Revenue, 2013 MT 100, 369 Mont. 505, 299 P.3d 813.

No Authority of Court to Order Refund of Taxes Paid Without Protest Absent Legislative Authorization: The District Court ordered that numerous parties who properly petitioned to be excluded from an irrigation district should be reimbursed for back taxes paid by the parties as of the date of their petitions. The irrigation district appealed, and the Supreme Court reversed. Tax refunds are a matter of legislative discretion, and absent specific legislative authorization, a court has no power to refund taxes paid without protest. RSG Holdings v. Missoula Irrigation District, 2004 MT 214, 322 M 369, 96 P3d 1131 (2004), followed in Petitioners I-549 v. Missoula Irrigation District, 2005 MT 100, 326 M 527, 111 P3d 664 (2005). See also Geil v. Missoula Irrigation District, 2004 MT 217, 322 M 388, 96 P3d 1127 (2004).

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in this section requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as 15-8-115, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Taxpayer Action to Be Brought in Accordance With Statutory Requirements — Woith Distinguished: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and repayment of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The taxpayers brought their action under both the Uniform Declaratory Judgments Act, Title 27, ch. 8, and this section. The District Court dismissed the cause of action under Title 27, ch. 8, reasoning that it was precluded by this section. The Supreme Court agreed with the District Court, holding that bringing an action pursuant to this section precludes an action under Title 27, ch. 8. In response to the taxpayers' argument that the Supreme Court's decision in Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752 (1993), recognizes that other causes of action may be brought under other statutes, the Supreme Court held that its decision in Woith does not exempt the taxpayers from having to comply with the provisions of those other statutes. Although an action under 15-1-405 is subject to Title 27, ch. 8, by virtue of 15-1-407, the Supreme Court said, there is still a limited amount of time in which the action may be brought, and that period of time is specified in this section. For these reasons, the Supreme Court concluded that the District Court did not err in dismissing the taxpayers' claim brought pursuant to the Uniform Declaratory Judgments Act. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Failure to File Administrative Appeal — Use of Declaratory Judgment Not Prevented: Woiths attempted to challenge the property tax assessment method provided in House Bill No. 703 (Ch. 636, L. 1989). Woiths intentionally failed to utilize the administrative appeal process provided for in 15-15-102 and instead proceeded with an alternate remedy of a declaratory judgment action allowed under this section. The District Court held that Woiths had failed to preserve their appeal and, under the holding in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990), were barred from any further remedy. The Supreme Court held that there was no attempt in Barron to limit the remedies of taxpayers using alternate remedies, such as declaratory judgments, in lieu of the administrative appeal process at issue in Barron. Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752, 50 St. Rep. 1498 (1993), distinguished as to the requirement that taxpayers using alternative statutory remedies comply with requirements of those statutes in Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under this section, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to 15-16-101 rather than the date the taxes are entered on the assessment book pursuant to 15-10-305. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-2-307 (now repealed), 15-16-601 (now repealed), or this section. Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Payment of Tax Condition Precedent to Action — Indians Subject to Procedural Requirements: When a right of action and the conditions for bringing the action are contained within the same statute, compliance with those conditions is a condition precedent that must be fulfilled to preserve the right. Payment of tax due is a condition precedent in a declaratory judgment action under this section. Appellant's status as a tribal member does not excuse compliance with the procedural requirements associated with declaratory judgment relief. Jefferson v. Big Horn County, 235 M 148, 766 P2d 244, 45 St. Rep. 2263 (1988).

15-1-407. Alternative remedy — procedure.

Compiler's Comments

1995 Amendment: Chapter 348 in (2)(a) inserted second sentence requiring that taxes must have been paid under protest; inserted (3)(d) requiring that to be a member of class, taxes must have been paid under protest consistent with the Rules of Civil Procedure; and made minor changes in style. Amendment effective April 10, 1995.

Case Notes

Department of Revenue Properly Phased in Increases — Property Tax — Plain Reading of Statute: The petitioners filed for declaratory judgment and writ of mandate based on the Department of Revenue's 2009 reclassification of their agricultural property. The petitioners argued that the Department failed to correctly phase in increases under 15-7-111 and that the subsection used by the Department only applied to reclassification of property among different classes. Following a remand from the Supreme Court based on class action certification, the District Court granted the Department's motion for summary judgment. On appeal, the Supreme Court affirmed, holding that 15-7-111 was not ambiguous, that the department followed the plain language of the statute, that the Department's failure to promulgate rules did not have a substantive effect on the proceeding, and that the petitioner's equal protection concerns were not valid. Lucas Ranch, Inc. v. Dept. of Revenue, 2015 MT 115, 379 Mont. 28, 347 P.3d 1249.

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

Taxpayer Action to Be Brought in Accordance With Statutory Requirements — Woith Distinguished: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and repayment of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The taxpayers brought their action under both 15-1-406 and the Uniform Declaratory Judgments Act, Title 27, ch. 8. The District Court dismissed the cause of action under Title 27, ch. 8, reasoning that it was precluded by 15-1-406. The Supreme Court agreed with the District Court, holding that bringing an action pursuant to 15-1-406 precludes an action under Title 27, ch. 8. In response to the taxpayers' argument that the Supreme Court's decision in Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752 (1993), recognizes that other causes of action may be brought under other statutes, the Supreme Court held that its decision in Woith does not exempt the taxpayers from having to comply with the provisions of those other statutes. Although an action under 15-1-405 is subject to Title 27, ch. 8, by virtue of this section, the Supreme Court said, there is still a limited amount of time in which the action may be brought, and that period of time is specified in 15-1-406. For these reasons, the Supreme Court concluded that the District Court did not err in dismissing the taxpayers' claim brought pursuant to the Uniform Declaratory Judgments Act. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

15-1-408. Alternative remedy — judgment.

Compiler's Comments

1993 Amendment: Chapter 594 inserted (3) providing that a judgment may direct an assessment to be changed for the taxpayer who brought the action and for all similarly situated taxpayers as well; and made minor changes in style.

Case Notes

Taxation of Tribal Lands Allowed by Change in Federal Law — Inherent Court Power to Dissolve Injunction When Law Upon Which Injunction Based Changed by Subsequent Judicial Interpretation: In 1989, Jefferson, a member of the Crow Tribe, challenged Big Horn County's authority to impose and collect real property taxes on reservation land owned in fee simple by enrolled tribal members and requested that the District Court permanently enjoin Big Horn County from assessing and collecting taxes on Crow Reservation lands in the county. In 1990, while Jefferson's complaint was pending, the Ninth Circuit Court decided Confederated Tribes & Bands of the Yakima Nation v. County of Yakima, 903 F2d 1207 (9th Cir. 1990) (Yakima), which concluded that the Indian General Allotment Act of 1887 (GAA), 25 U.S.C. 349, manifested Congress's unmistakably clear intent to permit states to tax land allotted under the GAA. The District Court then applied Yakima later in 1990 and ruled in favor of Jefferson, holding that because Jefferson's land was never subject to the GAA, it was not taxable by the county. The court required Big Horn County to refund taxes paid under protest and remove Crow Tribe members from the tax rolls, stating that the declaratory ruling established a future tax-exempt status for land located within the Crow Reservation that was owned by Crow tribal members and not subject to the GAA. About 7 years later, the county moved to dissolve the 1990 decision on grounds that subsequent federal cases had established that alienable land owned by enrolled tribal members was subject to state ad valorem taxes even if it had not been patented in fee subject to the GAA. The county cited Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 US 103, 141 L Ed 2d 90, 118 S Ct 1904 (1998) (Leech Lake), in which the U.S. Supreme Court rejected the Yakima rationale and held that when Congress made reservation lands freely alienable, it was unmistakably clear that Congress intended that land to be taxable by state and local governments unless a contrary intent was clearly manifested. The District Court then dissolved that portion of its 1990 decision that had granted a future tax-exempt status to tribal members, who appealed to the Montana Supreme Court on grounds that the doctrine of res judicata barred the District Court from vacating its decision. The state responded that the 1990 decision was a form of injunctive relief that the District Court could modify or dissolve pursuant to Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941) (Santa Rita). The Supreme Court found that the 1990 order was not strictly a declaratory judgment, but rather an injunction containing both retrospective and prospective relief, that 15-1-404 did not preclude the District Court from ordering injunctive relief, and that the court's declaratory judgment could not exempt Jefferson's property from future taxation without a further order of injunctive relief. Under Santa Rita, a court has inherent power to modify or dissolve perpetual injunctive relief based on a subsequent change in the judicial interpretation of a law. The judicial interpretation of the law upon which the 1990 relief was based was changed by Leech Lake; thus, the District Court did not err when it vacated the injunctive portion of its 1990 judgment. Jefferson v. Big Horn County, 2000 MT 163, 300 M 284, 4 P3d 26, 57 St. Rep. 682 (2000).

15-1-409. Exclusion of certain property subject to property tax protest — guaranteed tax base — tax refund.

Compiler's Comments

2011 Amendment: Chapter 261 in (1) near beginning inserted "centrally assessed" and near end inserted "under 15-1-402(5)(b)"; in (2) in first sentence inserted "under subsection (1)" and after "school district" substituted reference to taxable value of centrally assessed property for which school district has waived certain right for "that is not subject to a tax protest"; and inserted (3) defining centrally assessed property. Amendment effective October 1, 2011.

Applicability: Section 5(2), Ch. 261, L. 2011, provided: "(2) [Sections 2 and 3] apply to tax years beginning after December 31, 2011."

Effective Date: This section is effective October 1, 2009.

Applicability: Section 4, Ch. 344, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

Administrative Rules

Title 42, chapter 2, subchapter 9, ARM School districts waiver to taxes.

15-1-421. Payment of taxes by negotiable instrument.

Compiler's Comments

Effective Date: Section 5, Ch. 17, L. 1989, provided that this section is effective February 15, 1989.

Applicability: Section 3, Ch. 17, L. 1989, provided: "[This act] applies to all payments received by the department on or after [the effective date of this act]." Effective February 15, 1989.

Part 5

Disposition of Tax Proceeds

Part Attorney General's Opinions

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

15-1-503. Refund of overpayment — procedure.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near beginning of (1) substituted "estate tax" for "inheritance tax"; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Administrative Rules

ARM 42.31.131 Cigarette tax refund.

15-1-504. Settlement of county treasurer with department.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) at beginning in exception clause inserted reference to subsection (3); in (2) at beginning of second sentence substituted "By July 15" for "In July"; inserted (3) concerning remittance of motor vehicle, vessel, and snowmobile funds; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1993 Amendment: Chapter 102 in (2), near beginning after "state treasurer", inserted "an estimate of"; deleted former (3) that read: "(3) By December 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by December 15, in addition to the amount collected during the preceding month. In January, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of December"; and made minor changes in style. Amendment effective March 17, 1993.

1992 Special Session Amendment: Chapter 4, Sp. L. July 1992, in (1), at beginning, inserted exception clause; inserted (2) concerning June and July remittance; and inserted (3) concerning December and January remittance. Amendment effective July 21, 1992.

Coordination Instruction: Section 1, Ch. 6, Sp. L. July 1992, amended this section to require interest charges and to provide for deposit of the interest in the state general fund. Section 14, Ch. 6, Sp. L. 1992, provided that if House Bill No. 12 was passed and approved and if it amended this section, then section 1 was void. House Bill No. 12 was passed and approved as Ch. 4, Sp. L. July 1992, and amended 15-1-504, so section 1, Ch. 6, Sp. L. July 1992, was void.

1991 Amendment: Revised second sentence and inserted third sentence to allow State Treasurer to assess interest charge for late remittance of money collected by County Treasurers for the state, rather than to require the assessment; and made minor changes in style. Amendment effective July 1, 1991.

Severability: Section 2, Ch. 72, L. 1991, was a severability clause.

15-1-521. Property valuation improvement fund.

Compiler's Comments

2015 Amendment: Chapter 348 at end substituted "2-6-1007" for "2-6-110(3)". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

1997 Amendment: Chapter 42 near end of second sentence substituted "2-6-110(3)" for "2-6-110(4)". Amendment effective March 12, 1997.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

Effective Date: Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

Part 6
Multistate Tax Compact

Part Compiler's Comments

Adopting States and District: The following states and district have adopted the Multistate Tax Compact: Alabama, Alaska, Arkansas, California, Colorado, District of Columbia, Hawaii, Idaho, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, and Washington.

Part Administrative Rules

Title 42, chapter 26, ARM Multistate Tax Commission allocation and apportionment regulations.

15-1-601. Compact adopted — text.

Commission Notes for Article IV.

The Uniform Division of Income for Tax Purposes Act is designed for enactment in those states which levy taxes on or measured by net income.

The need for a uniform method of division of income for tax purposes among the several taxing jurisdictions has been recognized for many years and has long been recommended by the Council of State Governments. There is no other practical means of assuring that a taxpayer is not taxed on more than its net income. At present, the several states have various formulae for determining the amount of income to be taxed, and the differences in the formulae produce inequitable results. The problem has been well analyzed and its historical background outlined in an article appearing in 18 Ohio State Law Journal, page 84.

The Uniform Division of Income for Tax Purposes Act is the result of conferences with the representatives of the Controller's Institute of America, the Council of State Governments and various interested individuals.

[Subsection 1]

This definition is derived from the Model Unemployment Compensation Act which has been adopted in all states.

It is expected that "public utility" will be defined to include all taxpayers subject to the control of the state's regulatory bodies on the theory that separate legislation will provide for the apportionment and allocation of the income of such taxpayers.

Each state may wish to enact separate legislation to apportion and allocate the income of taxpayers subject to the control of its regulatory bodies.

[Subsection 11]

This section is admittedly arbitrary in using original cost rather than depreciated cost, and in valuing rented property as eight times the annual rental. This approach is justified because the act does not impose a tax, nor prescribe the depreciation allowable in computing the tax, but merely provides a basis for division of the taxable income among the several states. The use of original cost obviates any differences due to varying methods of depreciation, and has the advantage that the basic figure is readily ascertainable from the taxpayer's books. No method of valuing the property would probably be universally acceptable.

[Subsection 14]

This section is derived from the Model Unemployment Compensation Act. This is the same figure which will be used by taxpayers for unemployment compensation purposes.

[Subsection 16]

Sales to the United States Government are treated separately because they are not necessarily attributable to a market existing in the state to which the goods are originally shipped.

[Subsection 18]

It is anticipated that this act will be made a part of the income tax acts of the several states. For that reason, this section does not spell out the procedure to be followed in the event of a disagreement between the taxpayer and the tax administrator. The income tax acts of each state presumably outline the procedure to be followed.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

2021 Amendment: Chapter 459 in Article IV in (9) after "plus the payroll factor plus" inserted "two times" and at end after "the denominator of which is" substituted "4" for "3". Amendment effective May 11, 2021.

Applicability: Section 3, Ch. 459, L. 2021, provided: "[This act] applies to tax years beginning after June 30, 2021."

2017 Amendment: Chapter 268 in Article IV in (1) inserted definitions of apportionable income, nonapportionable income, and receipts, deleted definition that read: ""business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations", deleted definition that read: ""nonbusiness income" means all income other than business income, and deleted definition that read: ""sales" means all gross receipts of the taxpayer not allocated under subsections of this article"; in (3)(b) at end inserted "do so"; in (4) substituted "nonapportionable income" for "nonbusiness income"; in (9) near beginning substituted "apportionable income" for "business income" and near end substituted "receipts factor" for "sales factor"; in (15) near beginning substituted "receipts factor" for "sales factor" and in two places substituted "total receipts" for "total sales"; in (16) substituted "Receipts from the sale" for "Sales"; in (17) substituted current language for former language that read: "(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance"; inserted (18)(b) through (18)(e) allowing rules or regulations to determine alternative allocation and apportionment methods, requiring uniform application of regulations, requiring the petitioner to prove certain elements by a preponderance of the evidence, prohibiting imposition of civil or criminal penalties with reference to tax due attributable to the taxpayer's reasonable reliance solely the allocation and apportionment provisions of Article IV, and prohibiting revocation of written permission to use a certain method of allocation and apportionment of transaction and activities that have already occurred without a material change in or material misrepresentation of facts; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Uniform Act: Article IV of this Compact consists of the Uniform Division of Income for Tax Purposes Act.

Administrative Rules

ARM 42.9.107 Multitiered pass-through entity structures with Montana source income — reporting requirements.

ARM 42.9.112 Apportionable and nonapportionable income — apportionment or allocation — pass-through entities.

ARM 42.15.120 Income tax — intent.

Title 42, chapter 26, subchapter 2, ARM Corporate multistate activities — income allocation and apportionment.

ARM 42.26.245 Numerator of receipts factor — sales other than sales of tangible personal property — market based sourcing.

ARM 42.26.246 Numerator of receipts factor — sale, rental, lease, or license of real property.

ARM 42.26.247 Numerator of receipts factor — rental, lease, or license of tangible personal property.

ARM 42.26.248 Numerator of receipts factor — sale of a service.

ARM 42.26.249 Numerator of receipts factor — license or lease of intangible property.

ARM 42.26.250 Numerator of receipts factor — sale of intangible property.

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Audit Information Subject to Discovery by Taxpayer: Pacificorp appealed taxes imposed by the Department of Revenue that were in part based on audits by other states belonging to the Multistate Tax Commission. The lower court affirmed the State Tax Appeal Board's refusal to turn over copies of the audits pursuant to discovery requests by Pacificorp. The Supreme Court held that the audits were subject to discovery under this section because the action was brought in Montana and its confidentiality rules were controlling and not those of the state performing the audit. Pacificorp v. Dept. of Revenue, 254 M 387, 838 P2d 914, 49 St. Rep. 774 (1992).

15-1-603. Alternate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 7
Collection of Delinquent Taxes — Warrant for Distraint

Part Attorney General's Opinions

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-701. Warrant for distraint.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 589, L. 2023. Amendment effective May 18, 2023.

2001 Amendment: Chapter 108 in (3) in first sentence substituted "accumulated penalty" for "penalty" and in second sentence after "accrued" inserted "penalty and"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendments: Chapter 365 in (2), near middle of second sentence, inserted "the department is a judgment lien creditor"; in (3) inserted third sentence regarding the priority date of the tax lien; and inserted (4) providing that the accelerated priority date is not valid against certain entities whose interest is recorded prior to the filing of the warrant for distraint. Amendment effective April 12, 1995.

Chapter 529 in (2), at end of second sentence, inserted exception relating to Department enforcement of a judgment lien. Amendment effective April 25, 1995.

Effective Date — Applicability: Section 2, Ch. 365, L. 1995, provided: "[This act] is effective on passage and approval [approved April 12, 1995] and applies to warrants for distraint filed after December 31, 1995."

Section 17(1), Ch. 529, L. 1995, provided that this section applies to warrants for distraint filed by the Department of Revenue and certificates of lien filed by the Department of Labor and Industry on or after July 1, 1996.

1991 Amendment: In (1), near beginning after "department of revenue", inserted "or of the department of transportation"; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-702. Issuance of warrant.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Near beginning of (1), after "If a tax", deleted "other than inheritance or estate tax". Amendment effective March 18, 1989.

Retroactive Applicability: Section 6, Ch. 131, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988."

15-1-704. Filing with district court.

Compiler's Comments

2001 Amendment: Chapter 515 at end of (3) substituted "upon motion, or by judgment for that purpose founded upon supplemental pleadings" for "pursuant to the methods provided in 25-13-102". Amendment effective October 1, 2001.

1997 Amendment: Chapter 42 in (3) substituted "methods provided in 25-13-102" for "provisions of 25-13-102". Amendment effective March 12, 1997.

1995 Amendment: Chapter 529 inserted (3) allowing renewal of a judgment lien. Amendment effective April 25, 1995.

Applicability: Section 17(1), Ch. 529, L. 1995, provided that this section applies to warrants for distraint filed by the Department of Revenue and certificates of lien filed by the Department of Labor and Industry on or after July 1, 1996.

15-1-705. Review.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (1) substituted "right to a review of the tax liability pursuant to 15-1-211" for "right to request a hearing on the matter of tax liability"; in (2), in first sentence, substituted "review" for "hearing", deleted former second sentence that read: "A request for a hearing must be made in writing within 30 days of the date of the notice", and substituted last sentence relating to requirement that review process and appeals be completed before warrant may be executed for former last sentence that read: "If a written request for a hearing is received, the warrant may not be executed upon until after the date the hearing is held or, if the taxpayer fails to attend a scheduled hearing, the date the hearing is scheduled"; and deleted (3) that read: "(3) The hearing is subject to the contested case provisions of the Montana Administrative Procedure Act. Before a decision may be appealed to the district court, an appeal must first be taken to the state tax appeal board. A request for a hearing must be in writing in order to postpone execution on a warrant".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-1-706. Execution upon warrant.

Compiler's Comments

2013 Amendment: Chapter 200 in (1) after "department" inserted "by electronic or other means"; in (2) in first sentence after "letter" inserted "or, upon written consent of the recipient, by electronic means"; and inserted (6) providing rulemaking authority. Amendment effective October 1, 2013.

2001 Amendment: Chapter 397 inserted (3) concerning notice of levy having effect of writ of execution and concerning duration of levy upon earnings; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

Title 42, chapter 5, subchapter 3, ARM Electronic levies and writs.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-1-707. Emergency execution upon warrant.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-1-708. Release of lien.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 7 in last sentence of (3)(a) after "may" substituted "proceed" for "transfer the debt to the department of administration for collection"; in (3)(b) in three places after "department" deleted "of administration", at beginning of first sentence deleted "Subject to approval by the department", and near middle of third sentence after "collected must be" deleted "returned to the department to be"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 108 in (1) substituted "accumulated penalty" for "penalty". Amendment effective July 1, 2001.

1995 Amendment: Chapter 529 inserted (3)(a) relating to the Department's transfer of an uncollectible debt to the Department of Administration for collection; and inserted (3)(b) relating to obtaining collection fees and costs from the debtor. Amendment effective April 25, 1995.

Code Commissioner Change: Pursuant to sec. 16, Ch. 529, L. 1995, a coordination section, in (3)(a) the Code Commissioner changed "state auditor" to "department of administration". The coordination instruction did not direct such a change in (3)(b). Because the change was necessary for conformity to the directed change, the Code Commissioner made the change under authority of sec. 73, Ch. 18, L. 1995, allowing correction of such erroneous references.

Administrative Rules

ARM 42.17.221 Due date and application of taxes.

Part 8
Payment of Taxes by Electronic Funds Transfer

15-1-801. Definitions.

Compiler's Comments

1995 Amendment: Chapter 561 in definition of taxes inserted exception clause; and made minor changes in style. Amendment effective July 1, 1995.

Statement of Intent: The statement of intent attached to Ch. 96, L. 1985, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the department of revenue. This bill is intended to authorize the department of revenue to adopt rules necessary to implement the payment of taxes by electronic funds transfer. This would include rules coordinating the filing of tax returns with the payment of taxes by electronic funds transfer, rules specifying the form and content of the electronic funds transfer message in order to ensure the proper receipt and crediting of the tax payment, and other necessary rules. This is not intended to authorize the department to raise the $500,000 limitation, to select which taxes under Title 15 will be subject to the requirement, or to otherwise differentiate between taxpayers."

Administrative Rules

ARM 42.5.201 Electronic payment.
ARM 42.5.202 Electronic returns, reports, and signatures.
ARM 42.5.213 Backup situation.

15-1-802. Taxes to be paid by electronic funds transfer — limitation.

Administrative Rules

ARM 42.5.201 Electronic payment.
ARM 42.5.202 Electronic returns, reports, and signatures.

Part 23
Rebate of Property Taxes Paid

Part Compiler's Comments

Effective Date: Section 9, Ch. 47, L. 2023, provided that this part is effective on passage and approval. Approved March 13, 2023.

Termination: Section 10, Ch. 47, L. 2023, provided: "[This act] terminates June 30, 2025."

15-1-2301. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 764, L. 2023, to this section as enacted by sec. 1, Ch. 47, L. 2023. Amendment effective June 5, 2023, and terminates June 30, 2025.

Severability: Section 8, Ch. 764, L. 2023, was a severability clause.

15-1-2304. Property tax rebate.

Compiler's Comments

Effective Date: Section 9, Ch. 764, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 5, 2023.

Termination: Section 10, Ch. 764, L. 2023, provided that this section terminates June 30, 2025.

Severability: Section 8, Ch. 764, L. 2023, was a severability clause.

CHAPTER 2
MONTANA TAX APPEAL BOARD

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Law Review Articles

A Historical Perspective on Montana Property Tax: 25 Years of Statewide Appraisal and Appeal Practice, Powell, 70 Mont. L. Rev. 21 (2009).

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

Part 1
Composition and Organization

Part Compiler's Comments

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

15-2-101. Montana tax appeal board — appointment of members — term of office.

Compiler's Comments

2021 Amendment: Chapter 142 near beginning of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Composite Section — Conflicting Amendments: This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Chapter 405 was later in date of approval. Neither amendatory act mentioned or incorporated the changes made by the other. The acts appear not to conflict except possibly with respect to the method of appointment of Board members. In this respect, the compiler used the language of Ch. 405.

Attorney General's Opinions

Members as State Employees for Certain Purposes: State Board of Tax Appeal members generally are considered to be public officers, but for the specific purpose of determining the applicability of vacation, sick leave, and working hour statutes, they are considered as state employees. 36 A.G. Op. 100 (1976).

Collateral References

Tax Appeals and Oversize Loads, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

15-2-102. Qualification and compensation.

Compiler's Comments

2021 Amendment: Chapter 142 in (1) in two places, in (2) in two places, in (3) in one place, and in (4) in one place substituted "Montana tax appeal board" for "state tax appeal board"; and made minor changes in style. Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2017 Amendment: Chapter 430 in (2) near middle of first sentence substituted "occupational wage range for the occupation designated" for "pay band, defined in 2-18-101, determined"; in (3) in two places after "occupation" deleted "and pay band"; and in (4) near middle after "board members within the" substituted "occupational wage range" for "pay band". Amendment effective July 1, 2017.

Severability: Section 19, Ch. 430, L. 2017, was a severability clause.

2009 Amendment: Chapter 7 in (2) in first sentence, in (3) in two places, and in (4) substituted "pay band" for "occupational pay range". Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 44 in (1) in fourth sentence near beginning after "board is" substituted "attached" for "transferred"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 81 in (2) in first sentence after "paid a salary" substituted text regarding occupational pay range determined by department of administration pursuant to subsection (3) for "equivalent to that of a grade 17 salary as provided in 2-18-312", in second sentence after "the legislature for" deleted "classified", and in last sentence after reference to 2-18-503 deleted "as amended"; inserted (3) and (4) regarding setting salary of state tax appeal board members; and made minor changes in style. Amendment effective July 1, 2007.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1995 Amendment: Chapter 455 in (2), at beginning, deleted "The member designated chairman as provided for in 15-2-103 shall receive a salary equivalent to that of an entry grade 17 salary, plus 5%. The remaining", in first sentence, after "equivalent to that of", substituted "a grade" for "an entry grade" and inserted reference to 2-18-312, and inserted second and third sentences relating to pay adjustment and salary of presiding officer; and made minor changes in style. Amendment effective April 14, 1995.

Retroactive Applicability: Section 23, Ch. 455, L. 1995, provided "[Section 17] [15-2-102] applies retroactively, within the meaning of 1-2-109, to a member of the state tax appeal board who was a member on December 31, 1994."

1991 Amendment: In (2), at end of first sentence, substituted "equivalent to that of an entry grade 17 salary, plus 5%" for "of $29,082 in fiscal year 1990 and $29,809 in fiscal year 1991 and thereafter" and at end of second sentence substituted "equivalent to that of an entry grade 17 salary" for "of $28,326 in fiscal year 1990 and $29,034 in fiscal year 1991 and thereafter". Amendment effective July 1, 1991.

1989 Amendment: In first sentence of (2) increased salary of chairman from $28,373 a year to $29,082 in fiscal year 1990 and to $29,809 in fiscal year 1991 and thereafter and in second sentence increased salary of remaining Board members from $27,635 a year to $28,326 in fiscal year 1990 and to $29,034 in fiscal year 1991 and thereafter. Amendment effective May 11, 1989.

1985 Amendments: Chapter 236, deleted former (3) that read: "(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature." Amendment effective July 1, 1987, upon approval by the electorate of HB 463 that repealed Art. XIII, sec. 3, of the Constitution.

Chapter 693, in (2), increased salary for chairman to $28,373 from $26,003 in fiscal 1984 and $26,523 in fiscal 1985 and thereafter, and increased salary for remaining board members to $27,635 from $25,305 in fiscal 1984 and $25,811 in fiscal 1985 and thereafter.

1983 Amendment: In (2), increased the salary of the chairman from $23,554 in fiscal year 1982 and $25,493 in fiscal years after fiscal year 1982 to $26,003 in fiscal year 1984 and $26,523 in fiscal years after 1984; and increased the salaries of members of the board from $22,924 in fiscal year 1982 and $24,809 in fiscal years after 1982 to $25,305 in fiscal year 1984 and $25,811 in fiscal years after fiscal year 1984.

1981 Amendment: In (2), increased the salary of chairman from $20,276 in 1980 and $21,779 in 1981 to $23,554 in 1982 and $25,493 in 1983; increased the salary of members from $19,843 in 1980 and $21,200 in 1981 to $22,924 in 1982 and $24,809 in 1983.

Salary Commission Bill: Chapter 605, L. 1981 (HB 580) was introduced at the request of the Montana Salary Commission. See commission report, Legislative Council, 1980.

15-2-103. Organization, quorum, sessions.

Compiler's Comments

2021 Amendment: Chapter 142 in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-2-104. Employees — expenses — minutes — rules.

Compiler's Comments

2021 Amendment: Chapter 142 in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 2.51.403 Decisions by the Montana Tax Appeal Board.

15-2-106. Seal.

Compiler's Comments

2021 Amendment: Chapter 142 in first sentence substituted "Montana tax appeal board" for "state tax appeal board"; and made minor changes in style. Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Part 2
Powers and Duties

15-2-201. Powers and duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 104 in (1)(c) after "boards" inserted "and assess attorney fees against the department when a taxpayer substantially prevails on the merits of an appeal of the value of class four residential property, as provided in 15-2-306." Amendment effective October 1, 2021.

Chapter 142 in (1) near beginning substituted "Montana tax appeal board" for "state tax appeal board"; and made minor changes in style. Amendment effective October 1, 2021.

Name Change — Directions to Code Commissioner: Pursuant to sec. 48, Ch. 142, L. 2021, in (1)(a), (2), and (3) the code commissioner changed "state tax appeal board" to "Montana tax appeal board".

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 329 in (1)(b) substituted "15-15-101(4)" for "15-15-101(2)". Amendment effective October 1, 2015.

1995 Amendment: Chapter 529 at end of (1)(d) inserted exception for determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2; and made minor changes in style. Amendment effective July 1, 1996.

1981 Amendment: Inserted (1)(b) relating to meeting of County Tax Appeal Board beyond normal time period.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 2.51.307 Orders of County Tax Appeal Board.
ARM 2.51.403 Decisions by the Montana Tax Appeal Board.
ARM 42.19.102 Commercial appraisal firms.

Case Notes

Authority of State Tax Appeal Board to Independently Assess Taxpayer's Market Value in Excess of Department of Revenue's Original Assessment: Puget Sound Energy appealed the Department of Revenue's final ad valorem assessment of Puget to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board). STAB, concluding the Department erred, assessed Puget's value in excess of the Department's assessment. Puget petitioned the District Court for review, arguing STAB lacked authority to adopt an assessment that exceeded the Department's original assessment and violated Puget's due process rights. The District Court agreed. On appeal, the Supreme Court reversed the District Court. Appeals to STAB, in accordance with Art. VIII, sec. 7, Mont. Const., differ depending on whether the appeal is from the county tax appeal board, pursuant to 15-2-301, or is brought directly from a Department decision, pursuant to 15-2-302. Because Puget appealed directly, STAB was the factfinding tribunal and had authority to adopt assessments in excess of the Department's original assessments. Section 15-8-111(1) mandates that all property must be assessed at 100% of its market value and applies equally to the Department and to STAB. Department error does not create an exception for STAB to assess a taxpayer's property at less than 100% of its market value. Puget's due process claim lacked merit, as it placed the determination of ultimate market value before STAB. Puget Sound Energy, Inc. v. Dept. of Revenue, 2011 MT 141, 361 Mont. 39, 255 P.3d 171.

Failure of Taxpayers to Produce Tax Assessment-Related Documents — Tax Appeal Properly Dismissed With Prejudice: After additional tax, interest, and penalties were assessed on plaintiffs for several tax years, plaintiffs contested the assessment and were referred to a Department of Revenue hearings examiner, who requested but did not receive a number of documents from plaintiffs pertaining to the tax years in question. Some 15 months and two additional requests later, the hearings examiner sent a letter to plaintiffs' counsel requesting the materials, but no response was received, so the Department moved to dismiss. The hearings examiner dismissed the matter, and plaintiffs immediately appealed the dismissal to the State Tax Appeal Board (now Montana Tax Appeal Board). The Department then sent its discovery request to plaintiffs' counsel but again received no response and no documents, so the Department requested that the Board dismiss the case, which the Board dismissed pursuant to former Rule 37(d), M.R.Civ.P. (now superseded), for failure to prosecute. Plaintiffs appealed to District Court, but the Board's dismissal was affirmed. Plaintiffs appealed, but the Supreme Court affirmed. At each level of the proceedings, plaintiffs and their counsel blatantly ignored and failed to respond to discovery requests for information related to the case. One sanction for failure to comply with discovery requests is dismissal of the case, and it was well within the discretion of the District Court to affirm the Board's dismissal of the case for plaintiffs' failure to prosecute and to abide by rules for discovery. Menholt v. Dept. of Revenue, 2009 MT 38, 349 M 239, 203 P3d 792 (2009), following Xu v. McLaughlin Research Institute for Biomedical Science, Inc., 2005 MT 209, 328 M 232, 119 P3d 100 (2005).

Refusal to Consider Taxpayer's Appraisal — Abuse of Discretion: A taxpayer presented evidence of market value but the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) refused to consider the evidence in a commercial property tax appeal. Citing Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768 (1983), the Supreme Court held that STAB was required to consider the theory and figures offered by a taxpayer, although not bound to adopt them, and that to refuse to accept a taxpayer's appraisal was an abuse of discretion. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

State Board to Take Evidence From Individual Protestors — Power to Affect County Board's Decision: Property taxpayers objected to the Department of Revenue (DOR) appraisal of their commercial property. They contend that commercial property is overvalued while residential property is undervalued. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) held a hearing applicable to all protesting taxpayers. STAB remanded all the cases to the DOR to reappraise the commercial property. On appeal, the Supreme Court said that STAB was required to take evidence from individual protestors to determine if their individual property was overvalued. Based on that evidence, STAB may affirm, modify, or reverse the decisions of the County Tax Appeal Boards in only those cases in which STAB has jurisdiction (i.e., those involving protestors properly before it). Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Factfinding Responsibility of Administrative Body: The Department of Revenue assessed Paxson's land for tax purposes. Paxson contended the valuation was too high because part of the land was in a flood plain. The County Tax Appeal Board entered an order granting a 20% reduction in the assessment. This was upheld by the State Tax Appeal Board (now Montana Tax Appeal Board). The District Court concluded that the 20% reduction was arbitrary and capricious since no evidence was contained in the record to support this figure. The court then adopted Paxson's theory of reduction and figures. On appeal, the Supreme Court upheld the overturning of the 20% reduction as not supported by the evidence but vacated the District Court's order and remanded the case to the State Tax Appeal Board. The Supreme Court held that the responsibility of factfinding and arriving at the proper taxable valuation is the function of the administrative bodies. Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768, 40 St. Rep. 1210 (1983), distinguished in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Appellate Review of Appraisal Methods: Section 15-7-102 gives the State Tax Appeal Board (now Montana Tax Appeal Board) specific power to hear tax appraisal appeals, including the power to pass judgment on appraisal methods. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Board Not Quasi-Judicial Body: The State Tax Appeal Board (now Montana Tax Appeal Board) is not a quasi-judicial body as defined in 2-15-124, but it may nonetheless perform some quasi-judicial functions and exercise its judgment and discretion pursuant to the provisions of this section. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Legislative Intent: The intent of the Legislature was to maintain continuity between the former State Board of Equalization and the new State Tax Appeal Board (now Montana Tax Appeal Board) and to transfer the appellate functions of the old Board to the new. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Mandamus to Enforce Increased Valuations: State Board of Equalization (duties now performed by Montana Tax Appeal Board), which issued a directive to Board of County Commissioners and County Assessor in November, 1963, requiring use of certain valuations on grades of farm land for 1964 and years thereafter, which the officials of the county refused to do, was entitled to mandamus to compel the county officials to comply with the directive. Alleged impossibility of compliance on July 22, 1964, was no defense. The officials had from November until the second Monday in August to accomplish the task but chose to do nothing except contest the matter. State ex rel. St. Bd. of Equalization v. Koch, 145 M 474, 401 P2d 765 (1965).

Mandamus: A county may be compelled by a Writ of Mandate to comply with the directives of the State Board of Equalization (duties now performed by Montana Tax Appeal Board). State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Tax Base of Railroads: The State Board of Equalization (duty now performed by Department of Revenue) had authority under Art. XII, sec. 15, 1889 Mont. Const. (see Art. VIII, sec. 7, 1972 Mont. Const.) to issue directive to county officers with respect to determination of property tax base of railroads. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Writ of Prohibition Improper: District Court acted prematurely in issuing Writ prohibiting State Board of Equalization (duty now performed by Department of Revenue) from proceeding further under 15-9-101, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented Board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Duty of Board to Equalize: Prior to amendment of this section, the State Board of Equalization (duty now performed by Department of Revenue) was charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Limitation on Court Intervention: A court may not intervene when action of the Board is not arbitrary, fraudulent, or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Standard of Judicial Review:

The Supreme Court will not, in a tax recovery action where overvaluation is alleged, substitute its judgment for that of the taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief only where the overvaluation is so gross as to be inconsistent with the exercise of honest judgment. Investors Sec. Co. v. Moore, 113 M 400, 127 P2d 225 (1942).

The State Board of Equalization (duty now performed by Department of Revenue) as a taxing body, while properly exercising its authority, was supreme. In the exercise of its powers it had a wide discretion, and its decisions, when honestly arrived at, were not disturbed by the courts. When, however, it pursued a fundamentally wrong method of assessment or acted fraudulently or maliciously, or where error so gross as to be inconsistent with any exercise of honest judgment was shown, courts would grant relief. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Part 3
Appeal Procedure

Part Case Notes

Challenge to Property Valuation Brought Pursuant to Repealed Statute Prohibited by Terms of Repealed Statute: Taxpayers brought a civil action in 1996 against the Department of Revenue and others, seeking declaratory judgment relief and the refund of property taxes paid in 1989 through 1992, based upon their rights as determined in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. The action was brought pursuant to 15-2-307 through 15-2-310, which were repealed in 1993. The Supreme Court held that even assuming the taxpayers properly asserted their action pursuant to repealed statutes, the District Court correctly dismissed the action because former 15-2-309 provided that the remedy ordered by a court could only apply prospectively, which precluded any remedy for taxes imposed in 1989 through 1992 as sought by the taxpayers. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Exhaustion of Administrative Remedies — Exception for Nonparty:

Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987).

Plaintiffs are citizens of Great Falls who expended money for construction and improvement in reliance on the city's MELDA (Montana Economic Land Development Act) plan. The Department of Revenue ruled that the city's plan did not conform to MELDA's provisions, and thus persons acting in reliance upon the city's plan would not receive MELDA tax treatment. The court found that the plaintiffs were nonparties even though they appeared at the administrative hearing and therefore could not appeal the Department's decision to the State Tax Appeal Board (now Montana Tax Appeal Board). Their remedy is in the District Court. This is an exception to the general rule that administrative remedies must be exhausted before applying for judicial review. Keller v. Dept. of Revenue, 182 M 478, 597 P2d 736 (1979).

Judicial Function in Taxation Matters: Plaintiff appealed his property's appraisal to the County Tax Board, the State Tax Appeal Board (now Montana Tax Appeal Board), the District Court, and the Supreme Court, who all reached the same result. The Supreme Court said it is not a judicial function to act as an authority on taxation matters. The court will not evaluate the advantages and disadvantages of a particular assessment method as applied to a taxpayer. Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement, and the judiciary cannot properly interfere with that function. NW. Land & Dev. of Mont., Inc. v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44, 40 St. Rep. 470 (1983), followed in United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991), and partially overruled in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Nonadministrative Question to Be Decided on Judicial Review: The Department of Revenue ruled that the Great Falls MELDA (Montana Economic Land Development Act) plan did not conform to MELDA provisions. Plaintiffs acted in reliance on the city's plan, but because of the Department's decision they did not receive MELDA tax treatment. In appealing the administrative decision, the plaintiffs are challenging the Department's decision not to utilize MELDA in assessing plaintiffs' property and seeking a determination of the effect of MELDA's repeal. Clearly these are not administrative questions, and plaintiffs should not be required to present their case to the State Tax Appeal Board (now Montana Tax Appeal Board). Keller v. Dept. of Revenue, 182 M 478, 597 P2d 736 (1979).

15-2-301. Appeal of county tax appeal board decisions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 142 throughout section substituted "Montana board" for "state board"; in (1)(b) in first sentence substituted "Montana tax appeal board" for "state tax appeal board"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 148 in (3)(a) at beginning inserted exception clause; inserted (3)(b) relating to consideration of independent appraisals of residential property according to standards set by the Montana board of real estate appraisers; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 2, Ch. 148, L. 2021, provided: "[This act] applies to appeals filed on or after [the effective date of this act]. Effective October 1, 2021."

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendments — Composite Section: Chapter 26 throughout section clarified and standardized references to state tax appeal board and county tax appeal board; inserted (2)(c) concerning annually assessed industrial property; in (5) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 361 inserted (3) regarding consideration and use of independent appraisal by state tax appeal board; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

1999 Amendment: Chapter 584 inserted (6) prohibiting construction of 15-6-134 and 15-7-111 to prevent department from implementing order changing property valuation. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 134 in (3), near end of first sentence, substituted "employ a competent person to electronically record the testimony" for "employ the local court reporter or other competent stenographer to take and transcribe the testimony" and in second sentence substituted "cost of electronically recording testimony" for "cost of taking and transcribing testimony"; and made minor changes in style. Amendment effective March 24, 1997.

1993 Special Session Amendment: Chapter 15 in (1), at beginning of second sentence before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any". Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

1993 Amendment: Chapter 594 deleted former second sentence of (4) that read: "The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review"; and inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review.

1991 Amendment: Twice in (2) and once in (3) inserted reference to hearing officer; and made minor changes in style. Amendment effective March 29, 1991.

1987 Amendment: In (1) at beginning inserted sentence requiring decision to be mailed to parties, in second sentence, relating to filing of notice of appeal, before "tax appeal board" substituted "state" for "county", after "notice of appeal" deleted "and a duplicate thereof with the state board", and substituted "30 calendar days" for "20 calendar days"; near middle of (1) deleted former language that read: "The county tax appeal boards shall mail their decisions to the property assessment division of the department. Receipt, for purposes of appeal, by the department is when the county tax appeal board decision is received by the property assessment division of the department" and inserted third sentence concerning notice of acceptance; near end of (1) substituted "respondent" for "county board"; at beginning of (2) substituted "At the time of giving notice of acceptance of an appeal" for "At the time of giving such notice"; near end of (2), after "transcript", substituted "or a tape recording of the hearing" for "of the testimony received"; inserted (3) authorizing employment of hearings officer (effective until June 30, 1989); near beginning of (4), relating to court reporter or stenographer, substituted "person" for "member" (effective until June 30, 1989); and made minor changes in phraseology.

Period of Effectiveness: Section 2, Ch. 611, L. 1979, provided: "This act is effective on passage and approval and remains in effect through June 30, 1981." Approved May 7, 1979. The code commissioner has returned the section to its form prior to being amended by Ch. 611, L. 1979, in compliance with sec. 2, Ch. 611, L. 1979.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Administrative Rules

ARM 2.51.307 Orders of County Tax Appeal Board.

Case Notes

Authority of State Tax Appeal Board to Independently Assess Taxpayer's Market Value in Excess of Department of Revenue's Original Assessment: Puget Sound Energy appealed the Department of Revenue's final ad valorem assessment of Puget to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board). STAB, concluding the Department erred, assessed Puget's value in excess of the Department's assessment. Puget petitioned the District Court for review, arguing STAB lacked authority to adopt an assessment that exceeded the Department's original assessment and violated Puget's due process rights. The District Court agreed. On appeal, the Supreme Court reversed the District Court. Appeals to STAB, in accordance with Art. VIII, sec. 7, Mont. Const., differ depending on whether the appeal is from the county tax appeal board, pursuant to 15-2-301, or is brought directly from a Department decision, pursuant to 15-2-302. Because Puget appealed directly, STAB was the factfinding tribunal and had authority to adopt assessments in excess of the Department's original assessments. Section 15-8-111(1) mandates that all property must be assessed at 100% of its market value and applies equally to the Department and to STAB. Department error does not create an exception for STAB to assess a taxpayer's property at less than 100% of its market value. Puget's due process claim lacked merit, as it placed the determination of ultimate market value before STAB. Puget Sound Energy, Inc. v. Dept. of Revenue, 2011 MT 141, 361 Mont. 39, 255 P.3d 171.

Lack of Required Statutory Information Precluding Dismissal of Valuation: Plaintiff protested the state's 2005 valuation of plaintiff's operating property. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) affirmed the valuation, and plaintiff appealed. The state moved to dismiss for lack of subject matter jurisdiction because although plaintiff's appeal contained sufficient information to comply with 15-2-303, both 15-2-301(5) and 15-2-302(5) mandate that additional information required by 2-4-702(2)(b) and 2-4-704(2)(a) also be contained in the petition for judicial review of a STAB decision. The motion was denied, and the state appealed, but the Supreme Court affirmed. As a more specific statute, 15-2-303 applies only to STAB decisions, while 2-4-702, a more general statute, applies to information necessary for inclusion in a petition for judicial review of an administrative decision. Therefore, it was not necessary to dismiss plaintiff's appeal on grounds that plaintiff's notice of appeal did not contain all the information required by 2-4-702(2)(b) and 2-4-704(2)(a). PacifiCorp v. St., 2009 MT 140, 350 M 336, 207 P3d 327 (2009), following Dept. of Revenue v. Davidson Cattle Co., 190 M 326, 620 P2d 1232, 37 St. Rep. 2074 (1980).

Continuance — Furtherance of Justice: The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) has the inherent authority to grant a continuance upon good cause shown and in furtherance of justice. STAB did not act in the furtherance of justice when it denied a request for continuance when it could present no evidence, other than its compliance with minimum notice requirements, to support the denial. The case was remanded for further development of the record. Hi-Line Radio Fellowship v. Dept. of Revenue, 227 M 150, 737 P2d 886, 44 St. Rep. 955 (1987).

State Board to Take Evidence From Individual Protestors — Power to Affect County Board's Decision: Property taxpayers objected to the Department of Revenue (DOR) appraisal of their commercial property. They contend that commercial property is overvalued while residential property is undervalued. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) held a hearing applicable to all protesting taxpayers. STAB remanded all the cases to the DOR to reappraise the commercial property. On appeal, the court said that STAB was required to take evidence from individual protestors to determine if their individual property was overvalued. Based on that evidence, STAB may affirm, modify, or reverse the decisions of the County Tax Appeal Boards in only those cases in which it has jurisdiction (i.e., those involving protestors properly before it). Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

State Tax Appeal Board — No Authority Over Department of Revenue: When a taxpayer appeals the action of the County Tax Appeal Board to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board), STAB may take evidence and based on that evidence it may affirm, modify, or reverse the decision of the County Tax Appeal Board. STAB may not remand the matter to the Department of Revenue, and STAB has no mandatory or injunctive power over the Department of Revenue. Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board (now Montana Tax Appeal Board) review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Scope of Review: So long as the Department of Revenue acts pursuant to an administrative rule or regulation its decisions are entitled to a presumption of correctness, unless the rule or regulation is arbitrary, capricious, or otherwise unlawful. However, there is no presumption of correctness when the Department has made an ad hoc determination unaided by rule or regulation, and in such cases the Board may examine the Department's procedures to determine whether they were fair, and whether the result is fair, just, and equitable. In order to do this the Board may conduct a hearing de novo at which it may examine the entire record sent by the Department, and may supplement it by taking additional testimony and receiving additional evidence. Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976).

Unconditional Assessment — No Need to Exhaust Administrative Remedies: A class action suit protesting method of assessment as being unconstitutional was properly filed directly against the Department of Revenue without first exhausting administrative remedies. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Mandamus to Correct Arbitrary Assessment: In an action in the District Court for a Writ of Mandamus by a taxpayer to compel the State Board of Equalization (duty now performed by Department of Revenue) to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, when the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant Board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. St. Bd. of Equalization, 116 M 499, 154 P2d 795 (1945).

Grounds for Court Appeal: The State Board of Equalization (duty now performed by Montana Tax Appeal Board) in a hearing on appeal to it involving a tax matter acted in a quasi-judicial capacity, and the presumption obtained that its findings were justified by the evidence taken at the hearing. An aggrieved taxpayer may resort to the courts for review if he can show fraud or other unlawful acts, such as arbitrary increase of valuation, wrong principle of assessment, or error so gross as to be inconsistent with any honest exercise of judgment, but if his complaint is not so predicated it does not state a cause of action. IBM Corp. v. Lewis & Clark County, 111 M 384, 112 P2d 477 (1941).

Reduction of Valuations of All Similar Property: When the State Board of Equalization (duty now performed by Montana Tax Appeal Board), at the time it made an order reducing assessments on a given class of lands on appeal of certain of the taxpayers, knew that there were other owners in like situation, its full duty in the premises was not discharged by the order of reduction in the specific instances, but it was its further duty, after giving notice, to reduce valuations of such others to avoid discrimination, i.e., to equalize the values; its failure in that behalf, however, did not deprive such others of their rights. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Nature of Findings: A decision of the State Board of Equalization (duty now performed by Montana Tax Appeal Board) made after hearing the appeal of a taxpayer from an adverse ruling of a County Board of Equalization (now County Tax Appeal Board) was quasi-judicial, and on application for Writ of Certiorari the Supreme Court could not go back of the record made by the State Board, the presumption obtaining that its findings were justified by the testimony heard by it at the hearing. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Appeal of Reduced Valuation by Third Party — Burden of Proof: The State Board of Equalization (duty now performed by Montana Tax Appeal Board) in an appeal by a number of owners of irrigated and irrigable lands in a certain county, after a hearing, reduced the valuations made by the Assessor and approved by the County Board of Equalization (now County Tax Appeal Board). Relator, owner of like lands in the same vicinity who had not complained of his assessment or appeared at the hearing to object to the granting of relief to appellants, instituted proceedings in certiorari in the Supreme Court, attacking the jurisdiction of the Board in making its order, in effect alleging that by the order he was being discriminated against. He charged neither fraud not that the Board had adopted a fundamentally wrong principle of assessment. The proceedings were dismissed on failure of the relator to show that the Board had acted in excess of its authority. State ex rel. Schoonover v. Stewart, 89 M 257, 297 P 476 (1931).

Collateral References

Tax Appeals and Oversize Loads, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

15-2-302. Direct appeal from department decision to Montana tax appeal board — hearing.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendment: Chapter 142 throughout section substituted "Montana board" for "state board"; and in (1)(a) at end substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2017 Amendment: Chapter 102 in (5) inserted last two sentences regarding informal consultation or communication about discovery prior to use of formal discovery procedures. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 102, L. 2017, provided: "[This act] applies to proceedings commenced on or after January 1, 2018."

Saving Clause: Section 3, Ch. 102, L. 2017, was a saving clause.

2015 Amendment: Chapter 26 throughout section clarified and standardized references to the state tax appeal board; in (1)(a) and (1)(b) in introduction substituted current text concerning appeals of final decisions for "A person may appeal to the state tax appeal board a final decision of the department of revenue involving"; inserted (2) concerning appeal of the department of revenue's annual assessment of industrial properties; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 67 in (2) at beginning deleted "Except as provided in subsection (2)(b)"; deleted former (2)(b) that read: "(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party"; in (3) at end after "complaint" deleted "or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint"; in (4) at beginning deleted "Except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendment: Chapter 491 in (2)(a), at beginning, inserted exception clause; inserted (2)(b) concerning appeal of Department determination regarding proper reporting of wages earned by unemployment benefits claimant; in (3), in first sentence, inserted "or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board"; in (4)(a), at beginning, inserted exception clause; inserted (4)(b) concerning conduct of appeal and time of Board decision; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1993 Amendments: Chapter 59 near beginning of (1) substituted "a final decision" for "any action"; in (2), at end of first sentence, substituted "department's final decision" for "department action"; in (4) substituted "conduct the appeal" for "hear the parties"; and made minor changes in style. Amendment effective February 19, 1993.

Chapter 594 near beginning of (1), before "action", inserted "final"; inserted (5) clarifying finality of State Tax Appeal Board decisions and proceedings for judicial review; and made minor changes in style.

Applicability: Section 2, Ch. 59, L. 1993, provided: "[This act] applies to final decisions made on or after [the effective date of this act]." Effective February 19, 1993.

Administrative Rules

ARM 42.4.4106 Appeal rights.

Case Notes

Authority of State Tax Appeal Board to Independently Assess Taxpayer's Market Value in Excess of Department of Revenue's Original Assessment: Puget Sound Energy appealed the Department of Revenue's final ad valorem assessment of Puget to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board). STAB, concluding the Department erred, assessed Puget's value in excess of the Department's assessment. Puget petitioned the District Court for review, arguing STAB lacked authority to adopt an assessment that exceeded the Department's original assessment and violated Puget's due process rights. The District Court agreed. On appeal, the Supreme Court reversed the District Court. Appeals to STAB, in accordance with Art. VIII, sec. 7, Mont. Const., differ depending on whether the appeal is from the county tax appeal board, pursuant to 15-2-301, or is brought directly from a Department decision, pursuant to 15-2-302. Because Puget appealed directly, STAB was the factfinding tribunal and had authority to adopt assessments in excess of the Department's original assessments. Section 15-8-111(1) mandates that all property must be assessed at 100% of its market value and applies equally to the Department and to STAB. Department error does not create an exception for STAB to assess a taxpayer's property at less than 100% of its market value. Puget's due process claim lacked merit, as it placed the determination of ultimate market value before STAB. Puget Sound Energy, Inc. v. Dept. of Revenue, 2011 MT 141, 361 Mont. 39, 255 P.3d 171.

Lack of Required Statutory Information Precluding Dismissal of Valuation: Plaintiff protested the state's 2005 valuation of plaintiff's operating property. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) affirmed the valuation, and plaintiff appealed. The state moved to dismiss for lack of subject matter jurisdiction because although plaintiff's appeal contained sufficient information to comply with 15-2-303, both 15-2-301(5) and 15-2-302(5) mandate that additional information required by 2-4-702(2)(b) and 2-4-704(2)(a) also be contained in the petition for judicial review of a STAB decision. The motion was denied, and the state appealed, but the Supreme Court affirmed. As a more specific statute, 15-2-303 applies only to STAB decisions, while 2-4-702, a more general statute, applies to information necessary for inclusion in a petition for judicial review of an administrative decision. Therefore, it was not necessary to dismiss plaintiff's appeal on grounds that plaintiff's notice of appeal did not contain all the information required by 2-4-702(2)(b) and 2-4-704(2)(a). PacifiCorp v. St., 2009 MT 140, 350 M 336, 207 P3d 327 (2009), following Dept. of Revenue v. Davidson Cattle Co., 190 M 326, 620 P2d 1232, 37 St. Rep. 2074 (1980).

Complaint Limited to Department Action in Revised Assessment Rather Than Review of Entire Assessment: A taxpayer whose assessment has been revised by the Department of Revenue has a right to an administrative review of only those aspects of the assessment that were changed in the revision rather than to a review of the assessment in its entirety. Pac. Power & Light Co. v. Dept. of Revenue, 249 M 33, 813 P2d 433, 48 St. Rep. 565 (1991).

Jurisdiction When Illegal Tax Alleged — Improper Dismissal: The court erred in granting defendants' motions to dismiss for lack of subject matter jurisdiction because the complaints alleged an illegal tax and did not put into issue any question of valuation. Thus the courts and not the Tax Appeal Boards had original jurisdiction to hear the case under the rule of Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975). U.S. Nat'l Bank of Red Lodge v. Dept. of Revenue, 175 M 205, 573 P2d 188 (1977).

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Collateral References

Tax Appeals and Oversize Loads, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

15-2-303. Judicial review — costs and attorney fees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 104 inserted (6) concerning awarding costs and reasonable attorney fees to a taxpayer who substantially prevails on the merits of an appeal of the value of class four residential property. Amendment effective October 1, 2021.

Chapter 142 throughout section substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Name Change — Directions to Code Commissioner: Pursuant to sec. 48, Ch. 142, L. 2021, in (6) the code commissioner changed "state tax appeal board" to "Montana tax appeal board".

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1993 Amendment: Chapter 594 in (1), after "decision", deleted "in a contested case"; in (2), after "district", deleted "and serving a copy of the petition on the department of revenue or taxpayer", at beginning of second sentence inserted "A petition for judicial review must be filed" and at end substituted "service of the final decision" for "the decision thereon", and inserted third sentence requiring service of petition copies on parties of record; inserted (3) requiring service of a petition copy on the County Treasurer of the county in which taxable property of a taxpayer seeking refund under protest is located; and made minor changes in style.

1981 Amendments: Chapter 77 substituted "department of revenue or taxpayer" for "state tax appeal board" in first sentence of (2) and at end of (2) substituted "The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review but failure to do so shall have no effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents" for "All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceedings".

Chapter 501 increased the time period for serving a copy of the petition after a final decision has been reached from 30 to 60 days.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Revenue Oversight Committee Bill: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

Case Notes

Lack of Required Statutory Information Precluding Dismissal of Valuation: Plaintiff protested the state's 2005 valuation of plaintiff's operating property. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) affirmed the valuation, and plaintiff appealed. The state moved to dismiss for lack of subject matter jurisdiction because although plaintiff's appeal contained sufficient information to comply with 15-2-303, both 15-2-301(5) and 15-2-302(5) mandate that additional information required by 2-4-702(2)(b) and 2-4-704(2)(a) also be contained in the petition for judicial review of a STAB decision. The motion was denied, and the state appealed, but the Supreme Court affirmed. As a more specific statute, 15-2-303 applies only to STAB decisions, while 2-4-702, a more general statute, applies to information necessary for inclusion in a petition for judicial review of an administrative decision. Therefore, it was not necessary to dismiss plaintiff's appeal on grounds that plaintiff's notice of appeal did not contain all the information required by 2-4-702(2)(b) and 2-4-704(2)(a). PacifiCorp v. St., 2009 MT 140, 350 M 336, 207 P3d 327 (2009), following Dept. of Revenue v. Davidson Cattle Co., 190 M 326, 620 P2d 1232, 37 St. Rep. 2074 (1980).

Standard of Appellate Review of Administrative Decision in Contested Case: When reviewing a District Court order affirming or reversing an administrative decision in a contested case, the Supreme Court employs the same standard applied by the District Court to determine whether the findings of fact are clearly erroneous and whether the agency correctly interpreted the law. O'Neill v. Dept. of Revenue, 2002 MT 130, 310 M 148, 49 P3d 43 (2002), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004), and Billings v. Owen, 2006 MT 16, 331 M 10, 127 P3d 1044 (2006). See also Glendive Medical Center, Inc. v. Dept. of Public Health and Human Services, 2002 MT 131, 310 M 156, 49 P3d 560 (2002).

Substitution of District Court Property Valuation for That of Tax Appeal Board Improper — Remand for Reinstatement of State Tax Appeal Board Assessment Absent Clear Error or Abuse of Discretion: The O'Neills contested the valuation ascribed to two parcels of property. The Department of Revenue had applied the market data approach in valuing one parcel, and the cost approach method in valuing the other parcel. The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) ultimately granted further reductions to the land values and ordered that the properties be entered into the county tax rolls. Dissatisfied with the STAB reduction, the O'Neill appealed the STAB ruling to the District Court. The court applied the comparable sales method of valuation, and concluded that an even lower value should have been applied. The court then vacated the STAB valued and assigned significantly lower values to the properties. The Department of Revenue appealed. The Supreme Court applied 2-4-704, holding that the section does not contemplate a wholesale substitution of the District Court's opinion for that of the agency. The District Court could have reversed or modified the STAB decision and remanded the case for further proceedings if the O'Neills' substantial rights had been prejudiced because the administrative findings were clearly erroneous, but the court did not reach that conclusion, and instead simply applied its own analysis in place of the STAB analysis. Absent findings of clear error or abuse of discretion required in 2-4-704, the STAB valuation will be upheld. Thus, the Supreme Court reversed and remanded for reinstatement of the STAB assessments. O'Neill v. Dept. of Revenue, 2002 MT 130, 310 M 148, 49 P3d 43 (2002), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Proper Denial of Motion to Present Additional Evidence in Support of Petition for Judicial Review: Leahys contended that the District Court erred in failing to open the record and admit additional evidence in support of their motion for judicial review, contending that they were misinformed and ill-prepared for the administrative hearing before the State Tax Appeal Board (now Montana Tax Appeal Board) and that they were not represented by counsel. The Supreme Court affirmed the denial of the motion, noting that it is not the obligation of the administrative agency or the District Court to second-guess litigants' decisions in their preparation for and presentation of their case before the agency, nor are they entitled to reopen their case on judicial review simply because they might have benefited from better preparation, different representation, or an alternative theory or approach than that presented at the hearing. An administrative hearing is not simply a dry run for retrial in District Court on judicial review with more, better, or different evidence. Under the rationale of O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456 (1987), it was a proper exercise of the District Court's discretion, absent good cause, to deny reopening of the record to allow additional evidence. Leahy v. Dept. of Revenue, 266 M 94, 879 P2d 653, 51 St. Rep. 665 (1994).

Right to Refund Not Affected by Failure to File Notice of Second Petition: DeVoe paid taxes under protest for several years but filed a notice of a petition for relief for only the first year and did not file notices for petitions filed for subsequent years. The Department of Revenue argued that he was not entitled to a refund for the years in which he had not filed a notice of the petitions with the County Treasurer. The Supreme Court held that the statutes were clear in indicating that the failure to file subsequent notices did not prohibit DeVoe from receiving refunds for the subsequent years since he did pay the taxes for those years under protest. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Refusal to Consider Taxpayer's Appraisal — Abuse of Discretion: A taxpayer presented evidence of market value but the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) refused to consider the evidence in a commercial property tax appeal. Citing Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768 (1983), the Supreme Court held that STAB was required to consider the theory and figures offered by a taxpayer, although not bound to adopt them, and that to refuse to accept a taxpayer's appraisal was an abuse of discretion. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Court Observations Beyond Scope of Judicial Notice in STAB Case: The District Court erred in reviewing a contested State Tax Appeal Board (now Montana Tax Appeal Board) case when its observations of the business-generating capability of a motel could only be verified by income statements of other area motels, data which was not generally known or capable of accurate and ready determination. Such empirical observations passed beyond the scope of judicial notice and bordered on judicial impression. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Showing of Good Cause Permissive, Not Mandatory — Introduction of Additional Evidence in STAB Cases: Judicial review of contested State Tax Appeal Board (now Montana Tax Appeal Board) cases under this section allows the court to supplement the record; therefore, the court may, on its own initiative or upon motion of a party, find good cause and allow additional evidence to be introduced. The showing of good cause is permissive, not mandatory. Any legally sufficient reason meets the good cause requirement, and such sufficiency lies within the discretion of the reviewing court. Additional evidence is not restricted to the parties, but may be accepted from a variety of sources. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Review of STAB Decision — Additional Evidence: When additional evidence is presented during review under this section, such evidence may be introduced before the court rather than the agency. Findings of fact and conclusions of law are then required to be made by the court. If the court does not permit or receive additional evidence, written findings and conclusions by the court are not required. Hi-Line Radio Fellowship v. Dept. of Revenue, 227 M 150, 737 P2d 886, 44 St. Rep. 955 (1987).

Factfinding Responsibility of Administrative Body: The Department of Revenue assessed Paxson's land for tax purposes. Paxson contended the valuation was too high because part of the land was in a flood plain. The County Tax Appeal Board entered an order granting a 20% reduction in the assessment. This was upheld by the State Tax Appeal Board (now Montana Tax Appeal Board). The District Court concluded that the 20% reduction was arbitrary and capricious since no evidence was contained in the record to support this figure. The court then adopted Paxson's theory of reduction and figures. On appeal, the Supreme Court upheld the overturning of the 20% reduction as not supported by the evidence but vacated the District Court's order and remanded the case to the State Tax Appeal Board. The Supreme Court held that the responsibility of factfinding and arriving at the proper taxable valuation is the function of the administrative bodies. Dept. of Revenue v. Paxson, 205 M 194, 666 P2d 768, 40 St. Rep. 1210 (1983).

Tax Appeal — Standard of Review — Applicable Procedure: The Department of Revenue audited respondent's corporate license tax returns and assessed additional taxes. Respondent protested the assessment and appealed to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board). After a hearing, STAB affirmed the Department's decision. Respondent filed for judicial review of the STAB decision in District Court. Respondent mailed a copy of the summons and petition to the attorney who represented the Department at the hearing and to STAB. The respondent received a default judgment and a reversal of STAB's final order. Separate standards of review for STAB decisions are not provided, with the exception of 15-2-303 which states that the District Court may permit additional evidence notwithstanding 2-4-704. The District Court reversed STAB's determination and granted the relief requested by respondent based on the Department's failure to answer and appear. The failure to appear does not suspend the standard of review. The District Court was not entitled to enter a default judgment reversing STAB without reviewing the record and complying with the standard of review contained in 2-4-704. In addition, the Department contends that respondent failed to obtain jurisdiction over the Department because it failed to comply with 2-4-702. Respondent asserts that 15-2-303 is the applicable statute. Section 15-2-303 is a specific statute while 2-4-702 is general. A specific statute controls over a general statute to the extent of any inconsistency. Dept. of Revenue v. Davidson Cattle Co., 190 M 326, 620 P2d 1232, 37 St. Rep. 2074 (1980).

Alternative to Payment Under Protest — Mootness: In effect this statute provides an alternative to paying taxes under protest, and payment of first tax installment 15 days prior to filing a petition for judicial review did not render the appeal moot. Compliance with the judgment did not make effective relief by the appellate court impossible and a decision regarding the issues presented will strongly affect future tax assessments by the Department of Revenue. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975), overruled, with regard to voluntary versus involuntary payment or performance as affecting waiver of right to appeal without having bearing on mootness, in Turner v. Mtn. Eng'r & Constr., Inc., 276 M 55, 915 P2d 799, 53 St. Rep. 23 (1996).

Attorney General's Opinions

County Attorney — Fees in Addition to Salary: A County Attorney may not accept a fee from the County Commissioners, in addition to his or her salary as County Attorney, for prosecuting an appeal from a decision of the Tax Appeal Board in which the county has intervened as party plaintiff. 37 A.G. Op. 63 (1977).

15-2-304. Petition for interlocutory adjudication.

Compiler's Comments

2021 Amendment: Chapter 142 in (1)(a) and (1)(b) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (1)(b) substituted "may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings" for "must raise all questions raised by the pleadings involving the interpretation of a constitutional provision, a statute, or a rule"; inserted (1)(c) requiring a nonpetitioning party to respond to the petition within 30 days and stating what the response may raise; in (2) substituted "After the 30-day period specified in subsection (1)(b)" for "After a proceeding has commenced before the state tax appeal board" and after "proceeding may" inserted "jointly"; in (3) substituted "the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact" for "the issues presented involve the interpretation of a constitutional provision, a statute, or a rule and do not require the hearing of evidence to be resolved" and at end inserted sentence requiring a court granting a petition to rule on all issues in the petition and response regardless of whether a ruling on less than all issues is dispositive of the case; and made minor changes in style.

1987 Amendment: Inserted (1) relating to interlocutory adjudication after answer filed before board; and at beginning of (3) inserted "In a petition under subsection (1) or (2)" and near middle substituted "a rule" for "regulation".

Case Notes

Interpretation of Terms "Scheduled Airline Company" and "Regularly Scheduled Flights" — Interlocutory Adjudication: The Department of Revenue informed the respondent, an aviation company, that the company would be centrally assessed. The respondent requested reclassification, which was denied by the Department. The Department filed an interlocutory appeal with the District Court seeking an adjudication of the meaning of the terms "scheduled airline company" and "regularly scheduled flights" for Montana property tax purposes. Following the issuance of the District Court's order interpreting the terms, the respondent appealed to the Supreme Court. The Supreme Court affirmed the District Court's interpretation with a slight modification of the term "regularly scheduled flights" as "those which follow an interval according to timetable and location predefined by the carrier and which fly regardless of whether there are passengers or freight to be carried". Dept. of Revenue v. Alpine Aviation, Inc., 2016 MT 283, 385 Mont. 282, 384 P.3d 1035.

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

15-2-305. Jurisdiction to make interlocutory adjudication.

Compiler's Comments

2021 Amendment: Chapter 142 in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1991 Amendment: In first sentence substituted "involves procedure, the admissibility of evidence, or a substantive question of law and does not require the determination of a question of fact" for "involves only the interpretation of a constitutional provision, statute, or regulation and does not require the hearing of evidence" and inserted second sentence requiring a court granting a petition to rule on all issues in the petition and response regardless of whether a ruling on less than all issues is dispositive of the case; and made minor change in style.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

15-2-306. Board to order refund.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 104 inserted (2) concerning awarding costs and reasonable attorney fees to a taxpayer that substantially prevails on the merits of an appeal of the value of class four residential property; in (3) in introductory clause substituted "subsections (1) and (2)" for "subsection (1)"; inserted (4) defining substantially prevails; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 142 throughout section substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Name Change — Directions to Code Commissioner: Pursuant to sec. 48, Ch. 142, L. 2021, in (4)(b) the code commissioner changed "state tax appeal board" to "Montana tax appeal board".

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1993 Amendment: Chapter 594 in three places in (1) substituted reference to property tax or fee for reference to tax or license fee; in (2)(a), after "appeal", deleted "specified in 15-1-402(4)"; and made minor changes in style.

Purpose: Section 1, Ch. 501, L. 1981, provided: "It is the purpose of this act to insure an orderly procedure for the payment of taxes and license fees under protest that may be appealed to a county or state tax appeal board and to insure that a taxpayer has exhausted all available remedies prior to filing an appeal in district court."

Interim Study Bill: Chapter 501, L. 1981 (SB 17), was introduced at the request of the Revenue Oversight Committee. See committee report, "Payment of Taxes Under Protest", Legislative Council, 1980.

CHAPTER 6
PROPERTY SUBJECT TO TAXATION

Chapter Compiler's Comments

Property Tax Refund: Sections 1 through 3, Ch. 6, Sp. L. May 2007, provided: "Section 1. Definitions. As used in [sections 1 through 3] [not codified], the following definitions apply:

(1) "Montana property taxes" means the ad valorem property taxes imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed in the specified calendar year.

(2) "Owned" includes purchasing under a contract for deed, owning 20% or more of the shares or other membership interests of an entity that owns a residence, and being the grantor or grantors under a trust indenture.

Section 2. Property tax refund — manner of claiming — limitations — appropriation. (1) (a) A refund of up to $400 of 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3).

(b) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 were more than $25 and less than $400, a refund of the 2005 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2005, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsection (1)(a) does not exceed $400.

(c) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006, together with the 2005 Montana property taxes allowed as a refund under subsection (1)(b), were more than $50 and less than $400, a refund of the 2004 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2004, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsections (1)(a) and (1)(b) does not exceed $400.

(2) (a) Subject to subsection (2)(b), the claim for refund, in the form that the department prescribes, must be executed by each taxpayer under penalty of false swearing and must include the information that the department requires.

(b) The personal representative of the estate of a deceased taxpayer may execute and file the claim for refund on behalf of a deceased taxpayer who qualifies for the refund.

(3) The claim for a refund is subject to the following limitations:

(a) The claim must be filed with the department of revenue on or before December 31, 2007, unless the department, for good cause shown, grants a reasonable extension of time for filing.

(b) Only one claim may be made with respect to any property.

(c) The claims by a taxpayer or taxpayers for 2006, 2005, and 2004 must be for the same property.

(4) The payment of property tax refunds under this section is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue for distribution to taxpayers.

Section 3. Property tax refund — penalty for false or fraudulent claim. A person who files a false or fraudulent claim for a property tax refund under [section 2] [not codified] is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other tax owed the state, together with a penalty of 25% and interest on the amount of the refund at the rate of 12% a year, until paid."

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Case Notes

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Chapter Law Review Articles

Of Castles and Kings: A Perspective for Property Tax Reform, Even, 50 Mont. L. Rev. 243 (1989).

Developing Theories of State Jurisdiction Over Indians: The Dominance of Preemption Analysis, Lynaugh, 38 Mont. L. Rev. 64 (1977).

Chapter Collateral References

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of Tax Increment Financing, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

Recipes for Change: A Menu of Property Tax Alternatives—A Report of the Interim Property Tax Committee to the 56th Legislature, 1998 Interim Report, Mont. Leg. Serv. Div.

An Overview of Taxation in Montana: Principles and Practice, 1992 Interim Report, Mont. Leg. Council.

Property Taxation and Other Issues Before the Revenue Oversight Committee, Mont. Leg. Council (1988).

Timber Taxation in Montana, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Montana's Financial Institutions, 1977-78 Interim Report, Montana Legislative Council.

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

Revision of Montana's Property Tax Classification System, 1977-78 Interim Report, Montana Legislative Council.

Motor Vehicle Fee System, 1977-78 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana's Property Taxes: Assessment and Classification, 1975-76 Interim Report, Montana Legislative Council.

Uniform Fee Taxation and Anniversary Date Registration of Motor Vehicles, 1974 Interim Report, Montana Legislative Council.

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

Property Taxation—Right of Entry, 1969-70 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
Classification

Part Compiler's Comments

Property Tax Committee: Section 10, Ch. 463, L. 1997, provided: "(1) There is an interim property tax committee. The committee consists of 12 members. The speaker of the house shall appoint six house members, three from each party, and the senate committee on committees shall appoint six senate members, three from each party.

(2) The committee may study all aspects of the state property tax system and shall prepare a menu of alternatives to revise, reform, or replace the property tax system. The alternatives should include methods that remove volatility from the valuation of property. The alternative methods should include options designed to supplement or replace the current valuation system in order to prevent the exclusive reliance on market value.

(3) In order to provide a wide-ranging series of options for consideration, each individual member of the committee may pursue proposals independently and receive staff assistance on the proposals. The committee may discuss and make suggestions on all proposals. A vote of one-fourth of the members may include a proposal on the menu of alternatives. The menu of alternatives must be presented to the 56th legislature.

(4) The committee may solicit the advice of appropriate persons and entities as the committee considers necessary.

(5) The legislative branch shall provide staff support to the committee. The committee may contract for services as the committee considers necessary."

The final report of the committee is entitled "Recipes for Change: A Menu of Property Tax Alternatives—A Report of the Interim Property Tax Committee to the 56th Legislature", 1998 Interim Report, Montana Legislative Services Division.

Part Case Notes

Effect on Statewide Special Levy: In the matter of refunding the state educational bonds under Ch. 23, L. 1931 (not codified), the issuance and sale of which were originally authorized by initiative measure No. 19, effective December 6, 1920, providing for their payment an annual levy at a given rate on each dollar of the assessed valuation of the taxable property in the state, measure No. 19 held a special act and as such was controlling over the general classification act (sections 84-301 and 84-302, R.C.M. 1947, now repealed), approved February 28, 1919 (Ch. 51, L. 1919), which prescribed the taxable value, at a certain percentage of the assessed value, as a basis of taxation. State ex rel. Judd v. Cooney, 97 M 75, 32 P2d 851 (1934), distinguished in N. Pac. Ry. v. Dunham, 108 M 338, 90 P2d 506 (1939).

Determination of Classification:

For the purposes of taxation, the use to which property is devoted and its productivity make up the measuring stick for determining its proper classification—a matter within the power of the Legislature. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

The basis for classification of the thing classified for taxation purposes need not be deducible from its nature, and discrimination merely is not inhibited, since there are discriminations which the best interests of society require. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

When there is a difference between various properties it need not be great or conspicuous in order to warrant classification by taxing officer; for that purpose there is a difference in the doing of business and its results. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

Part Attorney General's Opinions

State Taxation of Nontribe Member Not Preempted by Federal Concerns: While generally state taxation will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or established tradition of tribal governance, the simple fact that a particular on-reservation activity may validly be taxed by a tribe does not preclude state taxation of the same activity, and taxation of a nonmember has no effect on federal concerns. A tribe's sovereignty interest does not negate state authority over nonmember activity. Therefore, the interest of a nontribal member in motor vehicles, mobile homes, or personal property (whose tax situs is within the exterior boundaries of the reservation) and which interest is held in joint tenancy or tenancy in common with a tribal member is subject to those state taxes generally applicable to such property. 42 A.G. Op. 11 (1987).

Part Collateral References

Study of Taxation of Centrally Assessed and Utility Property, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

15-6-101. Property subject to taxation — classification.

Compiler's Comments

1985 Amendments: Chapters 20 and 681 in (2) substituted "this part" for "15-6-131 through 15-6-141".

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Administrative Rules

Title 42, chapter 20, subchapter 3, ARM Classification of nonproductive patented mining claims.

Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid because the statutes did not classify those properties as required by this section and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by this section. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Lease With Option to Purchase — Landlord Responsibility for Taxes: The city entered into an agreement with Pollard for construction and lease of a vehicle storage building, with an option to purchase throughout the term of the lease. After the city occupied the building, Pollard received notice that taxes had been assessed and were owing. Pollard maintained that the city had, by terms of the lease agreement, purchased the building and that he was not responsible for the taxes. He relied on the holding in Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985), that the lease was in fact a sale to the city and that the building was in effect a public works project. The Supreme Court found that the option to buy was not a sale and imposed no obligation to purchase. Rather, it found that the agreement fit the definition of a retail installment contract. Title bestowing ownership had not transferred to the city, so owner Pollard was responsible for the taxes on the building. Pollard v. Bozeman, 228 M 176, 741 P2d 776, 44 St. Rep. 1436 (1987).

Duty to File Return: It is the duty of every citizen to return his property for taxation and to pay the taxes levied upon it. Where property is discovered to have escaped taxation and assessment is made in a subsequent year as provided by law, the duty to pay is a continuing present obligation as valid at the time of subsequent assessment as in the year when the tax accrued. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924), followed in OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Bank Stock:

National bank stock was not subject to tax where state bank stock was not taxed. Mont. Nat'l Bank v. Yellowstone County, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928), reversing 78 M 62, 252 P 876 (1926).

Prior to the enactment of Ch. 634, L. 1979, to the extent that shares of stock of a bank had a value over and above the taxable real and personal property of the bank, they were taxable under the provisions of Art. XII, sec. 1, 2, 1889 Mont. Const., which provided that all property other than that specially exempted must be taxed without reference to the character of the securities which go to make up that value. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Securities of United States: The securities of the United States held by a bank are not taxable by the state, directly or indirectly. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Bank Property: The real estate, furniture and fixtures, and moneyed capital (prior to the enactment of 15-31-703) of a state bank, constituted all its taxable property. E. Helena St. Bank v. Rogers, 73 M 210, 236 P 1090 (1925).

Shares of Stock — Taxable Situs: Shares of stock in foreign corporations owned by a legal resident of the state who, however, for all intents and purposes had left Montana and was doing business as a stockbroker in the city of New York, which shares had never been within this state but were held and had their business situs in the State of New York, were not subject to taxation within this state. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Personal Property: The maxim "mobilia sequuntur personam" as applied to determine the situs of personal property for purposes of taxation is not of universal application but must give way in the face of contrary facts. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Extent of Taxing Power: The taxing power of the state does not extend beyond its territorial limits. State ex rel. Rankin v. Harrington, 68 M 1, 217 P 681 (1923).

Constitutionality of Prior Classification Section:

Section 84-301, R.C.M. 1947 (now repealed), which provided for the classification of property for purposes of taxation, did not infringe upon the guaranty of the equal protection of the laws. Hilger v. Moore, 56 M 146, 182 P 477 (1919).

Section 84-302, R.C.M. 1947 (now repealed), which set out the tax rates for the different classes of property, did not violate Art. XII, sec. 1, 1889 Mont. Const. Hilger v. Moore, 56 M 146, 182 P 477 (1919).

State and County Bonds: State and county bonds held in private ownership within the state are "property" within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being exempt under former law, were taxable as such. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Reservation of Minerals: When lands are sold with reservations in the grantor of minerals therein and the right to mine the same, as well as of a right-of-way over them for mining purposes, and for the removal of timber from adjoining lands, such reservations constitute property subject to taxation under this section and 15-1-101. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Separate Estates in Land: The separate estates which different persons may own in the same land, as where one owns the surface, another the growing timber, and a third the mineral underground, may each be subject to taxation, except such as specifically exempted. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913), explained and overruled in part in N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Purpose of Statute: The provisions of the Political Code of 1895 (sections 3670 to 4083) relating to revenue, contained a scheme for assessment, equalization, and collection of taxes complete in itself, which is available for all taxing purposes for the state, county, and subdivision of counties. The fundamental idea of this scheme or plan was that there must be one tax roll for all purposes, and that the Board of County Commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns which had ordinances providing for the assessment and collection of their own taxes. Hilburn v. St. Paul M. & M. Ry., 23 M 229, 58 P 551 (1899).

Collateral Security Mortgage: A mortgage regarded as collateral security belongs to the owner of the debt and is considered to have no situs except that of the domicile of the owner, and, if owned by one not a resident of the state, is not property in the state, subject to taxation, and can only be assessed at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. Holland v. Bd. of Comm'rs, 15 M 460, 39 P 575 (1895). See also Monidah Trust v. Sheehan, 45 M 424, 123 P 692 (1912).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

15-6-131. Class one property — description — taxable percentage.

Compiler's Comments

2005 Amendment: Chapter 559 in (1) near end in exception clause inserted "bentonite". Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 397 at end of (2) inserted "or, for industrial garnets and associated byproducts, as provided in 15-23-518". Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in (2), at end, inserted "or, for limestone as provided in 15-23-517". Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 in (2), at end, inserted "or, for vermiculite, as provided in 15-23-516". Amendment effective April 27, 1991.

Chapter 700 near end of (1), after "coal", inserted "travertine, building stone". Amendment effective April 26, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Section 3, Ch. 700, L. 1991, provided: "[This act] is effective on passage and approval [approved April 26, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 4, Ch. 700, L. 1991, provided: "[This act] terminates December 31, 1993."

1989 Amendment: At end of (2) inserted reference to talc. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1983 Amendment: Deleted former (1)(a), which read: "the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals; and"; in (2) after "is taxed" deleted "as follows"; deleted former (2)(a), which read: "Property described in subsection (1)(a) is taxed at 100% of its market value, as determined by the department of revenue."; and deleted introductory language of former (2)(b), which read: "Property described in subsection (1)(b) is taxed".

Case Notes

Mineral Reservation Right of Entry — Easement Only Does Not Include Property Interest in Minerals: A mineral reservation right of entry is an easement and conveys no interest in the underlying oil, gas, or minerals or in oil, gas, or minerals produced from the land. McDonald v. Unirex, Inc., 221 M 156, 718 P2d 316, 43 St. Rep. 709 (1986).

Net Proceeds Tax Applies to Fluorspar Removed From Tailings: Fluorspar removed from tailings on land owned by Darby Spar is subject to the net proceeds tax despite the fact that 15-6-131 does not contain a reference to "dump or tailings". The reason for this discrepancy in the statutes is found in Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945). The decision in that case noted the absence of references to "dump or tailings" in holding they were not subject to the tax. The next Legislature specifically included those words in what is now 15-23-502. The Legislature clearly intended to impose the net proceeds tax on the yield from disposed tailings, and for 40 years that is what the Department of Revenue has done by administrative rule. Darby Spar, Ltd. v. Dept. of Revenue, 217 M 376, 705 P2d 111, 42 St. Rep. 1262 (1985).

Law Review Articles

Taxation of Mineral Interests Under the 1889 Constitution, 32 Mont. L. Rev. 47 (1971).

Collateral References

Property Taxation — Right of Entry, 1969-70 Interim Report, Montana Legislative Council.

15-6-132. Class two property — description — taxable percentage.

Compiler's Comments

1989 Special Session Amendment: Deleted former (1)(b) relating to the annual gross proceeds of underground coal mines and deleted (2)(b) that taxed the gross proceeds at 33⅓% of annual gross proceeds; deleted former (1)(c) relating to the annual gross proceeds of coal mines using the strip-mining method and deleted (2)(c) that taxed the gross proceeds at 45% of annual gross proceeds; and made minor change in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

Case Notes

Taxation of Coal Lands Under 1889 Constitution: Coal lands purchased from the federal government were taxed under Art. XII, sec. 3, 1889 Mont. Const., at the price paid therefor and not at 30% of such purchase price, the rate at which real property was taxable under a former classification act. State ex rel. Hinz v. Moody, 71 M 473, 230 P 575 (1924).

Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Collateral References

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

15-6-133. Class three property — description — taxable percentage.

Compiler's Comments

2015 Amendment: Chapter 361 in (1)(c) in last sentence inserted "average" and after "grazing land" deleted "at the average grade of grazing land"; and in (2) substituted "2.16% of its productive capacity value" for "the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a)". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2005 Amendment: Chapter 376 in (1)(c) at end of first sentence inserted "which are considered to be nonqualified agricultural land", at beginning of second sentence inserted "Nonqualified agricultural", and inserted third sentence providing that nonqualified agricultural land is valued at the productive capacity and average grade of grazing land; in (2) at beginning inserted "Subject to subsection (3)"; in (3) near beginning before "land" inserted "taxable value of", near middle after "is" deleted "valued at the productive capacity value of grazing land, at the average grade of grazing land, and the taxable value is", after "value" inserted "of the land", and near end after "taxable" inserted "percentage"; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

1995 Amendment: Chapter 485 in (3), near middle, substituted "the average grade of grazing land" for "a production level set by the department". Amendment effective April 14, 1995.

Applicability: Section (6)(2), Ch. 485, L. 1995, provided: "[Sections 4 and 5] [15-6-133 and 15-7-221 (now repealed)] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendments: Chapter 267 in (2) substituted "applicable to class four property, as provided in 15-6-134(2)(a)" for ""P" of its productive capacity"; deleted (3) and (4) relating to the taxable percentage rate prior to July 1, 1986, and how it was determined (see 1993 Session Law for text); deleted (5) that provided that after July 1, 1986, no adjustment would be made by the Department to the taxable percentage rate "P" until a revaluation was made; and made minor changes in style. Amendment effective April 2, 1993.

Chapter 627 inserted (1)(c) including as class three property parcels of land of 20 acres or more but less than 160 acres that are not eligible for classification as agricultural land; and inserted (3) establishing a method of valuation of those lands. Amendment effective January 1, 1994.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

1991 Amendment: Inserted (1)(b) to include certain nonproductive patented mining claims in class three property. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1985 Amendment: In (2) substituted "at the taxable percentage rate "P" of its productive capacity" for "at 30% of its productive capacity"; and inserted (3) through (5) that read: "(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".

(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	Class Three Taxable Percentage "P"
0	30.00
10	27.27
20	25.00
30	23.08
40	21.43
50	20.00

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111."

1983 Moratorium on Rulemaking by Department: In HB 851 (Ch. 510, L. 1983), the Legislature declared a moratorium on the adoption or amendment of rules governing the assessed valuation of agricultural lands. The bill, which was not codified, provided: "Whereas, the Department of Revenue has recently proposed the repeal of its current administrative rules governing the assessed valuation of agricultural lands and has proposed new rules governing such assessed valuation; and

Whereas, the rules proposed by the Department will increase the assessed valuation of all agricultural lands and will increase the assessed valuation of some agricultural lands by more than 10 times; and

Whereas, the House Agriculture Committee and the Legislature as a whole seriously question the need for and wisdom of the proposed increases, particularly in times of severe economic hardship for farmers and ranchers.

Therefore, it is the intent of this bill to establish a temporary moratorium on the effective date of any rules proposed by the Department of Revenue in the area of assessed valuation of agricultural lands, in order that any such proposals may be more carefully reviewed by the Legislature.

Section 1. Proposed rules not to be effective until January 1, 1986. The rules governing the assessed valuation of agricultural lands proposed for adoption by the department of revenue in Montana Administrative Register Notice No. 42-2-209 and published at pages 58 through 64 of Issue No. 2 of the 1983 Montana Administrative Register and any rules substantially equivalent to those rules may not be made effective by the department of revenue until January 1, 1986.

Section 2. Current rules to remain in effect. Any repeal or substantial amendment of rules governing the assessed value of agricultural lands now published as ARM 42.20.141 through 42.20.146 may not take effect prior to January 1, 1986."

Statement of Intent: The statement of intent attached to HB 851 (Ch. 510, L. 1983) provided: "It is the intent of the legislature that the Department of Revenue work closely with agricultural associations and representatives of the agricultural community in developing administrative rules on the valuing of agricultural lands for property taxation. The Department may adopt administrative rules prior to the next legislative session so long as those rules are not implemented for taxation purposes prior to January 1, 1986.

The legislature further intends to review these rules in 1985 to ensure the Department has worked closely with the agricultural groups in developing rules and that those rules treat agricultural land fairly for purposes of property taxation in relation to the Montana Constitution, statutes, and other property."

Administrative Rules

ARM 42.20.156 Land classification change criteria.

Title 42, chapter 20, subchapter 3, ARM Classification of nonproductive patented mining claims.

ARM 42.20.305 Valuation of acreage beneath improvements on eligible mining claims.

ARM 42.20.306 Valuation of improvements located on eligible mining claims.

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

Case Notes

Department of Revenue Properly Phased in Increases — Property Tax — Plain Reading of Statute: The petitioners filed for declaratory judgment and writ of mandate based on the Department of Revenue's 2009 reclassification of their agricultural property. The petitioners argued that the Department failed to correctly phase in increases under 15-7-111 and that the subsection used by the Department only applied to reclassification of property among different classes. Following a remand from the Supreme Court based on class action certification, the District Court granted the Department's motion for summary judgment. On appeal, the Supreme Court affirmed, holding that 15-7-111 was not ambiguous, that the department followed the plain language of the statute, that the Department's failure to promulgate rules did not have a substantive effect on the proceeding, and that the petitioner's equal protection concerns were not valid. Lucas Ranch, Inc. v. Dept. of Revenue, 2015 MT 115, 379 Mont. 28, 347 P.3d 1249.

Collateral References

Agricultural Property Taxation Study, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

15-6-134. Class four property — description — taxable percentage.

Compiler's Comments

2017 Amendment: Chapter 333 inserted (1)(d) concerning property beneath an improvement used as residence on land eligible for valuation, assessment, and taxation as forest land; and made minor changes in style. Amendment effective May 4, 2017.

Retroactive Applicability: Section 5, Ch. 333, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016, and to the reappraisal cycle beginning January 1, 2017."

2015 Amendment: Chapter 361 substituted current text concerning class four property for former section (see 2015 Session Law for former text); and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2009 Amendments — Composite Section: Chapter 421 in (2)(a) after "15-24-1502" inserted "and 15-24-2101"; and made minor changes in style. Amendment effective April 30, 2009.

Chapter 483 in (1)(c) at end substituted "one or more qualified claimants" and subsections (1)(c)(i) and (1)(c)(ii) establishing income thresholds for "any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both"; in (2)(a)(i) substituted "2.93%" for "3.22%" and changed year from 2005 to 2009; in (2)(a)(ii) substituted "2.82%" for "3.14%" and changed year from 2006 to 2010; in (2)(a)(iii) substituted "2.72%" for "3.07%" and changed year from 2007 to 2011; inserted (2)(a)(iv) and (2)(a)(v) establishing the rate for years 2012 and 2013; in (2)(a)(vi) substituted "2.47%" for "3.01%" and changed year from 2007 to 2013; in (2)(b)(i) near end inserted reference to the preceding calendar year for a primary residence; inserted (4) relating to qualified claimants, determination of income, and the case of two or more owners; and made minor changes in style. Amendment effective May 10, 2009.

The amendment to this section made by sec. 1, Ch. 6, L. 2009, was rendered void by sec. 16, Ch. 483, L. 2009, a coordination section.

Extension of Deadlines Relating to 2009 Property Taxes: Section 12, Ch. 483, L. 2009 provided: "As a result of the changes in the mitigation strategy of reappraisal for class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Extension of Application Deadlines: Section 13, Ch. 483, L. 2009 provided: "Because the application deadlines for the property tax assistance program in 15-6-134(1)(c) and the disabled or deceased veterans' residence property tax exemption program under [former] 15-6-211 [(see 15-6-311 for new program)] will have passed by [the effective date of this act] [effective May 10, 2009], the application deadlines for those programs have been extended for tax year 2009 to July 15, 2009."

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 8, Ch. 421, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008."

Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2005 Amendments — Composite Section: Chapter 532 in (1)(a) and (1)(b) at beginning after "subject to" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)"; in (1)(e) at beginning after "subject to" substituted "15-6-222(1)" for "15-6-201(1)(z)"; deleted former (2)(a)(i) and (2)(a)(ii) that read: "(i) 3.40% of its taxable market value in tax year 2003;

(ii) 3.3% of its taxable market value in tax year 2004"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 584 in (1)(a) and (1)(b) near beginning after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)"; and in (1)(e) near beginning after "15-6-201" substituted "(1)(bb)" for "(1)(z)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendment: Chapter 606 in (2)(a) in introductory clause after "15-24-1502" deleted "and subsection (2)(a)(ii) of this section"; in (2)(a)(i) decreased percentage from 3.794% to 3.40% and substituted "2003" for "1999"; inserted (2)(a)(ii) through (2)(a)(vi) stating the percentage of taxable market value in tax years 2004 through 2007 and tax years after 2007; deleted (2)(a)(ii) that read: "(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%"; in (2)(b)(i) in introductory clause substituted "subsection (2)(a)" for "subsection (2)(a)(ii)" and before "market value" inserted "taxable"; in (2)(c) substituted "subsection (2)(a)" for "subsection (2)(a)(i)"; and made minor changes in style. Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

2001 Amendment: Chapter 135 in (2)(a) inserted reference to 15-24-1502; and made minor changes in style. Amendment effective March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 436 in (1)(d) decreased lineal yards for golf course from 3,000 yards to 700 yards; and made minor changes in style. Amendment effective April 22, 1999.

Chapter 584 in (1)(a) and (1)(b) inserted "subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section"; in (1)(c) before "market" inserted "taxable"; in (1)(e) inserted "subject to 15-6-201(1)(z)"; inserted (1)(f) concerning single-family residences, rental multifamily dwelling units, appurtenant improvements, and vacant residential lots; inserted (1)(g) concerning commercial buildings and vacant commercial lots; in (2)(a)(i) inserted references to subsections (1)(f) and (1)(g), decreased tax rate from 3.86% to 3.794%, and substituted "taxable market value in tax year 1999" for "market value"; in (2)(a)(ii) increased percentage points from 0.022 to 0.0835 and at end substituted "less than 3.46%" for "less than 2.78%"; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 3, Ch. 436, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1998."

Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

1997 Amendments: Chapter 200 in (1)(b) and (1)(c), near beginning after "trailers", inserted "manufactured homes"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 463 in (2)(a)(i), after "15-24-1501", inserted "and subsection (2)(a)(ii) of this section"; inserted (2)(a)(ii) providing for annual reduction of taxable percentage rate; in (2)(b)(i), in introductory clause, substituted "the rate provided in subsection (2)(a)(ii)" for "3.86%"; in (2)(c) substituted reference to subsection (2)(a)(i) for reference to subsection (2)(a); and made minor changes in style. Amendment effective April 30, 1997.

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1995 Amendments: Chapter 485 in (1)(e), near middle after "15-7-202", deleted "(2)" and after "beneath" substituted "improvements on land described in 15-6-133(1)(c)" for "the agricultural improvements"; deleted former (3) that read: "(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 574 in (1)(c) increased market value amount of improvement from $80,000 to $100,000, decreased time requirement for occupation of primary residential dwelling from 10 months to 7 months, and increased tax-exempt income eligibility amount for single person from $10,000 to $15,000 and for married couple or head of household from $12,000 to $20,000; in (2)(b)(i), after "Property", substituted "qualifying under the property tax assistance program" for "described" and after "table" substituted current class four property table for former table (see 1995 Session Law for text); in (2)(b)(ii)(A) substituted "1995" for "1986"; deleted former (3) that read: "(3) After July 1, 1986, an adjustment may not be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111"; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1993 Amendments: Chapter 267 inserted (1)(e) concerning improvements on land that is eligible under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements, and requiring that the 1 acre must be valued at market value; in (2)(a) inserted reference to subsection (1)(e); and made minor changes in style. Amendment effective April 2, 1993.

Chapter 562 near middle of first sentence of (1)(c), after "business income", deleted "or loss" and inserted second sentence defining net business income as gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both; and made minor changes in style.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

Section 2, Ch. 562, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

1991 Amendments: Chapter 612 in (1)(c) inserted "but not including social security income paid directly to a nursing home". Amendment effective April 24, 1991.

Chapter 773 in (1)(b), after "improvements", inserted "including trailers or mobile homes used as a residence"; in (1)(c), near beginning after "property", inserted "including trailers or mobile homes", near middle, after "including", inserted "net business income or loss and", and near end, after "couple", inserted "or a head of household"; inserted (1)(e) classifying as class four certain real and personal property used exclusively for the processing of agricultural or timber products; and inserted (2)(d) regarding computation of market value of certain real and personal property used exclusively for the processing of agricultural or timber products. Amendment effective May 15, 1991.

Retroactive Applicability: Section 4, Ch. 612, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Termination: Section 17, Ch. 773, L. 1991, provided: "Subsections (1)(e) and (2)(d) of 15-6-134 terminate January 1, 1993."

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1987 Amendments: Chapter 427 in (1)(c), the "homestead exemption", increased from $35,000 to $80,000 the market value of a home given tax preference when owned by low-income person.

Chapters 427 and 575 in (2)(a) and (2)(b) substituted "3.86%" for "the taxable percentage rate "P""; deleted former (3) that read: "(3) Until January 1, 1986, the taxable percentage rate "P" for class four property is 8.55%"; and deleted former (4) that directed the Department to determine taxable percentage rate "P" for revaluation cycle beginning January 1, 1986, by calculating statewide percentage increase in taxable valuation resulting from reappraisal and applying appropriate class four taxable percentage as set forth in columnar form (the taxable rate was determined to be 3.86%).

Chapter 575 in (1)(c), the "homestead exemption", at end inserted "as adjusted according to subsection (2)(b)(ii)"; and in (3), prohibiting adjustment to the taxable percentage rate until revaluation, after "percentage rate", substituted "for class four property" for ""P"".

Amendments applicable to taxable years beginning after December 31, 1986.

1985 Amendments: Chapter 292 in (1)(d) after "lineal yards", deleted "and were used as a golf course on January 1, 1979, and were owned by a nonprofit Montana corporation"; and at end of (2)(c) after "(2)(a)", deleted "or 4.275%". Amendment applicable to taxable years beginning after December 31, 1984 (sec. 3, Ch. 292, L. 1985).

Chapter 663 deleted former (1)(c)(i) and (1)(c)(ii) and beginning portion of (1)(c)(iii) that read: "(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits"; in (1)(c), after "residential dwelling of", inserted "any person", and increased income limitation from $8,000 to $10,000 for a single person and from $10,000 to $12,000 for a married couple; and in (2)(b) substituted first two columns of income level table for first two columns of former table (see Ch. 739, 1985 Session

Law, for text). Amendment applicable to taxable years beginning after December 31, 1985 (sec. 5, Ch. 663, L. 1985).

Chapter 739 in (2)(a) and (2)(b) substituted "at the taxable percentage rate "P" of its market value" for "at 8.55% of its market value"; in (2)(c) substituted "percentage rate "P" established in subsection (2)(a)" for "percentage established in subsection (2)(a), or 4.275%"; and inserted (3) through (5) concerning percentage rate (see 1985 Session Law for text).

Chapter 743 at end of (2)(c) deleted "or 4.275%"; and inserted (6) that reads: "(6) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property." Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 25 made permanent the 1979 temporary amendments relating to golf courses.

Chapter 632 deleted former (1)(c), which read: "(c) all trailers and mobile homes used as permanent dwellings except:

(i) those held by a distributor or dealer of trailers or mobile homes as his stock in trade; and

(ii) those specifically included in another class;"; and in (1)(c) after "real property" deleted "or a trailer or mobile home used as a permanent dwelling".

1981 Amendments: Chapter 564 inserted "Except as provided in 15-24-1402" at the beginning of (2)(a).

Chapter 575 inserted "including otherwise tax-exempt income of all types" in (1)(d)(iii) relating to retirement or disability benefits recipients; changed "$7,000" to "$8,000" and "$8,000" to "$10,000" in (1)(d)(iii) relating to retirement or disability benefits recipients; inserted subsection (2)(b) relating to percentage multiplier calculation for tax rate on residential property owned by certain disadvantaged persons; deleted "(1)(d) and" after "subsection" in (2)(c).

Chapter 599 added "Except as provided in 15-24-1501" at the beginning of (2)(a).

Administrative Rules

ARM 42.20.120 Golf course valuation.

ARM 42.20.174 Mobile home exemption ownership determination.

ARM 42.20.655 Classification and valuation of one-acre of land beneath residences located on agricultural land and nonqualified agricultural land.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Classification of Oil Refinery Equipment as Class Eight Property — Standard of Review: An industrial appraiser for the Department of Revenue properly classified and appraised as class eight property, rather than class four property, certain new oil refinery equipment, including a boiler house fuel gas manifold, cooling tower header improvements, a coal filter bed upgrade, three parts of a hydrocarbon loss recovery system, a plant air drier, an opticrom ADV gasoline chromatograph, a Grabner CCA-V, an alky unit KOH scrubber, two oxygen analyzers, asphalt product handling improvements, a crude truck unloading system for tank storage, a heavy product flash point tester, two spare fuel oil pumps, eight hydrogen sulfide and carbon dioxide monitors, a breathing air compressor, a manlift, and tank level gauges. Class eight property is not limited to property used directly in a manufacturing process. Despite the fact that the District Court applied the "clearly erroneous" standard of review rather than the proper "correct interpretation" standard, the correct result was reached and the decision was affirmed on appeal. Farmers Union Cent. Exch., Inc. v. Dept. of Revenue, 272 M 471, 901 P2d 561, 52 St. Rep. 810 (1995), distinguishing United Grain v. Dept. of Revenue, 248 M 297, 811 P2d 555 (1991).

Grain Elevator Machinery as Class Four Property: The mixing of grain in a grain elevator does not produce an end product so significantly changed as to constitute a manufacturing process. Therefore, for taxation purposes, grain elevator machinery used to transport grain into and out of storage facilities is properly considered an improvement to land under class four rather than manufacturing property under class eight. United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991).

Power to Uniformly Lower Appraisals of a Type of Property to Equalize Appraisals — "34% Cases": Due to the use of different appraisal manuals for residential property and commercial improvements to real property, the two types of property being in the same tax class, equivalent values were not always placed upon similar properties. The Department of Revenue determined that the commercial valuations averaged 12% higher than the residential valuations and ordered each county assessor to reduce all commercial valuations by 12%. The Department properly assumed the responsibility of solving the problem and in equalizing the valuations in the manner it did was acting under its constitutional mandate and authority to equalize values of taxable property. The 12% reduction did not constitute a reappraisal. The power and duty to equalize included the power to alter appraised values set at the beginning of an appraisal cycle. Hanley v. Dept. of Revenue, 207 M 302, 673 P2d 1257, 40 St. Rep. 2054 (1983).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Petition for Rule Amendment Rendered Moot by Legislation: The Legislature, by placing automobiles and recreational vehicles in separate and distinct classes, emasculated plaintiff's contention that different methods of valuation and different appraisal guides were being improperly used by the Department of Revenue to appraise automobiles and recreational vehicles. The enactment of 15-6-110 and 15-6-111 (now repealed) rendered plaintiff's petition for rule amendment moot. Wetzel v. Dept. of Revenue, 180 M 123, 589 P2d 162 (1979).

Improvements: Improvements of a railroad right-of-way for purposes of taxation fell within class four of section 84-301, R.C.M. 1947 (now repealed), providing for taxation of all land, with improvements thereon, and therefore were assessable at 30% of their true and full value under section 84-302, R.C.M. 1947 (now repealed), and not within class seven embracing all property not included in the preceding six classes, and assessable at 30% of their true value. State ex rel. N. Pac. Ry. v. Duncan, 68 M 420, 219 P 638 (1923).

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home (see 1997 amendment) classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Taxable Value of Mobile Homes: The taxable value of mobile homes (see 1997 amendment) included in former class eleven was to be determined as a function of the certified statewide percentage increase pursuant to 15-7-121 (now repealed). 37 A.G. Op. 142 (1978).

Personal Property Tax — Indians: An enrolled member of an Indian tribe is not required to pay personal property taxes on a mobile home that he owns and uses as rental property within the exterior boundaries of a reservation. 37 A.G. Op. 122 (1978).

Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-135. Class five property — description — taxable percentage — exemption.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 644, L. 2023. Amendment effective October 1, 2023.

2021 Amendments — Composite Section: Chapter 142 in (2)(f) in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Chapter 266 in (5)(b)(i) at end deleted "for a period of 10 years from the date of certification, after which the property is assessed at 100% of its taxable value". Amendment effective October 1, 2021.

Chapter 483 inserted (5)(b)(ii) concerning the property tax exemption for fiber optic or coaxial cable, conditions on and requirements for claiming the exemption, and eligibility for the exemption; inserted (6) concerning termination of the exemption from taxation described in (5)(b)(ii); and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 7, Ch. 483, L. 2021, provided: "[This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act]." Effective July 1, 2021.

Preamble: The preamble attached to Ch. 483, L. 2021, provided: "WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements."

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Termination Provision Repealed: Section 1, Ch. 444, L. 2017, repealed sec. 7, Ch. 407, L. 2015, which terminated the 2015 amendments to this section December 31, 2025. Effective October 1, 2017.

2015 Amendment: Chapter 407 in (1)(b) inserted "and carbon capture"; in (2)(a) in first sentence after "pollution control" inserted "and carbon capture" and after "equipment" inserted "certified as provided in subsections (2)(b) and (2)(c) and" and inserted second sentence regarding equipment used to capture carbon dioxide or other greenhouse gases; in (2)(c) in three places after "pollution control" inserted "and carbon capture"; inserted (2)(d) and (2)(e) regarding qualifying for exemption; in (5)(a) at beginning inserted exception clause; inserted (5)(b) regarding air and water pollution control and carbon capture equipment; and made minor changes in style. Amendment effective May 5, 2015, and terminates December 31, 2025.

Preamble: The preamble attached to Ch. 407, L. 2015, provided: "WHEREAS, Montana industries are required to install certain air and water pollution control and carbon capture equipment to comply with state and federal standards as a result of recent and anticipated regulatory action, including but not limited to:

(1) the Utility Mercury and Air Toxics Rule;
(2) the Regional Haze Rule;
(3) the Clean Power Plan Rule;
(4) the Nitrogen Oxide Primary National Ambient Air Quality Standards;
(5) the Sulfur Dioxide Primary National Ambient Air Quality Standards;
(6) the Cooling Water Intakes 316(b) Rule;
(7) the Particulate Matter 2.5 National Ambient Air Quality Standards;
(8) the Effluent Guidelines for Coal-Fired Electrical Generating Units;
(9) the Maximum Achievable Control Technology Standards for industrial boilers;

(10) the Numeric Nutrient Criteria;

(11) the Portland Cement Maximum Achievable Control Technology Standards;

(12) Total Maximum Daily Loads;

(13) National Pollutant Discharge Elimination System, including stormwater discharge; and

(14) Additional new or future regulatory actions requiring the control of air or water pollution.

WHEREAS, compliance with these regulations requires investments of hundreds of millions of dollars and ultimately impacts consumers; and

WHEREAS, technologies to comply with these regulations are often unproven or not commercially or economically available; and

WHEREAS, these regulations address important protections for public health; and

WHEREAS, many of these regulations require installation of pollution control technologies that decrease the efficiency of existing equipment at industrial facilities; and

WHEREAS, reduced tax rates for pollution control equipment will improve public health by providing an incentive for early compliance when possible and ultimately making regulatory compliance more affordable; and

WHEREAS, incentivizing advancements and investments in carbon sequestration is important to the future of Montana's economy and consistent with the goals in Montana's state energy policy, including expanded technological innovation through enhanced oil recovery; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to exempt certain air and water pollution control and carbon capture equipment from property taxation and reduce property taxes for carbon transportation and sequestration equipment."

Transition After Termination — Carryover of Abatement: Section 4, Ch. 407, L. 2015, provided: "(1) (a) An exemption or property tax rate reduction that a taxpayer receives under the provisions of law in effect in 15-6-135, 15-6-158, or 15-6-219, prior to the termination date in [section 7]:

(i) may be carried forward for the remaining number of years left under the certification; and

(ii) is not impaired by [this act].

(b) A taxpayer is entitled to the exemption or property tax rate reduction for the period of time established in the section at the time the exemption or property tax rate reduction was first allowed.

(2) This section applies to all exemptions and property tax rate reductions that are removed or repealed by [section 7], including 15-6-135 for pollution control equipment and 15-6-158 for carbon sequestration."

Retroactive Applicability: Section 6, Ch. 407, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to air and water pollution control and carbon capture equipment and carbon sequestration equipment placed in service after January 1, 2014."

2007 Amendment: Chapter 100 in (1)(d) after "production of" substituted "ethanol-blended gasoline" for "gasohol". Amendment effective March 30, 2007.

1999 Amendments — Composite Section: Chapter 51 in (4)(b)(iii) after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1987 Standard Industrial Classification Manual". Amendment effective March 15, 1999.

Chapter 426 inserted (1)(g) relating to property of rural and small town telecommunications services; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1995 Amendment: Chapter 418 substituted air and water pollution control equipment for air and water pollution equipment as defined term, in (c), in two places, substituted "department of environmental quality" for "department of health and environmental sciences" and in two places, before "equipment", inserted "control", and in (d) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1993 Amendment: Chapter 510 in definition of air and water pollution equipment, in first sentence after "means", inserted "that portion of identifiable property", after "machinery" inserted "devices", after "equipment" substituted "designed, constructed, under construction, or operated for" for "use to reduce or control water or atmospheric pollution or contamination by", after "removing" deleted "reducing, altering", after "disposing" inserted "abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert", and after "storing" substituted "or preventing the creation of air or water pollutants, which, except for the use of the item, would be released to the environment" for "pollutants, contaminants, wastes, or heat", inserted second sentence relating to certificate ineligibility, and deleted last sentence that read: "The department of health and environmental sciences shall determine if such utilization is being made"; inserted (2)(b) relating to requests for certification; inserted (2)(c) relating to required rulemaking; and in (2)(d), in first sentence, substituted "A person may appeal the certification, classification, and valuation of the property to" for "The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or" and at beginning of second sentence substituted "Appeals on the property certification must name the department of health and environmental sciences as the respondent, and appeals on the classification or valuation" for "However, the appraised value", after "equipment" substituted "must name the" for "as determined by the", and after "revenue" substituted "as the respondent" for "may be appealed to the county tax appeal board and the state tax appeal board".

1993 Statement of Intent: The statement of intent attached to Ch. 510, L. 1993, provided: "A statement of intent is necessary for this bill because the amendment to 15-6-135 grants rulemaking authority to the department of revenue and the department of health and environmental sciences [now department of environmental quality].

It is intended that the rules promulgated by the departments clarify the definition, application for certification, and use of air and water pollution equipment eligible for special property tax treatment. It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control. The rules should provide certainty regarding the special tax treatment for air and water pollution equipment purchasers, affected local governments, and state departments, thus increasing the use of air and water pollution equipment."

Applicability — Rulemaking: Section 2, Ch. 510, L. 1993, provided: "(1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue and the department of health and environmental sciences [now department of environmental quality] may institute rulemaking under Title 2, chapter 4, prior to October 1, 1993, to implement [this act], but the rules may not be effective prior to October 1, 1993."

1991 Amendment: In (4)(b)(iii) substituted "1987" for "1972"; inserted (4)(b)(iv) including as new industries those that transport, warehouse, or distribute commercial products if 50% or more of gross sales or receipts are earned from outside the state; inserted (4)(b)(v) including as new industries those that earn 50% or more of annual gross income from out-of-state sales; and in (5)(a), after "professions", inserted "unless the business or profession meets the requirements of subsection (4)(b)(v)". Amendment effective April 27, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

1987 Amendments: Chapter 370 in (1)(a), relating to cooperatives, at end, before "of 15-6-137" changed "(1)(c)" to "(1)(b)".

Chapter 519 inserted (1)(f) relating to electrolytic reduction facilities.

Chapter 659 inserted (1)(e) relating to research and development firms.

1987 Temporary Amendment: Chapter 568, L. 1987, redesignated tour boats (defined as watercraft, not less than 40 feet in length, designed and employed to accommodate passengers for a fee for the purpose of sightseeing, with or without food and beverage service, and intended primarily for tourism promotion) from class sixteen property to class five property. Section 4, Ch. 568, L. 1987, provided that if House Bill No. 658 was passed and approved, Ch. 568 terminates January 1, 1988. House Bill No. 658 (Ch. 649, L. 1987) was passed and approved May 11, 1987; therefore, the amendment by Ch. 568, L. 1987, being temporary, was not codified.

Effective Date — Applicability: Section 3, Ch. 519, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986." The retroactive applicability applies to machinery and equipment used in electrolytic reduction facilities added to class five property by subsection (1)(e) of sec. 1. Effective April 16, 1987.

1981 Amendment: Deleted subsection (1)(c) relating to recreational vehicles owned by low-income retirees; substituted "department of health and environmental sciences'" for "department's" in (2)(b); deleted brackets before "as to" and after "equipment" in (2)(b); inserted "and water" after "air" in (2)(b).

Administrative Rules

ARM 42.19.1102 Treatment of gasohol production facilities.

ARM 42.20.512 Valuation of class five locally assessed electric and telephone cooperatives and telecommunications companies.

ARM 42.21.154 Annual valuation of personal property.

ARM 42.21.155 Personal property categories and trended depreciation methodologies.

ARM 42.22.108 Market value of pollution control equipment.

ARM 42.22.1311 Industrial machinery and equipment trend factors.

ARM 42.23.112 Research and development — application and eligibility.

Case Notes

No Error in Appraising Fair Market Value of Electric Generation Assets Differently When Owned by Different Utilities — Equal Protection Constitutionality of Unit Method of Property Valuation Affirmed: Defendant utility company appealed a District Court decision regarding the equality of the state's tax assessments, claiming that the state deprived the utility of equal protection by failing to properly equalize defendant's property tax burden with other comparable electric generation facilities in Montana. The Department of Revenue explained that the relatively higher appraisal values of defendant's properties arose from the fact that the different companies had different total market values as a unit, so their individual properties also had different market values despite the fact that the individual properties might be physically similar. The Supreme Court noted that the unit method of valuation was held to pass constitutional equal protection scrutiny in W. Union Tel. Co. v. St. Bd. of Equalization, 91 M 310, 7 P2d 551 (1932), and the court declined to revisit the issue of the constitutionality of the method itself. The court held that there is nothing constitutionally significant in the bare fact that the Department of Revenue appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities. The basic rule of equal protection is that persons that are similarly situated with respect to a legitimate governmental purpose of law must receive like treatment. The first prerequisite of a meritorious equal protection claim is that the state had adopted a classification that affects two or more similarly situated groups in an unequal manner. Here, the District Court's determination that defendant failed to establish that the state's use of the unit method of valuation deprived defendant of equal protection was affirmed. Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 M 124, 172 P3d 1241 (2007).

New Industrial Property: The purpose of the tax break for new industrial property is to encourage out-of-state businesses to establish new industrial plants in Montana as well as to encourage the creation of new industries by Montana citizens and businesses. The business need not be creating a totally new market but may be relying on existing out-of-state markets. The tax status cannot be denied merely because already existing industry in the state will benefit. The completion of a second unit of one generating plant 1 year after the completion of the first unit is not a mere expansion of an existing industry when a single agreement called for the construction of the two units. The generation of electricity is a manufacturing process, and electricity is a commercial product. Dept. of Revenue v. Puget Sound Power & Light Co., 179 M 255, 587 P2d 1282 (1978).

Reclassification of Industrial Property Under 1951 Amendment Unconstitutional: Chapter 178, L. 1951, by permitting the reclassification of some industrial property into class five while similar property is in class 4 thwarts the mandate of Art XII, sec. 1 and 11, 1889 Mont. Const. and is invalid. Victor Chem. Works v. Silver Bow County, 130 M 308, 301 P2d 730 (1956), distinguished in Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Attorney General's Opinions

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Collateral References

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

15-6-137. Class seven property — description — taxable percentage.

Compiler's Comments

2021 Amendment: Chapter 291 in (2) at end inserted "and property classified under 15-6-163"; and made minor changes in style. Amendment effective April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

2011 Amendment: Chapter 309 in (1)(a) at end substituted "15-6-141(1)(c)" for "15-6-141(1)(a)"; in (2) inserted "and energy storage facilities"; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 309, L. 2011, provided: "[Sections 1 through 4] [15-6-137, 15-6-141, 15-6-156, 15-6-157] apply to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 357 in (2) near end after "facilities" inserted "and biomass generation facilities". Amendment effective October 1, 2009.

Applicability: Section 6, Ch. 357, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2005 Amendment: Chapter 563 in (1) at beginning inserted exception clause; inserted (2) providing that class seven property does not include wind generation facilities classified under 15-6-157; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

1999 Amendment: Chapter 426 deleted former (1)(a) that read: "(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less"; deleted former (2) that read: "(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

1997 Amendment: Chapter 505 in (1)(b), at end, inserted exception clause. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

1989 Special Session Amendment: Deleted former (1)(d) relating to tools or implements not included in another class or exempt from taxation and used to repair and maintain machinery not used for manufacturing and mining purposes. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1989 Amendment: Inserted (1)(d) including as class seven property tools or implements not included in another class or included in statutorily exempted categories; and made minor change in form. Amendment effective April 20, 1989. (See 1989 Special Session amendment.)

Effective Date — Retroactive Applicability: Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1981 Amendments: Chapter 330 deleted former subsection (1)(a) that read: "livestock, poultry, and unprocessed products of both".

Chapter 352 reduced the mileage limitation on telephone communications equipment that qualifies for class seven taxation from 1 ¼ to 1 circuit mile for each station in (2).

Chapter 575 substituted "noncentrally" for "centrally" in (1)(c).

Administrative Rules

ARM 42.21.154 Annual valuation of personal property.

Case Notes

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Tools, Implements, and Machinery Not Used in Manufacture of Article of Trade:

Tools, implements, and machinery employed as an aid to the operation of a business not devoted to the manufacture of an article of trade, fell properly within class two of section 84-301, R.C.M. 1947 (now repealed), and as such were taxable at 20% of their actual value. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Machinery and electric appliances located in a substation and used by a railway company in the transformation of electric current employed in the propulsion of its trains, and engine pumps and pipes used for the pumping of water for use in the substation shop, machinery and movable shop tools used for repairing equipment, properly fell within class two of section 84-301, R.C.M. 1947 (now repealed), and within the designation "implements and machinery" and were therefore assessable at 20% of their true value. Chicago, Milwaukee, & St. Paul R.R. v. Powell County, 76 M 596, 247 P 1096 (1926).

Attorney General's Opinions

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

15-6-138. Class eight property — description — taxable percentage.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 45, L. 2023, in (4) substituted "$1 million of market value" for "$300,000 of market value". Amendment effective October 1, 2023.

Section 1, Ch. 234, L. 2023, in definition of flow lines and gathering lines near middle after "69-13-101" deleted "a pipeline carrier as defined in 49 U.S.C. 15102(2)"; and made minor changes in style. Amendment effective April 24, 2023.

Section 1, Ch. 695, L. 2023, inserted definitions of governing body and manufacturing machinery, fixtures, and equipment; in (3) near middle inserted "and this section"; in (4)(a) at beginning inserted exception clause; inserted (4)(b) regarding exemption for manufacturing machinery, fixtures, and equipment installed and placed in service after December 31, 2022, a phased-out rate, and recordkeeping requirements; inserted (6)(a) regarding application for abatement, project plan and associated deadlines; inserted (6)(b) regarding governing body approval of abatement request; inserted (6)(c) regarding public hearing, notice, and local government determination; inserted (6)(d) regarding 120-day deadline for governing body decision; and made minor changes in style. Amendment effective October 1, 2023.

Termination Provision Amended: Section 6, Ch. 45, L. 2023, amended sec. 13, Ch. 506, L. 2021, revising the multiple termination dates imposed by Ch. 506. Amendment effective October 1, 2023.

Contingent Termination Provision Repealed: Section 7, Ch. 45, L. 2023, repealed sec. 14, Ch. 506, L. 2021, which was a contingent termination section. Effective October 1, 2023.

Applicability — Retroactive Applicability: Section 9, Ch. 45, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

Section 6, Ch. 234, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022."

Section 2, Ch. 695, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 506 in (4) substituted "$300,000 of market value" for "$100,000 of market value". Amendment effective October 1, 2021, October 1, 2022, October 1, 2023, October 1, 2024, and July 1, 2025, and terminates on occurrence of contingency until July 1, 2025.

Effective Dates — Applicability: Section 12, Ch. 506, L. 2021 (amended by sec. 5, Ch. 45, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Section 3] [amendments to 15-1-123] is effective January 1, 2026.

(3) [Section 4] [first temporary amendment to 15-6-138(4)] is effective October 1, 2021, and applies to the tax year beginning after December 31, 2021.

(4) [Section 5] [second temporary amendment to 15-6-138(4)] is effective October 1, 2022, and applies to the tax year beginning after December 31, 2022.

(5) [Section 6] [third temporary amendment to 15-6-138(4)] is effective October 1, 2023, and applies to the tax year beginning after December 31, 2023.

(6) [Section 7] [fourth temporary amendment to 15-6-138(4)] is effective October 1, 2024, and applies to the tax year beginning after December 31, 2024.

(7) [Section 8] [final permanent amendment to 15-6-138(4)] is effective July 1, 2025, and applies to the tax years beginning after December 31, 2025."

Contingent Termination: Section 14, Ch. 506, L. 2021 (repealed by sec. 7, Ch. 45, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Section 4] [first temporary amendment to 15-6-138(4)] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Section 5] [second temporary amendment to 15-6-138(4)] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Section 6] [third temporary amendment to 15-6-138(4)] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Section 7] [fourth temporary amendment to 15-6-138(4)] terminates on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of this act may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of this act would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)." Terminates January 1, 2025.

Severability: Section 11, Ch. 506, L. 2021, was a severability clause.

2015 Amendment: Chapter 361 in (3) after "15-24-1402" deleted "and 15-24-2102". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2013 Amendments — Composite Section — Coordination: Chapter 268 in (4)(a) in two places and in (4)(b) substituted "corporate income tax" for "corporation income tax". Amendment effective October 1, 2013. The amendment by Ch. 396 rendered the amendment by Ch. 268 void.

Chapter 396 in (3) after "15-24-2102" deleted "and subsection (4) of this section"; in (3)(a) substituted "$6 million" for "$3 million" and near end inserted "in excess of the exemption amount in subsection (4)"; deleted former (3)(a) and (3)(a)(i) that read: "(a) as determined pursuant to subsection (4):

(i) for the first $2 million of taxable market value, 2%"; in (3)(b) substituted "$6 million" for "the applicable amount of taxable market value in subsection (3)(a)"; deleted former (4) and (5) that read: "(4) (a) The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and corporation income tax exceeds the revenue collected from individual income tax and corporation income tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.

(b) For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and corporation income tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.

(5) The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation"; inserted (4) regarding exemption for first $100,000 of market value of class eight property; and made minor changes in style. Amendment effective May 6, 2013.

The amendment to this section made by sec. 1, Ch. 11, L. 2013, was rendered void by sec. 38, Ch. 268, L. 2013, a coordination section.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Section 8, Ch. 396, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Section 10, Ch. 396, L. 2013, provided: "[This act] applies to property tax years beginning after December 31, 2013."

2011 Amendment: Chapter 411 in (3) inserted reference to (4) and at end deleted "3% of its market value"; inserted (3)(a) and (3)(b) relating to tax rates; inserted (4) relating to determination of applicability of rate; and made minor changes in style. Amendment effective July 1, 2011.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendments — Composite Section: Chapter 2 in (1)(b) at end inserted "under 15-6-135"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 343 in (1)(b) at end inserted "under 15-6-135"; in (1)(e) at end after "class" inserted "or that are rented under a purchase incentive rental program as defined in 15-6-202(4)"; and made minor changes in style. Amendment effective April 24, 2009.

Chapter 421 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2009.

Chapter 487 in (1)(c)(iii) near beginning after "including" inserted "flow lines and gathering lines"; inserted (2)(c) defining flow lines and gathering lines; inserted (5) requiring that certain gas gathering facilities be treated as a natural gas transmission pipeline subject to central assessment; and made minor changes in style. Amendment effective May 10, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 5, Ch. 343, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008."

Section 8, Ch. 421, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008."

Section 6, Ch. 487, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the property tax year beginning after December 31, 2008."

2005 Amendments — Composite Section: Chapter 3 in (5)(d) near middle of first sentence substituted "SA07N" for "SA07", inserted second sentence requiring the use of the most recent available wage and salary data if the fall state annual SA07N series is not available, and inserted third sentence requiring the use of a replacement series if the name of the SA07N series changes. Amendment effective February 23, 2005. The amendment by Ch. 531 rendered this amendment void.

Chapter 531 substituted (5) exempting from taxation class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property for former (5) and (6) that read: "(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year wage and salary data series.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation." Amendment effective April 28, 2005.

Chapter 532 in (1)(a) at end after "under" substituted "15-6-207 or 15-6-220" for "15-6-201(1)(bb)"; in (1)(b) near middle and in (1)(c) near end after "under" substituted "15-6-219" for "15-6-201(1)(r)"; in (1)(d) near end after "provided in" substituted "15-6-220" for "15-6-201"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(f) at end substituted "61-1-101" for "61-1-104". Amendment effective January 1, 2006.

Chapter 584 in (1)(a) at end after "15-6-201" substituted "(1)(dd)" for "(1)(bb)"; and in (1)(b) near middle and in (1)(c) near end after "15-6-201" substituted "(1)(t)" for "(1)(r)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 3, Ch. 3, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to calculations of inflation-adjusted Montana wage and salary income growth made by the department of revenue before [the effective date of this act]." Effective February 23, 2005.

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

Contingent Effective Date Provision Repealed: Sections 3 through 5, Ch. 531, L. 2005, amended sec. 27(2), Ch. 285, L. 1999, sec. 31(4), Ch. 285, L. 1999, and sec. 5, Ch. 577, L. 2003, which would have repealed this section if the tax rate in subsection (4) of this section reached zero.

Repealer — Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "[Sections 13(1)(aa) through (1)(ll) and 27(2) [repealing this section]] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero."

2003 Amendments — Composite Section: Chapter 114 in (1)(d) near end after "milk processors" deleted "as providers". Amendment effective October 1, 2003.

Chapter 505 in (5)(a) after "income" deleted "in the last full year for which data is available" and after "from the" substituted "year prior to the base year" for "prior year"; inserted (5)(b) concerning base year; in (5)(c) after "subsection (5)(a)" inserted "by October 30 of each target year"; in (5)(c)(i) and (5)(c)(ii) near beginning substituted "calendar base year" for "most current available year"; in (5)(c)(i) near end substituted "calendar year prior to the base year" for "year prior to the most current available year"; in (5)(c)(ii) substituted "calendar year prior to the base year" for "available year"; in (5)(d) after "use" inserted "the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year" and at end deleted "referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements"; and made minor changes in style. Amendment effective April 25, 2003.

Transition: Section 2(2), Ch. 505, L. 2003, provided that the department of revenue shall perform the calculation in 15-16-138(5) (sic, 15-6-138(5)) for the tax year 2004 not later than June 24, 2003. Effective April 25, 2003.

2001 Amendment: Chapter 438 in (1)(d) after "tools" substituted "except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201" for "that are not exempt under 15-6-201(1)(r) or (1)(bb)"; in (4) substituted "is taxed at 3% of its market value" for former language that read: "is taxed at:

(a) 6% of its market value for tax years beginning after December 31, 1997; and

(b) 3% of its market value for tax years beginning after December 31, 1999"; in (6) at beginning deleted "Beginning with tax year 2000"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment: Chapter 11 in two places substituted reference to 15-6-201(1)(bb) for reference to 15-6-201(1)(cc). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 285 deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; inserted (4)(b) relating to tax years beginning after December 31, 1999; inserted (5) providing for reduction in class eight property tax rate based on percentage growth in inflation-adjusted Montana wage and salary income; inserted (6) exempting from taxation certain class eight property beginning with tax year 2000; and made minor changes in style. Amendment effective April 11, 1999.

Chapter 551 inserted (1)(c) regarding oil and gas production equipment; deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; and made minor changes in style. Amendment effective April 30, 1999.

Chapter 555 in (1)(a) at end inserted "that are not exempt under 15-6-201(1)(z)"; in (1)(d) inserted "or (1)(z)"; deleted former (4)(a) that read: "(a) 7% of its market value for tax year 1997"; in (4) after "market value" deleted "for tax years beginning after December 31, 1997" (amendment voided by amendment by Ch. 285); and made minor changes in style. Amendment effective October 1, 1999. The code commissioner changed the references to 15-6-201(1)(z) to 15-6-201(1)(cc) to reflect the composite of that section.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Retroactive Applicability: Section 3, Ch. 551, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 4, Ch. 555, L. 1999, provided: "[This act] applies to industrial dairies and industrial milk processors established after June 30, 1999."

1997 Amendments: Chapter 121 deleted former (1)(d) that read: "all trailers and semitrailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) or exempt under 15-6-201(1)(v)"; deleted former (1)(g) that read: "(g) truck toppers weighing more than 300 pounds"; deleted former (4)(a) and (4)(b) that read: "9% of its market value for tax years ending on or before December 31, 1995;

(b) 8% of its market value for tax year 1996"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 in (1)(d), after "all trailers and semitrailers", deleted "including those prorated under 15-24-102" and after "except those" deleted "subject to taxation under 61-3-504(2) or" (voided by Ch. 121 amendment); deleted former (1)(f) that read: "buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102"; inserted (1)(g) concerning special mobile equipment; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 570 in (4)(a) inserted "for tax years ending on or before December 31, 1995"; inserted (4)(b) taxing class eight property at 8% of its market value for tax year 1996; inserted (4)(c) taxing class eight property at 7% of its market value for tax year 1997; inserted (4)(d) taxing class eight property at 6% of its market value for tax years beginning after December 31, 1997; and made minor changes in style.

1993 Amendment: Chapter 575 in (1)(d) inserted "and semitrailers" and at end inserted "or exempt under 15-6-201(1)(v)". Amendment effective January 1, 1994.

1989 Special Session Amendment: Deleted (1)(b)(ii) exempting coal and ore haulers from class eight property; deleted former (1)(g) referring to all machinery except that included in another class; inserted (1)(g) relating to truck toppers; inserted (1)(h) relating to furniture, fixtures, and equipment; inserted (1)(i) relating to x-ray, medical, and dental equipment; inserted (1)(j) relating to citizens' band radios and mobile telephones; inserted (1)(k) relating to radio and television broadcasting and transmitting equipment; inserted (1)(l) relating to cable television systems; inserted (1)(m) relating to coal and ore haulers; inserted (1)(n) relating to theater projectors and sound equipment; inserted (1)(o) relating to other property not included in another class or subject to a fee in lieu of tax; inserted definitions of coal and ore haulers and commercial establishment; reduced tax rate from 11% to 9%; and made minor changes in form. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1989 Amendments: Chapter 576 in (1)(b) and (1)(c), after "tools", inserted "that are not exempt under 15-6-201(1)(r)". Amendment effective April 20, 1989.

Chapter 598 at beginning of (1)(f) inserted "buses and" and after "more than" substituted "1 ton" for "1½ tons".

Effective Date — Retroactive Applicability: Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

1987 Amendments: Chapter 453 deleted former (1)(e) that read: "(e) aircraft". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 584 in (1)(d) substituted "all trailers, including those prorated under 15-24-102" for "all trailers up to and including 18,000 pounds maximum gross loaded weight"; and inserted (1)(f) relating to trucks over 1½ tons.

Chapter 611 in (1)(d), relating to trailers, at end after "subject to" substituted "taxation under 61-3-504(2)" for "a fee in lieu of property tax".

1985 Amendments — Composite Section: Chapter 516 deleted former (1)(d) that read "motorcycles"; and in former (1)(h) after "all-terrain vehicles", inserted "not registered under 61-3-301". Amendment effective January 1, 1986.

Chapter 743 in (1), deleted former (d) that read "motorcycles", former (e) that read "watercraft", former (h) that read "all-terrain vehicles", and former (i) that read "harness, saddlery, and other tack equipment". Amendment effective January 1, 1986.

Chapter 516 amended former (1)(h) to read "all-terrain vehicles not registered under 61-3-301" because licensed all-terrain vehicles and motorcycles were changed to a fee in lieu of tax by Ch. 516. Because Ch. 743 removes motorcycles and all-terrain vehicles from class eight and transfers them to class 16, a composite section is created for this section and 15-6-146 (now repealed) (class 16). This section makes the Ch. 743 deletion of all-terrain vehicles despite the Ch. 516 amendment of that category of property, but since that category of property is now listed in 15-6-146 (now repealed), the Ch. 516 amendment appears there. Additionally, "motorcycles" is deleted from 15-6-146 (now repealed) following the intent of Ch. 516.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendments: Chapter 278 in (1)(f) substituted "all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax" for "light utility and boat trailers".

Chapter 599 inserted (1)(j) relating to goods and equipment intended for rent or lease.

1981 Amendment: In (1)(h), relating to all-terrain vehicles, deleted reference to snowmobiles.

Administrative Rules

ARM 42.19.1103 Treatment of ethanol manufacturing facilities.

Title 42, chapter 21, subchapter 1, ARM Market value of personal property.

ARM 42.21.116 Exempt intangible personal property deduction for commercial and industrial property.

ARM 42.21.154 Annual valuation of personal property.

ARM 42.21.155 Personal property categories and trended depreciation methodologies.

ARM 42.21.158 Property reporting requirements.

ARM 42.22.1305 Industrial property other than land.

ARM 42.22.1311 Industrial machinery and equipment trend factors.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Crude Oil Gathering Pipelines — Class Eight, Not Class Nine Property: The plaintiff, an oil company, filed a declaratory action against the Department of Revenue challenging the tax designation of its oil gathering pipelines and seeking a refund. The Department argued that because the plaintiff was centrally assessed, its gathering pipelines were class nine property. The plaintiff countered that its being centrally assessed did not render its pipelines class nine property. The District Court granted the plaintiff summary judgment and ordered the Department to refund the difference between what the plaintiff had paid and what it owed. On appeal, the Supreme Court affirmed, holding that under the plain language of 15-6-138 the plaintiff's gathering lines were class eight property. Hiland Crude, LLC v. Dept. of Revenue, 2018 MT 159, 392 Mont. 44, 421 P.3d 275.

Remanded Case Cannot Serve as Issue Preclusion — Tax Challenge: The plaintiff, an oil and gas exploration and production company, challenged the state's property tax assessment. In Omimex I, the Supreme Court remanded, finding that the company did not operate a major distribution system in the state. The Supreme Court did not address the District Court's findings that the plaintiff operated a single and continuous property under 15-23-101. The Legislature subsequently amended several tax statutes, and the state assessed the property accordingly. The plaintiff sued again. The District Court found that issue preclusion prevented the plaintiff from challenging the prior finding of a single and continuous property. On appeal, the Supreme Court held that issue preclusion did not apply because the first case was remanded, the issues were not identical, the issues addressed separate tax years, and the plaintiff appropriately appealed the determinations. Omimex Canada, Ltd. v. St., 2015 MT 102, 378 Mont. 490, 346 P.3d 1125.

Cable Company Properly Reclassified as a Telecommunications Company — Conclusion Based on Evaluation of Use and Productivity: The Department of Revenue reclassified a cable company's property from class eight (cable television system) to class thirteen (telecommunications services company) by reasoning that the company's voice, cable, and Internet services made it a centrally assessed telecommunications services company under 15-6-156. The District Court reversed the classification change, but the Supreme Court upheld the Department's decision. The Supreme Court reasoned that the Legislature had exempted certain properties from class thirteen in the past but chose not to exempt companies that use a network to provide voice, cable, and Internet services. Moreover, an analysis of the use and productivity of the cable company's entire network resulted in the inescapable conclusion that it used a single transmission line to deliver three services, and therefore the Department had the authority to treat all of the property accordingly under class thirteen. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

Cable Company Properly Subjected to Central Assessment — Single and Continuous Network Operated in 20 Counties: The Department of Revenue's decision to reclassify a cable company's property from class eight local assessment to class thirteen central assessment was upheld by the Supreme Court. After the Supreme Court concluded that the company met the definition of a centrally assessed telecommunications services company under 15-6-156, it proceeded to analyze whether it qualified for central assessment. The Supreme Court reasoned that a company must operate single and continuous property in more than one county to qualify for central assessment under 15-23-101, in addition to having property that is functionally integrated over a wide area with a unity of use and management. Given the cable company's single and continuous network in 20 Montana counties, unity in billing, centralized management, and the single transmission line used to deliver three services, the cable company was properly subjected to central assessment. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

Classification of Natural Gas Company Property as Class Eight Absent Major State Distribution System: Plaintiff, a resource development corporation, owned numerous gas and oil wells and pipelines in several counties on property that extended into several counties and into Canada. The property was centrally assessed, classified as class nine property, and taxed at 12%. Plaintiff contended that its properties should be locally assessed, classified as class eight property, and taxed at 3%. The District Court upheld central assessment and class nine classification, but on appeal the Supreme Court reversed. Plaintiff did not have a major distribution system in this state as required for taxation as class nine property under 15-6-141. Rather, plaintiff's properties were manifestly designed to accumulate natural gas from many wells to central points where the gas was commingled and delivered to a single buyer for final distribution to consumers. Therefore, whether plaintiff's properties were centrally or locally assessed, absent a major state distribution system, they should have been classified as class eight property under 15-6-138 and taxed at 3%. (See 2009 amendment.) Omimex Canada, Ltd. v. St., 2008 MT 403, 347 M 176, 201 P3d 3 (2008).

Classification of Oil Refinery Equipment as Class Eight Property — Standard of Review: An industrial appraiser for the Department of Revenue properly classified and appraised as class eight property, rather than class four property, certain new oil refinery equipment, including a boiler house fuel gas manifold, cooling tower header improvements, a coal filter bed upgrade, three parts of a hydrocarbon loss recovery system, a plant air drier, an opticrom ADV gasoline chromatograph, a Grabner CCA-V, an alky unit KOH scrubber, two oxygen analyzers, asphalt product handling improvements, a crude truck unloading system for tank storage, a heavy product flash point tester, two spare fuel oil pumps, eight hydrogen sulfide and carbon dioxide monitors, a breathing air compressor, a manlift, and tank level gauges. Class eight property is not limited to property used directly in a manufacturing process. Despite the fact that the District Court applied the "clearly erroneous" standard of review rather than the proper "correct interpretation" standard, the correct result was reached and the decision was affirmed on appeal. Farmers Union Cent. Exch., Inc. v. Dept. of Revenue, 272 M 471, 901 P2d 561, 52 St. Rep. 810 (1995), distinguishing United Grain v. Dept. of Revenue, 248 M 297, 811 P2d 555 (1991).

Grain Elevator Machinery as Class Four Property: The mixing of grain in a grain elevator does not produce an end product so significantly changed as to constitute a manufacturing process. Therefore, for taxation purposes, grain elevator machinery used to transport grain into and out of storage facilities is properly considered an improvement to land under class four rather than manufacturing property under class eight. United Grain Corp. v. Dept. of Revenue, 248 M 297, 811 P2d 555, 48 St. Rep. 440 (1991).

Petition for Rule Amendment Rendered Moot by Legislation: Under former law, the Legislature, by placing automobiles and recreational vehicles in separate and distinct classes, emasculated plaintiff's contention that different methods of valuation and different appraisal guides were being improperly used by the Department of Revenue to appraise automobiles and recreational vehicles. The enactment of 15-6-110 and 15-6-111 (now repealed) rendered plaintiff's petition for rule amendment moot. Wetzel v. Dept. of Revenue, 180 M 123, 589 P2d 162 (1979).

Property Not Included in Other Classes: Under former law, tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine". A tailings dump containing valuable minerals was taxable as personal property in class 7 of section 84-301, R.C.M. 1947 (now repealed). Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945).

Taxing Motor Vehicles: Assertion that the Legislature, by enacting Ch. 72, L. 1937, making special provisions for taxing automobiles included in class two of section 84-301, R.C.M. 1947 (now repealed), among other property without express amendment, singled out motor vehicles for special consideration and unlawfully discriminated against them, was not well made, since Legislature may properly place identical articles in the hands of different owners, different uses resulting in different productivity. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Manufacturing Machinery: While machinery capable of being used for and actually used in the generation of electricity as a business fell within the designation of "manufacturing machinery", within the meaning of section 84-301, R.C.M. 1947 (now repealed) classifying property for purposes of taxation, it was the use to which it was devoted and its productivity which fixed the rate of taxation. Chicago, Milwaukee, St. Paul & Pac. R.R. v. Custer County, 96 M 566, 32 P2d 8 (1934).

Property Not Included in Other Classes:

Under former law, individually owned shares of state bank stock are not "credits" as defined by subsection 6 of section 84-301, R.C.M. 1947 (now repealed) and therefore could not properly be placed in class five of a former classification act; nor did they properly belong in class six, which embraced only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provision should have gone into class seven, as property not included in the preceding six classes. State ex rel. Conrad Banking Corp. v. Mady, 83 M 418, 272 P 691 (1928).

The constituent parts of a street railway track, poles, and trolley wires are personal property and taxable as such under a former classification act, falling within class seven of section 84-301, R.C.M. 1947 (now repealed), at 40% of their true and full value as property not included in the preceding six classes. Butte Elec. Ry. v. Brett, 80 M 12, 257 P 478 (1927).

Supplies: The term "supplies", as used in section 84-301, R.C.M. 1947 (now repealed), in declaring that machinery, fixtures, and supplies shall fall under class four of the property designated therein for taxation purposes, was employed in its ordinary sense, and railroad ties kept on hand for replacement or new construction fall fairly within its meaning. They were not subject to assessment under class seven, comprising all property not included in the six preceding classes, and taxable at a higher rate than that enumerated in class four. N. Pac. Ry. v. Sanders County, 66 M 608, 214 P 596 (1923).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Taxation of Well Casings: Oil and gas well casings that are permanently fixed in the well are taxable as class four property as improvements to real property. They are not mining fixtures. However, under legislation passed by the 1985 Legislature, oil and gas well casings are exempt from future taxation after December 31, 1984. 41 A.G. Op. 16 (1985).

Amendment of Repealed Section Void: The amendment of a repealed section is ineffectual as required by 1-2-204. Therefore, the 1979 amendments to 15-6-102 through 15-6-121 made by Ch. 686, 706, and 712, L. 1979, are void by virtue of the repeal of those sections by Ch. 693, L. 1979. 38 A.G. Op. 71 (1980).

Collateral References

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-141. Class nine property — description — taxable percentage.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 234, L. 2023. Amendment effective April 24, 2023.

Retroactive Applicability: Section 6, Ch. 234, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022."

2021 Amendment: Chapter 291 inserted (1)(e)(ix) regarding property classified under 15-6-163; and made minor changes in style. Amendment effective April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

2013 Amendment: Chapter 396 in (1)(d) substituted "15-6-138(5)" for "15-6-138(6)". Amendment effective May 6, 2013.

Saving Clause: Section 8, Ch. 396, L. 2013, was a saving clause.

Applicability: Section 10, Ch. 396, L. 2013, provided: "[This act] applies to property tax years beginning after December 31, 2013."

2011 Amendments — Composite Section: Chapter 309 in (1)(c) inserted "and energy storage facilities", inserted "and property used for headquarters, office, shop, or other similar facilities", and deleted former last sentence that read: "For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 411 in (1)(b) near end substituted "15-6-138(6)" for "15-6-138(5)". Amendment effective July 1, 2011.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 7, Ch. 309, L. 2011, provided: "[Sections 1 through 4] [15-6-137, 15-6-141, 15-6-156, 15-6-157] apply to tax years beginning after December 31, 2011."

Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendments — Composite Section: Chapter 357 in (1)(a) in second sentence near beginning in exception clause inserted "and biomass generation facilities". Amendment effective October 1, 2009.

Chapter 487 in (1)(b) at end substituted "distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5)" for "companies having a major distribution system in this state". Amendment effective May 10, 2009.

Applicability: Section 6, Ch. 357, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

Retroactive Applicability: Section 6, Ch. 487, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the property tax year beginning after December 31, 2008."

2007 Special Session Amendment: Chapter 2 in (1)(c)(ii) at beginning substituted "all property" for "wind generation facilities"; inserted (1)(c)(iii) relating to property classified under 15-6-158 and 15-6-159; and made minor changes in style. Amendment effective May 25, 2007.

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

2005 Amendment: Chapter 563 in (1)(a) near beginning of second sentence after "property" inserted "except wind generation facilities classified under 15-6-157"; in (1)(c)(i) after "facilities" substituted "classified under 15-6-156 and wind generation facilities classified under 15-6-157" for "included in class thirteen"; in (1)(c)(ii) and (1)(c)(iii) at end after "classified" substituted "under 15-6-135" for "in class five"; in (1)(c)(iv) and (1)(c)(v) at end after "included in" substituted "15-6-145" for "class twelve"; in (1)(c)(vi) at end after "included in" substituted "15-6-156" for "class thirteen"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "electrical energy" for "electric energy"; and in (1)(c)(i) substituted "electrical generation facilities" for "electrical generation facility property". Amendment effective October 1, 2001.

Chapter 406 in (1)(a) in second sentence near end after "company also owns property" inserted reference to property serving incorporated municipality that received service from facilities of electric cooperative. Amendment effective April 28, 2001.

Saving Clause: Section 7, Ch. 406, L. 2001, was a saving clause.

1999 Amendments — Composite Section: Chapter 426 in (1)(c)(iii) at end substituted "class five" for "class seven"; inserted (1)(c)(vi) relating to telecommunications property included in class thirteen; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 556 in (1)(a) near beginning inserted "allocations of an" and substituted "company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both" for "companies' allocations"; and in (1)(c)(i) substituted "electrical generation facility property included in class thirteen" for "electric power and natural gas companies' property". Amendment effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

1997 Amendment: Chapter 505 in (1)(a) inserted second and third sentences concerning certain rural electric cooperatives' property and definition of property used for the sole purpose; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

1991 Amendment: In (1), near beginning, and in (2) substituted reference to class nine for reference to class eleven; in (1)(c)(iv) substituted reference to class twelve for reference to class fifteen; and in (1)(c)(v) substituted reference to class twelve for reference to class seventeen. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1986 Amendment: In (1)(c)(iv) before "railroad" deleted "airline and"; and inserted (1)(c)(v) relating to airline transportation property.

1985 Amendments — Code Commissioner Correction — Composite Section: Chapter 722 in (2) substituted "Class eleven property is taxed at 12% of market value except as provided in 15-23-202 for railroad property" for former (2) that read: "(2) Class eleven property is taxed as follows:

(a) Property described in subsection (1)(a) and (b) is taxed at 12% of market value.

(b) Except as provided in 15-23-202, property described in subsection (1)(c) is taxed at 15% of market value". Amendment applicable to taxable years beginning after December 31, 1985 (sec. 3, Ch. 722, L. 1985).

Chapter 743 inserted (1)(c)(iv) relating to airline and railroad transportation property. Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

In (1)(c)(iv) the Code Commissioner changed "class thirteen" to "class fifteen". See 1985 compiler's comments (*Effective Date . . .*) at 15-6-145.

A composite section was prepared by the Code Commissioner for (2) since the transfer by Ch. 743 to class fifteen of airline and railroad property obviated the exception clause in (2). Without Ch. 743 the tax rate would, under Ch. 722, be 12% for all class eleven property. Hence, it would have been appropriate to include the exception language "except as provided in 15-23-202 for railroad property" at the end of (2). But with the creation of a new class for railroad property with pertinent tax rate provisions, the exception language is obsolete and has been deleted.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendments: Chapter 367 inserted "Except as provided in 15-23-202" at the beginning of (2)(b).

Chapter 478 added the language relating to allocations of properties of public agencies to the end of (1)(a).

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 2, Ch. 478, L. 1981, in subsection (1)(a). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Applicability: Section 12, Ch. 686, L. 1979, provided: "This act applies to taxable years after December 31, 1979."

Case Notes

Crude Oil Gathering Pipelines — Class Eight, Not Class Nine Property: The plaintiff, an oil company, filed a declaratory action against the Department of Revenue challenging the tax designation of its oil gathering pipelines and seeking a refund. The Department argued that because the plaintiff was centrally assessed, its gathering pipelines were class nine property. The plaintiff countered that its being centrally assessed did not render its pipelines class nine property. The District Court granted the plaintiff summary judgment and ordered the Department to refund the difference between what the plaintiff had paid and what it owed. On appeal, the Supreme Court affirmed, holding that under the plain language of 15-6-138 the plaintiff's gathering lines were class eight property. Hiland Crude, LLC v. Dept. of Revenue, 2018 MT 159, 392 Mont. 44, 421 P.3d 275.

Remanded Case Cannot Serve as Issue Preclusion — Tax Challenge: The plaintiff, an oil and gas exploration and production company, challenged the state's property tax assessment. In Omimex I, the Supreme Court remanded, finding that the company did not operate a major distribution system in the state. The Supreme Court did not address the District Court's findings that the plaintiff operated a single and continuous property under 15-23-101. The Legislature subsequently amended several tax statutes, and the state assessed the property accordingly. The plaintiff sued again. The District Court found that issue preclusion prevented the plaintiff from challenging the prior finding of a single and continuous property. On appeal, the Supreme Court held that issue preclusion did not apply because the first case was remanded, the issues were not identical, the issues addressed separate tax years, and the plaintiff appropriately appealed the determinations. Omimex Canada, Ltd. v. St., 2015 MT 102, 378 Mont. 490, 346 P.3d 1125.

Classification of Natural Gas Company Property as Class Eight Absent Major State Distribution System: Plaintiff, a resource development corporation, owned numerous gas and oil wells and pipelines in several counties on property that extended into several counties and into Canada. The property was centrally assessed, classified as class nine property, and taxed at 12%. Plaintiff contended that its properties should be locally assessed, classified as class eight property, and taxed at 3%. The District Court upheld central assessment and class nine classification, but on appeal the Supreme Court reversed. Plaintiff did not have a major distribution system in this state as required for taxation as class nine property under 15-6-141. Rather, plaintiff's properties were manifestly designed to accumulate natural gas from many wells to central points where the gas was commingled and delivered to a single buyer for final distribution to consumers. Therefore, whether plaintiff's properties were centrally or locally assessed, absent a major state distribution system, they should have been classified as class eight property under 15-6-138 and taxed at 3%. (See 2009 amendment.) Omimex Canada, Ltd. v. St., 2008 MT 403, 347 M 176, 201 P3d 3 (2008).

Collateral References

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-6-143. Class ten property — description — taxable percentage.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 638, L. 2023. Amendment effective May 19, 2023.

Retroactive Applicability: Section 7, Ch. 638, L. 2023, provided: "[Section 1] [amending 15-6-143] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022."

2021 Amendment: Chapter 427 inserted (3)(a) concerning 0.34% tax rate in tax year 2021; inserted (3)(b) concerning 0.31% tax rate in tax year 2022; in (3)(c) after "forest productivity value" inserted "in tax years after 2022"; and made minor changes in style. Amendment effective May 7, 2021.

Retroactive Applicability: Section 3, Ch. 427, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2020."

2015 Amendment: Chapter 361 in (3) substituted "taxed at 0.37% of its forest productivity value" for "taxed at:

(a) for tax year 2009, 0.34% of its forest productivity value;
(b) for tax year 2010, 0.33% of its forest productivity value;
(c) for tax year 2011, 0.32% of its forest productivity value;
(d) for tax year 2012, 0.31% of its forest productivity value;
(e) for tax year 2013, 0.3% of its forest productivity value; and
(f) for tax years after 2013, 0.29% of its forest productivity value"; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2013 Amendment: Chapter 243 in (1) at end inserted "and property described in subsection (2)"; inserted (2) regarding parcels of growing timber qualifying as class ten property; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 483 substituted current language in (2) listing tax rates for "Class ten property is taxed at 0.79% of its forest productivity value in tax year 1999, and the rate is reduced by 0.11% each year until the property is taxed at 0.35% of its forest productivity value." Amendment effective May 10, 2009.

Extension of Deadlines Relating to 2009 Property Taxes: Section 12, Ch. 483, L. 2009 provided: "As a result of the changes in the mitigation strategy of reappraisal for class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1999 Amendment: Chapter 584 at end of (2) inserted "in tax year 1999, and the rate is reduced by 0.11% each year until the property is taxed at 0.35% of its forest productivity value". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 297 in (2) substituted "taxed at 0.79%" for "taxed at the percentage rate "P""; deleted (3) and (4) that read: "(3) For taxable years beginning January 1, 1994, and thereafter, the taxable percentage rate "P" applicable to class ten property is 4%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (4). The taxable percentage rate "P" must be rounded downward to the nearest 0.01% and must be calculated by the department before July 1, 1994.

(4) (a) Prior to July 1, 1994, the department shall determine the certified statewide percentage increase for class ten property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1994, of all property in the state, excluding use changes occurring during the preceding year, classified under class ten as class ten is described in this section; and

(ii) Y is the appraised value, as of January 1, 1993, of all property in the state that would be classified under class ten as class ten is described in this section as this section reads in 1993.

(b) B must be rounded downward to the nearest 0.0001%."; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Extension of Deadlines: Section 11, Ch. 463, L. 1997, provided: "As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

1991 Amendment: (Temporary version) Chapter 783 in (3), after "taxed at", substituted "4%" for "the percentage rate "P""; and deleted (4) through (6) that read: "(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.

(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.

(b) B shall be rounded downward to the nearest 0.0001%.

(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111". Amendment effective May 17, 1991, and terminates January 1, 1994.

(Version effective January 1, 1994) Chapter 783 deleted former text that read: "(1) Class thirteen property includes all timberland.

(2) Timberland is contiguous land exceeding 15 acres in one ownership that is capable of producing timber that can be harvested in commercial quantity.

(3) Class thirteen property is taxed at the percentage rate "P" of the combined appraised value of the standing timber and grazing productivity of the property.

(4) For taxable years beginning January 1, 1986, and thereafter, the taxable percentage rate "P" applicable to class thirteen property is 30%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (5). The taxable percentage rate "P" shall be rounded downward to the nearest 0.01% and shall be calculated by the department before July 1, 1986.

(5) (a) Prior to July 1, 1986, the department shall determine the certified statewide percentage increase for class thirteen property using the formula B = X/Y, where:

(i) X is the appraised value, as of January 1, 1986, of all property in the state, excluding use changes occurring during the preceding year, classified under class thirteen as class thirteen is described in this section; and

(ii) Y is the appraised value, as of January 1, 1985, of all property in the state that, as of January 1, 1986, would be classified under class thirteen as class thirteen is described in this section.

(b) B shall be rounded downward to the nearest 0.0001%.

(6) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a valuation has been made as provided in 15-7-111"; inserted (1) designating forest land as class thirteen (now class ten, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction) property; inserted (2) taxing class thirteen (now class ten) property at the percentage rate "P" of its forest productivity value; inserted (3) concerning calculating the percentage rate "P" for taxable years beginning January 1, 1994; and inserted (4) concerning formula for determining certified statewide percentage increase for class thirteen (now class ten) property prior to July 1, 1994.

Termination Amended: Section 5, Ch. 680, L. 1991, and sec. 11, Ch. 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments to this section.

Coordination: Section 12, Ch. 680, L. 1991, provided: "If House Bill No. 340 is passed and approved and if it includes a section that amends 15-6-143, then the amendments made by [this act] to 15-6-143 are void." House Bill No. 340 was passed and approved as Ch. 783, L. 1991.

Retroactive Applicability of Termination Amendment: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Coordination Instruction: Section 16(1), Ch. 773, L. 1991, provided: "If House Bill No. 340 is passed by the 52nd legislature and approved by the governor, then the code commissioner is instructed, at the time of codification of that enactment, to change references in that enactment from class thirteen property to class ten property." House Bill No. 340 was approved May 17, 1991, as Ch. 783, L. 1991. Therefore, the Code Commissioner has changed references to the respective tax classes where they appear in this section in accordance with the coordination instruction.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Applicability: Section 17(1), Ch. 783, L. 1991, provided that the amendment to the version of this section effective January 1, 1994, applies to taxable years beginning after December 31, 1993.

Retroactive Applicability of Amendment: Section 17(2), Ch. 783, L. 1991, provided that the temporary version of this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

1985 Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Administrative Rules

Title 42, chapter 20, subchapter 7, ARM Forest land.

15-6-145. Class twelve property — description — taxable percentage.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, near beginning of (1) inserted reference to property of a railroad car company.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: Throughout section substituted reference to class twelve for reference to class fifteen; in (1), after "1986", inserted "and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986"; in (2), in two places, substituted reference to tax year for reference to taxable year and substituted "1991" for "1986"; in (3)(a) and (3)(b), after "15-1-101(1)(d)", deleted "including class 1 and class 2 property"; and in (4)(b) inserted reference to subsection (a) of subsection (4) and subsection (3). Amendment effective May 15, 1991.

Retroactive Applicability: Section 18(3), Ch. 773 L. 1991, provided in part that the amendments to class fifteen property contained in 15-6-145, as amended by [section 8] of Ch. 773, L. 1991, except those amendment that change the number of the class, are effective on passage and approval (approved May 15, 1991) and apply retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1991.

June 1986 Amendment: At end of (2) inserted "or 12%, whichever is less".

March 1986 Amendment: Deleted former (1)(b) that read: "all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986"; in (3) inserted "except class fifteen property" in two places; in (4)(c) deleted "and airline" before "taxable values"; and in (5) after "1976" deleted "and the Tax Equity and Fiscal Responsibility Act of 1982", substituted "it" for "they", and after "industrial property" inserted "except class fifteen property".

Effective Date — Applicability Dates — Code Commissioner Correction: This section is effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

The March 1986 and June 1986 amendments apply retroactively to tax years beginning after December 31, 1985 (sec. 8, Ch. 7, Sp. L. March 1986, and sec. 3, Ch. 24, Sp. L. June 1986).

In (1) and (2), the Code Commissioner changed "class thirteen" to "class fifteen" because Ch. 681, L. 1985, and Ch. 699, L. 1985, also enacted class thirteen property classifications.

Preamble: For preamble to Ch. 743, L. 1985, see Compiler's Comments to 15-6-134.

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

Administrative Rules

ARM 42.22.116 Determination of tax rate for class twelve property.

ARM 42.22.117 Methodology for preparation of sales assessment ratio study.

Case Notes

Interpretation of Terms "Scheduled Airline Company" and "Regularly Scheduled Flights" — Interlocutory Adjudication: The Department of Revenue informed the respondent, an aviation company, that the company would be centrally assessed. The respondent requested reclassification, which was denied by the Department. The Department filed an interlocutory appeal with the District Court seeking an adjudication of the meaning of the terms "scheduled airline company" and "regularly scheduled flights" for Montana property tax purposes. Following the issuance of the District Court's order interpreting the terms, the respondent appealed to the Supreme Court. The Supreme Court affirmed the District Court's interpretation with a slight modification of the term "regularly scheduled flights" as "those which follow an interval according to timetable and location predefined by the carrier and which fly regardless of whether there are passengers or freight to be carried". Dept. of Revenue v. Alpine Aviation, Inc., 2016 MT 283, 385 Mont. 282, 384 P.3d 1035.

Collateral References

From Liquor Stores to Burlington Northern Railroad: Issues Before the Revenue Oversight Committee, 1986 Interim Report, Montana Legislative Council.

15-6-156. Class thirteen property — description — taxable percentage.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 215 in (3) in definition of electrical generation facilities in (i) at end of last sentence inserted "or solar panel systems", in (iii)(A) substituted "a qualifying facility certified by the federal energy regulatory commission" for "a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138", inserted (iii)(B) regarding qualification requirements for consideration of an abatement, inserted (iii)(C) regarding when an abatement may be rescinded, inserted (iii)(D) regarding classification under 15-6-134 and 15-6-138, and inserted (iv) regarding certain facilities excluded from the definition of electrical generation facilities; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 291 inserted (2)(i) regarding property classified under 15-6-163; and made minor changes in style. Amendment effective April 28, 2021.

Chapter 483 in (3) in introductory clause at end inserted "the following definitions apply"; inserted (3)(b) defining fiber optic or coaxial cable; in (4)(a) at beginning inserted exception clause; inserted (4)(b) concerning the property tax exemption for fiber optic or coaxial cable, conditions on and requirements for claiming the exemption, and eligibility for the exemption; inserted (5) concerning termination of the exemption from taxation described in (4)(b); and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 215, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Section 7, Ch. 483, L. 2021, provided: "[This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act]." Effective July 1, 2021.

Preamble: The preamble attached to Ch. 483, L. 2021, provided: "WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

2017 Amendment: Chapter 438 in (1) after "subsections (2)(a) through" substituted "(2)(h)" for "(2)(g)"; inserted (1)(e) concerning dedicated communications infrastructure; inserted (2)(h) concerning qualified data centers; and made minor changes in style. Amendment effective May 22, 2017.

Applicability: Section 7, Ch. 438, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Preamble: The preamble attached to Ch. 438, L. 2017, provided: "WHEREAS, no large-scale commercial data centers currently operate in Montana; and

WHEREAS, Montana's current property tax classes and assessment methodologies prevent large data center operators from locating in Montana due to valuation uncertainty and noncompetitive tax rates; and

WHEREAS, Montana needs to create a new property tax class and valuation certainty while expanding existing abatements and incentives to allow local governments in Montana to compete against locations outside Montana for data center investment."

2011 Amendment: Chapter 309 in (1)(a), (1)(b), and (1)(c) inserted "and energy storage facilities"; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 309, L. 2011, provided: "[Sections 1 through 4] [15-6-137, 15-6-141, 15-6-156, 15-6-157] apply to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 357 in (1)(a), (1)(b), and (1)(c) near middle after "facilities" inserted "and biomass generation facilities"; and in (1)(b) at end substituted "42 U.S.C. 16451" for "section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a". Amendment effective October 1, 2009.

Applicability: Section 6, Ch. 357, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2005 Amendment: Chapter 563 in (1)(a), (1)(b), and (1)(c) after "facilities" inserted "except wind generation facilities classified under 15-6-157"; in (2)(b) at end after "15-6-137" inserted "or 15-6-157"; in (2)(e) and (2)(f) at end after "classified" substituted "under 15-6-135" for "in class five"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

2001 Amendment: Chapter 591 in (1) in exception clause substituted reference to (2)(g) for reference to (2)(f); inserted (2)(g) concerning exempt generation facilities; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

1999 Enactment: The enactment of a class thirteen property section by sec. 27, Ch. 556, L. 1999, was rendered void by sec. 34(2), Ch. 556, L. 1999, a coordination section. Pursuant to sec. 34, the text of sec. 27 was replaced.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

Effective Date: Section 38(1), Ch. 556, L. 1999, provided that this section is effective January 1, 2000.

Applicability: Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

Case Notes

Cable Company Properly Reclassified as a Telecommunications Company — Conclusion Based on Evaluation of Use and Productivity: The Department of Revenue reclassified a cable company's property from class eight (cable television system) to class thirteen (telecommunications services company) by reasoning that the company's voice, cable, and Internet services made it a centrally assessed telecommunications services company under 15-6-156. The District Court reversed the classification change, but the Supreme Court upheld the Department's decision. The Supreme Court reasoned that the Legislature had exempted certain properties from class thirteen in the past but chose not to exempt companies that use a network to provide voice, cable, and Internet services. Moreover, an analysis of the use and productivity of the cable company's entire network resulted in the inescapable conclusion that it used a single transmission line to deliver three services, and therefore the Department had the authority to treat all of the property accordingly under class thirteen. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

Cable Company Properly Subjected to Central Assessment — Single and Continuous Network Operated in 20 Counties: The Department of Revenue's decision to reclassify a cable company's property from class eight local assessment to class thirteen central assessment was upheld by the Supreme Court. After the Supreme Court concluded that the company met the definition of a centrally assessed telecommunications services company under 15-6-156, it proceeded to analyze whether it qualified for central assessment. The Supreme Court reasoned that a company must operate single and continuous property in more than one county to qualify for central assessment under 15-23-101, in addition to having property that is functionally integrated over a wide area with a unity of use and management. Given the cable company's single and continuous network in 20 Montana counties, unity in billing, centralized management, and the single transmission line used to deliver three services, the cable company was properly subjected to central assessment. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

No Error in Appraising Fair Market Value of Electric Generation Assets Differently When Owned by Different Utilities — Equal Protection Constitutionality of Unit Method of Property Valuation Affirmed: Defendant utility company appealed a District Court decision regarding the equality of the state's tax assessments, claiming that the state deprived the utility of equal protection by failing to properly equalize defendant's property tax burden with other comparable electric generation facilities in Montana. The Department of Revenue explained that the relatively higher appraisal values of defendant's properties arose from the fact that the different companies had different total market values as a unit, so their individual properties also had different market values despite the fact that the individual properties might be physically similar. The Supreme Court noted that the unit method of valuation was held to pass constitutional equal protection scrutiny in W. Union Tel. Co. v. St. Bd. of Equalization, 91 M 310, 7 P2d 551 (1932), and the court declined to revisit the issue of the constitutionality of the method itself. The court held that there is nothing constitutionally significant in the bare fact that the Department of Revenue appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities. The basic rule of equal protection is that persons that are similarly situated with respect to a legitimate governmental purpose of law must receive like treatment. The first prerequisite of a meritorious equal protection claim is that the state had adopted a classification that affects two or more similarly situated groups in an unequal manner. Here, the District Court's determination that defendant failed to establish that the state's use of the unit method of valuation deprived defendant of equal protection was affirmed. Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 M 124, 172 P3d 1241 (2007).

15-6-157. Class fourteen property — description — taxable percentage.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 692, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 692, L. 2023, provided: "[This act] applies to a renewable diesel production facility or a sustainable aviation fuel production facility that commences construction after December 31, 2020, and the abatement provided by [this act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 291 inserted (4)(f)(ii) excluding green hydrogen facilities, green hydrogen pipelines, and green hydrogen storage systems; and made minor changes in style. Amendment effective April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

2011 Amendment: Chapter 309 inserted (1)(i), (1)(j), (1)(k), and (1)(l) relating to energy storage facilities; inserted (1)(m) relating to battery energy storage systems; in (4) inserted definitions of compressed air energy storage, energy storage facilities, flywheel storage, hydroelectric pumped storage, and regenerative fuel cell; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 309, L. 2011, provided: "[Sections 1 through 4] [15-6-137, 15-6-141, 15-6-156, 15-6-157] apply to tax years beginning after December 31, 2011."

2009 Amendments — Composite Section: Chapter 277 in (3)(a) near middle substituted "18-2-414" for "18-2-401(13)(a)". Amendment effective July 1, 2009.

Chapter 357 in (1)(b) at end substituted "42 U.S.C. 16451" for "section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a"; inserted (1)(e) through (1)(h) concerning biomass generation facilities; inserted (4)(a) defining biomass generation facilities; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

Applicability: Section 6, Ch. 357, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2007 Special Session Amendment: Chapter 2 inserted (1)(e) through (1)(q) relating to property other than wind generation property; inserted (2) relating to the qualified portion of alternating current transmission lines; in (3) after "include" deleted "wind generation"; inserted (5) relating to certification by the department of environmental quality and department of revenue; and made minor changes in style. Amendment effective May 25, 2007.

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

Effective Date: Section 14, Ch. 563, L. 2005, provided: "[This act] is effective on passage and approval." Approved May 2, 2005.

Retroactive Applicability: Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

15-6-158. Class fifteen property — description — taxable percentage.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 692, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 692, L. 2023, provided: "[This act] applies to a renewable diesel production facility or a sustainable aviation fuel production facility that commences construction after December 31, 2020, and the abatement provided by [this act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 142 in (5)(c) in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Termination Provision Repealed: Section 1, Ch. 444, L. 2017, repealed sec. 7, Ch. 407, L. 2015, which terminated the 2015 amendments to this section December 31, 2025. Effective October 1, 2017.

2015 Amendment: Chapter 407 in (4)(a) at beginning inserted exception clause; inserted (4)(b) and (5) regarding carbon sequestration equipment, requests for certification, board of oil and gas conservation rulemaking, and appeals to state tax appeal board; and made minor changes in style. Amendment effective May 5, 2015, and terminates December 31, 2025.

Preamble: The preamble attached to Ch. 407, L. 2015, provided: "WHEREAS, Montana industries are required to install certain air and water pollution control and carbon capture equipment to comply with state and federal standards as a result of recent and anticipated regulatory action, including but not limited to:

(1) the Utility Mercury and Air Toxics Rule;
(2) the Regional Haze Rule;
(3) the Clean Power Plan Rule;
(4) the Nitrogen Oxide Primary National Ambient Air Quality Standards;
(5) the Sulfur Dioxide Primary National Ambient Air Quality Standards;
(6) the Cooling Water Intakes 316(b) Rule;
(7) the Particulate Matter 2.5 National Ambient Air Quality Standards;
(8) the Effluent Guidelines for Coal-Fired Electrical Generating Units;
(9) the Maximum Achievable Control Technology Standards for industrial boilers;
(10) the Numeric Nutrient Criteria;
(11) the Portland Cement Maximum Achievable Control Technology Standards;
(12) Total Maximum Daily Loads;
(13) National Pollutant Discharge Elimination System, including stormwater discharge; and
(14) Additional new or future regulatory actions requiring the control of air or water pollution.

WHEREAS, compliance with these regulations requires investments of hundreds of millions of dollars and ultimately impacts consumers; and

WHEREAS, technologies to comply with these regulations are often unproven or not commercially or economically available; and

WHEREAS, these regulations address important protections for public health; and

WHEREAS, many of these regulations require installation of pollution control technologies that decrease the efficiency of existing equipment at industrial facilities; and

WHEREAS, reduced tax rates for pollution control equipment will improve public health by providing an incentive for early compliance when possible and ultimately making regulatory compliance more affordable; and

WHEREAS, incentivizing advancements and investments in carbon sequestration is important to the future of Montana's economy and consistent with the goals in Montana's state energy policy, including expanded technological innovation through enhanced oil recovery; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to exempt certain air and water pollution control and carbon capture equipment from property taxation and reduce property taxes for carbon transportation and sequestration equipment."

Transition After Termination — Carryover of Abatement: Section 4, Ch. 407, L. 2015, provided: "(1) (a) An exemption or property tax rate reduction that a taxpayer receives under the provisions of law in effect in 15-6-135, 15-6-158, or 15-6-219, prior to the termination date in [section 7]:

(i) may be carried forward for the remaining number of years left under the certification; and

(ii) is not impaired by [this act].

(b) A taxpayer is entitled to the exemption or property tax rate reduction for the period of time established in the section at the time the exemption or property tax rate reduction was first allowed.

(2) This section applies to all exemptions and property tax rate reductions that are removed or repealed by [section 7], including 15-6-135 for pollution control equipment and 15-6-158 for carbon sequestration."

Retroactive Applicability: Section 6, Ch. 407, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to air and water pollution control and carbon capture equipment and carbon sequestration equipment placed in service after January 1, 2014."

2009 Amendment: Chapter 277 in (3) near end substituted "18-2-414" for "18-2-401(13)(a)". Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

Effective Date: Section 15, Ch. 2, Sp. L. May 2007, provided that this section is effective May 25, 2007.

15-6-159. Class sixteen property — description — taxable percentage.

Compiler's Comments

2009 Amendment: Chapter 277 in (2) near middle substituted "18-2-414" for "18-2-401(13)(a)". Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

Effective Date: Section 15, Ch. 2, Sp. L. May 2007, provided that this section is effective May 25, 2007.

15-6-162. Class seventeen property — description — taxable percentage.

Compiler's Comments

2019 Amendment: Chapter 383 inserted (2)(a)(ii) regarding a qualified data center that contains 25,000 square feet of new or expanded area; and made minor changes in style. Amendment effective May 8, 2019.

Retroactive Applicability: Section 4, Ch. 383, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2018."

Effective Date: Section 6, Ch. 438, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 22, 2017.

Applicability: Section 7, Ch. 438, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Preamble: The preamble attached to Ch. 438, L. 2017, provided: "WHEREAS, no large-scale commercial data centers currently operate in Montana; and

WHEREAS, Montana's current property tax classes and assessment methodologies prevent large data center operators from locating in Montana due to valuation uncertainty and noncompetitive tax rates; and

WHEREAS, Montana needs to create a new property tax class and valuation certainty while expanding existing abatements and incentives to allow local governments in Montana to compete against locations outside Montana for data center investment."

15-6-163. Class eighteen property — description — taxable percentage.

Compiler's Comments

Effective Date: Section 15, Ch. 291, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

15-6-194. Rules.

Compiler's Comments

Effective Date: Section 15, Ch. 291, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

Part 2
Tax-Exempt Property

Part Compiler's Comments

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title that applies to several sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Part Case Notes

Tribal Court — No Jurisdiction to Enjoin County Property Taxation: In an action by a Crow tribal member challenging a county's right to impose property taxes on reservation land held in fee by the member, the Ninth Circuit Court held that the Crow Tribal Court exceeded its jurisdiction by ruling that the tribal member was not required to pay the property taxes imposed by the county. Yellowstone County v. Pease, 96 F3d 1169 (9th Cir. 1996).

Part Attorney General's Opinions

Nonprofit Organization Not Exempt — Rented Building — Special Improvement District Exemptions: A nonprofit organization's building rented for gain or profit is not exempt from property taxes, nor is its real property within a special improvement district exempt from special improvement assessments. 35 A.G. Op. 77 (1974).

Part Collateral References

Real Property Tax Exemptions: Improving Information Management and Informing Policy Decisions, Performance Audit, Mont. Leg. Audit Div. (May 2023), https://leg.mt.gov/content/Committees/Administration/audit/2023-24/Meetings/March-2023/21P-06.pdf.

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-6-201. Governmental, charitable, and educational categories — exempt property.

Compiler's Comments

2017 Amendment: Chapter 407 in (1)(n)(ii) at beginning inserted "subject to subsection (2)(e)"; inserted (2)(e) qualifying the terms "retired" and "aged", requiring a property owner to verify age and gross household income requirements, and making applicants subject to false swearing penalties; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 407, L. 2017, provided: "[Section 2] [15-6-201] applies to rental agreements or occupancy arrangements entered into on or after [the effective date of this act]." Effective October 1, 2017.

2015 Amendment: Chapter 366 inserted (1)(p) concerning certain property leased to a municipality or taxing unit for public purposes; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 3, Ch. 366, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

2013 Amendment: Chapter 405 in (2)(a)(ii)(A) after "not to exceed" substituted "640 acres" for "15 acres". Amendment effective October 1, 2013.

Transition: Section 2, Ch. 405, L. 2013, provided: "[This act] does not extinguish existing property taxes, including but not limited to taxes due and owing, delinquent taxes, tax liens, and tax deeds on property that are in effect on December 31, 2013."

Applicability: Section 4, Ch. 405, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2011 Amendment: Chapter 278 inserted (1)(a)(viii) exempting certain Indian property from property tax; inserted (1)(c) pertaining to certain Indian land designated as sacred; inserted (1)(f) pertaining to tribal property used for schools; inserted (1)(h)(i)(B) referring to Indian-owned land; inserted (2)(a) establishing limits on use of Indian property subject to tax exemption; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 6, Ch. 278, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 286 inserted (1)(a)(vii) exempting the property of special districts; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 42, Ch. 286, L. 2009, was a saving clause.

Transition — Repealed: Section 43, Ch. 286, L. 2009, provided: "(1) Subject to subsection (2), a special district in existence on [the effective date of this act] [effective July 1, 2009] must comply with the provisions of [sections 1 through 20] [Title 7, ch. 11, part 10] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act] [effective July 1, 2009], the proposal is subject to the provisions of [section 20] [7-11-1029].

(2) A special district in existence on [the effective date of this act] [effective July 1, 2009] is required to comply with the provisions of [section 10] [7-11-1014] only upon alteration of its boundaries." This transition section was repealed by sec. 2, Ch. 97, L. 2019. See the code commissioner explanation under 7-11-1004.

2005 Amendments — Composite Section: Chapter 2 inserted (2)(a)(iv) exempting from taxation up to 160 acres by a public charity that applies for an exemption after December 31, 2004; and requiring that the application contain a legal description of the property proposed for exemption. Amendment effective February 23, 2005.

Chapter 531 deleted former (1)(ff) (see Chapter 532 note); and made minor changes in style. Amendment effective April 28, 2005.

Chapter 532 deleted former (1)(h) through (1)(l) that read: "(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft"; deleted former (1)(p) that read: "(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100"; deleted former (1)(r) through (1)(ff) that read: "(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;
(ii) 31.4% for tax year 2004;
(iii) 32% for tax year 2005;
(iv) 32.6% for tax year 2006;
(v) 33.2% for tax year 2007;
(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;
(ii) 13.3% for tax year 2004;
(iii) 13.8% for tax year 2005;
(iv) 14.2% for tax year 2006;
(v) 14.6% for tax year 2007;
(vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in 61-1-139; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;
(ii) all mining machinery, fixtures, equipment, tools, and supplies;
(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;
(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;
(v) all goods and equipment that are intended for rent or lease;
(vi) special mobile equipment as defined in 61-1-104;
(vii) furniture, fixtures, and equipment;
(viii) x-ray and medical and dental equipment;
(ix) citizens' band radios and mobile telephones;
(x) radio and television broadcasting and transmitting equipment;
(xi) cable television systems;
(xii) coal and ore haulers; and
(xiii) theater projectors and sound equipment"; deleted former (3) and (4) that read: "(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(j) substituted "61-8-102" for "61-1-123"; in (1)(v) substituted current text incorporating definitions in 61-1-101 for former text that read: "all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131"; deleted former (1)(z)(i) and (1)(z)(ii) that read: "(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004"; deleted former (1)(aa)(i) and (1)(aa)(ii) that read: "(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004"; in (1)(ee) at end substituted "61-1-101" for "61-1-139"; in (1)(ff)(vi) at end substituted "61-1-101" for "61-1-104"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 532 rendered this amendment void.

Chapter 563 deleted former (1)(z)(i) and (1)(z)(ii) that read: "(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004"; deleted former (1)(aa)(i) and (1)(aa)(ii) that read: "(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004"; in (1)(ff) after "15-6-156" inserted "and 15-6-157"; and made minor changes in style. Amendment effective May 2, 2005. The amendment by Ch. 532 rendered this amendment void.

Chapter 584 in (1)(a)(iii) at end before "profit" inserted "gain or"; in (1)(b) near beginning after "clergy" inserted "not to exceed one residence for each member of the clergy" and at end after "buildings" inserted "which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements"; in (1)(c) at beginning after "property" inserted "owned and" and at end after "societies" substituted "not operated for gain or profit" for "for educational purposes"; inserted (1)(d) exempting certain property used exclusively for educational purposes; in (1)(e) at beginning inserted "property used exclusively"; in (1)(f)(iii) after "maintained and" inserted "not" and after "operated for" substituted "gain or" for "private or corporate"; in (1)(i) at end before "profit" substituted "operated for gain or" for "used or held for private or corporate"; inserted (2)(a) defining clergy; inserted (2)(b)(iii) exempting up to 15 acres of property owned by a purely public charity and providing that if the property is not directly used for the charitable purpose within 8 years of receiving an exemption or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable; in (2)(c) in second sentence after "personal property" inserted "owned by the public museum, art gallery, zoo, or observatory that is"; and made minor changes in style. Amendment effective May 6, 2005.

Retroactive Applicability: Section 3, Ch. 2, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

Section 15(1), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004.

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendments — Coordination — Composite Section: Chapter 577 inserted (1)(ff) enumerating exempt property if the tax rate in 15-6-138 reaches zero; and made minor changes in style. The effect of the amendment by Ch. 577 was to eliminate the version of this section that was effective upon the contingency of the tax rate in 15-6-138 reaching zero. Amendment effective October 1, 2003.

The amendments to (1)(z) and (1)(aa) made by sec. 2, Ch. 577, L. 2003, were rendered void by sec. 10, Ch. 606, L. 2003, a coordination section.

Chapter 606 substituted (1)(z) and (1)(aa) relating to the percentage of market value of residential and commercial property for tax years beginning with 2003 for former text that read: "(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 23% for tax year 2000;
(ii) 27.5% for tax year 2001; and
(iii) 31% for tax year 2002 and succeeding tax years;
(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):
(i) 9% for tax year 2000;
(ii) 11% for tax year 2001; and
(iii) 13% for tax year 2002 and succeeding tax years"; and made minor changes in style. Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Contingent Effective Date: Section 31(4), Ch. 285, L. 1999, provided: "[Sections 13(1)(aa) through (1)(ll) [15-6-201(1)(aa) through (1)(ll), now 15-6-201(1)(ff)] and 27(2)] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero." Section 5, Ch. 577, L. 2003, amended Sec. 31(4), Ch. 285, L. 1999, so that the contingency applies only to sec. 27(2), Ch. 285, L. 1999 (repeal of 15-6-138).

2001 Amendment: (Temporary version) Chapter 438 deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used during construction and for 10 years after initial ethanol production; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective January 1, 2003) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; inserted (1)(dd) providing exemption for all manufacturing machinery, fixtures, equipment, and tools used in construction of and for 10 years after completion of ethanol manufacturing facility; and made minor changes in style.

(Version effective on occurrence of contingency) Deleted former (1)(z)(i) that read: "(i) 16% for tax year 1999"; deleted former (1)(aa)(i) that read: "(i) 6.5% for tax year 1999"; in (1)(ee) and (1)(ff) after "tools" deleted "that are not exempt under 15-6-201(1)(r)"; and made minor changes in style.

Applicability: Section 3, Ch. 438, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, in temporary version inserted (1)(cc), in 2003 version inserted (1)(dd), and in contingent version inserted (1)(pp) exempting light vehicles from taxation; and made minor changes in style. Amendment in temporary version effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

2000 Amendment: Chapter 11 deleted former (1)(bb) that read: "(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4)"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section: (Version effective January 1, 2003) Chapter 285 inserted (1)(dd) exempting personal property intended for rent or lease in ordinary course of business; and made minor changes in style. Amendment effective January 1, 2003.

(Version effective on occurrence of contingency) Inserted (1)(ee) exempting agricultural implements and equipment; inserted (1)(ff) exempting certain mining machinery, fixtures, equipment, tools, and supplies; inserted (1)(gg) exempting certain manufacturing machinery, fixtures, equipment, tools, and supplies; inserted (1)(hh) exempting certain goods and equipment intended for rent or lease; inserted (1)(ii) exempting special mobile equipment; inserted (1)(jj) exempting certain furniture, fixtures, and equipment used in commercial establishments; inserted (1)(kk) exempting x-ray and medical and dental equipment; inserted (1)(ll) exempting citizens' band radios and mobile telephones; inserted (1)(mm) exempting radio and television broadcasting and transmitting equipment; inserted (1)(nn) exempting cable television systems;

inserted (1)(oo) exempting coal and ore haulers; inserted (1)(pp) exempting theater projectors and sound equipment; and made minor changes in style. Amendment effective on occurrence of contingency.

Chapter 438 at beginning of (1)(e) inserted "subject to subsection (2)"; in (2)(a)(i)(A) inserted "offers its charitable goods or services to persons without regard to race, religion, creed, or gender and"; inserted (2)(a)(ii) concerning agricultural property owned by purely public charity; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 539 inserted (1)(r)(ii) exempting space vehicles and business personal property used to design, manufacture, launch, and repair space vehicles from property taxation; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 555 inserted (1)(cc) regarding personal property used by an industrial dairy or milk processor and dairy livestock used by an industrial dairy; inserted (3) defining industrial dairy and industrial milk processor; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 inserted (1)(z) outlining exemption rates applied to market value of certain residential property; inserted (1)(aa) concerning commercial property; inserted (1)(bb) concerning land; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Section 172, Ch. 584, L. 1999, was a severability clause.

Applicability: Section 2, Ch. 438, L. 1999, provided: "[This act] applies to tax periods beginning after December 31, 1999."

Section 2, Ch. 539, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 4, Ch. 555, L. 1999, provided: "[This act] applies to industrial dairies and industrial milk processors established after June 30, 1999."

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 121 in (1)(i) substituted "and campers" for "weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537"; in (1)(k), at end, deleted "travel trailers, and campers"; substituted (1)(v) concerning trailers, semitrailers, pole trailers, and travel trailers for former text that read: "that have a licensed gross weight of 26,000 pounds or more or that are registered through a proportional registration agreement under 61-3-721. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 472 in (1)(o) substituted "persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment" for "the mentally ill or the vocationally handicapped as defined in 18-5-101"; and made minor changes in style.

Chapter 496 in (1)(i), near end, substituted "61-3-504" for "61-3-504(2)" (voided by Ch. 121 amendment); inserted (1)(x) concerning buses, trucks, and truck tractors; inserted (1)(y) concerning motorcycles and quadricycles; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 88 at beginning of (1)(u) deleted "beginning January 1, 1994"; in (1)(v), after "more", inserted "or that are registered through a proportional registration agreement under 61-3-721"; in (3), after "investment", deleted "made after January 1, 1979"; and made minor changes in style. Amendment effective January 1, 1996.

Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (1)(o), the Code Commissioner has made the change and made minor conforming changes in grammar.

Chapter 257 inserted (1)(w) exempting vehicles registered under 61-3-456; and made minor changes in style.

Chapter 418 in (1)(c), in two places, substituted "department of public health" for "department of health and environmental sciences"; in (1)(u), at beginning, deleted "beginning January 1, 1994"; at beginning of (2)(a) inserted "For the purposes of subsection (1)(e)"; in (3), after "made", deleted "after January 1, 1979"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(c), in two places, substituted "department of public health and human services" for "department of health and environmental sciences"; in (1)(u), at beginning, deleted "beginning January 1, 1994"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 585 in (1)(e), after "owned", inserted "or property that is leased from a federal, state, or local governmental entity" and after "charity" substituted "if the property is" for "and". Amendment effective May 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Retroactive Applicability: Section 2, Ch. 585, L. 1995, provided that [this act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

1993 Amendments — Composite Section: Chapter 54 in (1)(a), at beginning, inserted exception clause; in (1)(a)(i), after "owned by", inserted "the federal government or" and at end, after "congress", deleted "to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)"; and made minor changes in style. Amendment effective February 18, 1993.

Chapter 80 inserted (1)(a)(i)(B) excepting United States property, as provided in 15-24-1103, from exemption from taxation; and made minor changes in style. Amendment effective February 25, 1993.

Chapter 575 inserted (1)(a)(v) relating to rural fire districts and other entities providing fire protection; inserted (1)(v) relating to and defining trailers and semitrailers with a licensed gross weight of 26,000 pounds or more; and made minor changes in style. Amendment effective January 1, 1994.

A style change in (1)(b) was slightly different. The codifier chose the more appropriate of the two.

Effective Date — Retroactive Applicability: Section 2, Ch. 54, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved February 18, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

1991 Amendments: Chapter 71 at beginning of (1)(m) inserted "motor vehicles". Amendment effective March 15, 1991.

Chapter 123 at beginning of (1)(e) inserted "property owned by" and after "charity" inserted "and directly used for purely public charitable purposes"; at end of (1)(o) inserted exemption for property owned and used by a nonprofit organization for care of the retired, aged, or chronically ill; and near beginning of (2)(a), after "includes", substituted requirements of tax-exempt status and method of accomplishing activities for former language that read: "organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit". Amendment effective March 20, 1991.

Chapter 271 in (1)(g) substituted "public museums, art galleries, zoos, and observatories" for "public art galleries and public observatories"; and substituted present (2)(b) relating to tax exemption for public museums, art galleries, zoos, and observatories for former (2)(b) that read: "(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only". Amendment effective March 29, 1991.

Chapter 467 in (3), in introductory clause after "generation", inserted "or low emission wood or biomass combustion devices". Amendment effective April 17, 1991.

Chapter 783 inserted (1)(u) including timber as exempt property beginning January 1, 1994. Amendment effective July 1, 1991.

Effective Date — Retroactive Applicability: Section 2, Ch. 71, L. 1991, provided: "[This act] is effective on passage and approval [approved March 15, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Section 2, Ch. 271, L. 1991, provided: "[This act] is effective on passage and approval [approved March 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Retroactive Applicability: Section 3, Ch. 123, L. 1991, provided: "[Section 1] [15-6-201] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1991 Statement of Intent: The statement of intent attached to Ch. 467, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices."

Applicability: Section 5, Ch. 467, L. 1991, provided: "[This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996."

Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

1989 Amendments: Chapter 59 inserted (1)(s) that read: "(s) harness, saddlery, and other tack equipment". Amendment effective March 10, 1989.

Chapter 576 inserted (1)(r) exempting from taxation the first $15,000 or less of value of certain hand-held tools; and made minor changes in phraseology. Amendment effective April 20, 1989.

Chapter 617 inserted (1)(t) exempting title plant owned by title insurer or agent as defined in 33-25-105.

Chapter 713 in (1)(t) substituted "title insurance producer" for "title agent". Amendment effective January 1, 1990.

Effective Date — Retroactive Applicability: Section 4, Ch. 59, L. 1989, provided: "[This act] is effective on passage and approval [approved March 10, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Section 5, Ch. 576, L. 1989, provided: "[This act] is effective on passage and approval [approved April 20, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 6, Ch. 617, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1987 Amendments: Chapter 455 in (1)(c), after "for educational purposes, and for", substituted reference to nonprofit health care facilities for "hospitals" and inserted sentence relating to unlicensed health care facilities. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 545 in (1)(m), relating to certain entities furnishing potable water, at beginning inserted "land". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 556 inserted (1)(q) relating to facility for international sports events. Amendment applicable to taxable years beginning after December 31, 1986.

Chapter 611 in (1)(i), relating to truck canopies, at end after "exempt from" substituted "taxation under 61-3-504(2) and 61-3-537" for "the fee in lieu of tax"; inserted (1)(k) relating to motor homes, travel trailers, and campers; and deleted former (1)(k) and (1)(l) that read: "(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(l) motorcycles and quadricycles". Amendment applicable to motor vehicles registered on or after July 1, 1987.

Chapter 649 inserted (1)(l) relating to all watercraft. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Applicability: Section 3, Ch. 556, L. 1987, provided in part: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." The retroactivity applies to property owned by a nonprofit corporation and provides primarily for training for or competition in international sports or athletic events, which was added as an exemption by subsection (1)(q) of sec. 1.

1985 Amendments: Chapter 463 exempted certain farm buildings and machinery.

Chapter 516 exempted motorcycles and quadricycles. Amendment effective January 1, 1986.

1983 Amendments: Chapter 170 exempted property of certain companies that furnish potable water.

Chapter 323 exempted the right of entry to explore for oil, gas, coal, or minerals.

Chapter 523 exempted property owned by entities caring for certain disadvantaged persons.

1981 Amendments: Chapter 478 added the exception at the end of (1)(a)(i) relating to privately owned generating facilities.

Chapter 614 exempted light vehicles.

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 1, Ch. 478, L. 1981, in subsection (1)(a). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Administrative Rules

Title 42, chapter 4, ARM Tax credits.
ARM 42.4.105 Standard components and passive solar systems.
ARM 42.19.502 Exemptions involving an ownership test.
ARM 42.19.506 Exemptions involving a use test.
ARM 42.20.102 Applications for property tax exemptions.
ARM 42.20.102A Additional documentation requirements for property tax exemption applications.
ARM 42.20.501 Definitions.

Case Notes

Order Allowing Utility to Not Pay Taxes During Condemnation Action Improper — Utility to Pay Until Transfer of Title by Final Order: The city of Missoula filed a condemnation action against the plaintiff, a utility. The plaintiff filed an action asking the District Court to declare that it did not need to pay taxes during the condemnation action and that the taxes would instead shift to the city. The District Court granted the plaintiff summary judgment, and the defendant, the Department of Revenue, appealed. The Supreme Court reversed, holding that the District Court had erred in its interpretation of 70-30-315 regarding the proration of taxes. The Supreme Court further agreed with the defendant that the plaintiff would pay taxes on its property until such time as a transfer of the property's title by entry of final order in the other case had been issued. Mtn. Water Co. v. Dept. of Revenue, 2017 MT 117, 387 Mont. 394, 394 P.3d 922.

Cattle Not Institutions of Purely Public Charity: The respondent operated a stewardship program that raised and sold cattle. The profit from the livestock sales was donated to evangelical organizations that used most of the money for evangelical services and a small portion for charitable purposes. The Supreme Court held that the cattle were raised to be sold for profit rather than for direct distribution to the needy. Therefore, the cattle did not qualify as institutions of purely public charity and were not tax-exempt. Steer, Inc. v. Dept. of Revenue, 245 M 470, 803 P2d 601, 47 St. Rep. 2199 (1990).

Tax-Exempt Status of Property Determined by Use, Not Ownership: The respondent operated a stewardship program that raised and sold cattle. The profit from the livestock sales was donated to evangelical organizations that used most of the money for evangelical services and a small portion for charitable purposes. The Supreme Court held that the cattle were not tax-exempt property because they were raised for profit rather than being distributed directly to the needy. Steer, Inc. v. Dept. of Revenue, 245 M 470, 803 P2d 601, 47 St. Rep. 2199 (1990).

Outpatient Clinic Not Considered Hospital for Property Tax Exemption Purposes: Applying the definitions set out in 50-5-101, the District Court properly found that an outpatient clinic was not a hospital and was not entitled to property tax exemptions under this section for property used "for hospital purposes". Dept. of Revenue v. Gallatin Outpatient Clinic, Inc., 234 M 425, 763 P2d 1128, 45 St. Rep. 2025 (1988).

State's Tax Appeal — Costs and Attorney Fees Denied Taxpayer — Appeal Not Frivolous or in Bad Faith: There was substantial evidence to support trial court's determination that Department of Revenue's appeal was neither frivolous nor in bad faith and that taxpayer thus was not entitled to costs and attorney fees under 25-10-711. An issue raised by the Department was retroactive application to a prior landowner of the tax-exempt status granted taxpayer. This issue was well within the bounds of legitimate argument on a substantial issue on which there was a bona fide difference of opinion, and the Department prevailed on the issue. Taxpayer's contention that the appeal was in bad faith because the Department challenged existing law in a prior case was unfounded, since the prior case was 20 years old. The law is not static. Furthermore, there was an issue not resolved by the prior case. Dept. of Revenue v. New Life Fellowship of Mont., Inc., 217 M 192, 703 P2d 860, 42 St. Rep. 1129 (1985).

Tax Exemption for Undeveloped Property Adjacent to Church Buildings — Application of Doctrine of Strict Construction of Tax Exemptions: Where the plaintiff church owned land, adjacent to the church, that was used for a church road and recreational activities of church members, the District Court erred, in a quiet title action brought by the church, in denying a tax exemption for the land actually used for the road providing access to the church. However, as there was no direct evidence of the use for church purposes of the other undeveloped property adjacent to the road and church, the Supreme Court strictly construed the tax exemption laws to deny an exemption for the other undeveloped property. Old Fashion Baptist Church v. Dept. of Revenue, 206 M 451, 671 P2d 625, 40 St. Rep. 1774 (1983).

Leased Property of Hospitals: Personal property leased by nonprofit hospital and used exclusively for hospital purposes was exempt from taxation even though the lessor, a private profit corporation, received a profit from the lease. The Legislature intended to exclude "ownership" of property as a criterion in determining applicability of exemption to property "used exclusively for hospitals". Mont. Deaconess Hosp. v. Cascade County, 164 M 256, 521 P2d 203 (1974).

Institution of Public Charity — Nonprofit Foundation: Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements. Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P2d 915, 37 ALR 3d 558 (1968).

Exclusive Use: The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Educational Purposes: The term "educational purposes", as used in Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school, and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Religious Education — Church Camp: Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. When church summer camp, containing 22 acres of land and 28 improvements, was "exclusively used for educational purposes" within the meaning of this section prior to 2005 amendments and Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.), it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Limits of Public Charity — Nominal Payment — Limitation on Beneficiaries:

An institution of purely public charity, which is exempt from taxation under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

A summer camp for children operated by a Methodist church was not exempt from taxation as an "institution of purely public charity". Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P2d 90 (1965).

Property Leased for School Purposes:

Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section prior to 2005 amendments, ownership of property is of no importance. It is exempt from taxation if it is used exclusively for educational purposes. NW. Improvement Co. v. Rosebud County, 129 M 412, 288 P2d 657 (1955).

A school building, built by an improvement company and leased by it to a school district, wherein the school district was to pay any tax which might be assessed and wherein the amount of the lease just covered the cost of the building, was exempt from taxation. NW. Improvement Co. v. Rosebud County, 129 M 412, 288 P2d 657 (1955).

Assessments Within Irrigation District — Not "Taxes": Assessments for irrigation district purposes, in their nature akin to special assessments for local improvements, are not "taxes" within the meaning of this section and Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.), declaring that state property shall be exempt from taxation, and state-owned lands within the district are subject to assessments levied by the district for district purposes. Toole County Irrigation District v. St., 104 M 420, 67 P2d 989 (1937).

Land Purchased From the State:

Under section 1868, R.C.M. 1921 (now repealed), lands purchased from the state on deferred payments may be taxed only at the percentage of the value of the land which the amount actually paid bears to the total purchase price. Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section, state property is exempt from taxation. Instead of assessing only the interest of a purchaser of such lands represented by his initial payment, the assessor levied taxes upon them at their full cash value. Taxes paid by the State under protest on the value in excess of the equity the purchaser had in the land were illegally levied as upon state property. St. v. Lewis & Clark County, 84 M 204, 274 P 855 (1929), distinguishing Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Under Art. XII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 5, 1972 Mont. Const.) and this section providing, inter alia, that state property is exempt from taxation, where the purchaser of state lands reconveyed them to the state to obviate foreclosure of the mortgage thereon, the lands were thereafter property of the state and nontaxable, entitling it to recover back taxes paid thereon under protest. St. v. Lewis & Clark County, 84 M 204, 274 P 855 (1929).

Lands to which the state retains the title under a contract of purchase are subject to taxation as property of the purchaser. Courtney v. Missoula County, 21 M 591, 55 P 359 (1898).

Property of a County — Special Assessments: When a city lot owned by the county is not used for county purposes and special municipal improvements enhance its value for building purposes, the county is liable for the payment of the consequent special assessments, constitutional and statutory provisions exempting its property from taxation not applying under such conditions. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928).

Bank Stock: Prior to the enactment of Ch. 634, L. 1979, to the extent that shares of stock of a bank had a value over and above the taxable real and personal property of the bank they were taxable, under the 1889 constitutional provision that all property other than that specially exempted must be taxed without reference to the character of the securities which go to make up that value. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

United States Securities: The securities of the United States held by a bank are not taxable by the state, directly or indirectly. Mont. Nat'l Bank v. Yellowstone County, 78 M 62, 252 P 876 (1926), reversed on other grounds, 276 US 499, 72 L Ed 673, 48 S Ct 331 (1928); 82 M 380, 267 P 304 (1928).

Property of the United States:

Property of a state bank represented by bonds of the United States is exempt from taxation under the supreme law of the land, irrespective of the fact that it is not made so by the state constitution or statutes. E. Helena St. Bank v. Rogers, 73 M 210, 236 P 1090 (1925).

Property belonging to the United States is exempt from special assessments, as well as from ordinary taxes, even in the absence of such provisions relative thereto as those found in the constitution or state laws. Ford v. Great Falls, 46 M 292, 127 P 1004 (1912).

State and County Bonds: State and county bonds held in private ownership within the state are "property" within the meaning of that term as employed in the constitution and revenue laws of the state, and not being declared exempt, are taxable as such. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Property of School Districts — Assessments for Special Improvements: Assessments for special municipal improvements are not taxes; hence constitutional and statutory provisions exempting property from taxation are not applicable to such assessments. Under this rule the property of a school district, devoted exclusively to school purposes, in the absence of express constitutional or statutory exemption, is liable for assessments made for special municipal improvements. Kalispell v. School District, 45 M 221, 122 P 742 (1912). Compare with Ford v. Great Falls, 46 M 292, 127 P 1004 (1912).

Property Must Be Used for Charitable Purposes: The provisions of the constitution and of this section, making certain property exempt from taxation, do not extend to a charitable institution as an association or corporate body, but only to such property of the institution as is used exclusively for charitable purposes, and the mere intention of such institution to devote certain of its lands to the erection of buildings for charitable purposes does not change the rule. Mont. Catholic Missions v. Lewis & Clark County, 13 M 559, 35 P 2 (1893).

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

School District Not Exempt From Payment of Solid Waste Management District Assessments: Article VIII, sec. 5, Mont. Const., authorizes the Legislature to exempt state property from taxation, and this section exempts school district property from taxation. However, taxation does not generally include special assessments or user fees. The purpose of a solid waste management district assessment is to recoup the costs of providing infrastructure and services that directly and tangibly benefit affected properties, not to raise general revenue or fund other programs. Therefore, solid waste management district assessments are not considered taxes within the meaning of this section. School district properties are not exempt from paying reasonable solid waste management fees that do not exceed the cost of waste management services. 48 A.G. Op. 21 (2000). See also 46 A.G. Op. 7 (1995).

No Authority for Self-Governing City to Assess Fire Service Fees to State Property Within Fire Service Area: The city of Helena, a self-governing city, is precluded from assessing fire service fees to state property located in the city fire service area because the fees are a tax for services provided for the general public good, and thus prohibited by subsection (1)(a)(ii) of this section, rather than an assessment commensurate with a specific benefit conferred on the assessed property. 46 A.G. Op. 7 (1995).

Irrigation District Property: Irrigation district property that is not related to or used in irrigation work is not exempt from taxation under the general irrigation district exemptions in 15-6-201 and 85-7-2011. 41 A.G. Op. 17 (1985).

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

Law Review Articles

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

Collateral References

Real Property Tax Exemptions: Improving Information Management and Informing Policy Decisions, Performance Audit, Mont. Leg. Audit Div. (May 2023), https://leg.mt.gov/content/Committees/Administration/audit/2023-24/Meetings/March-2023/21P-06.pdf.

15-6-202. Freeport merchandise and business inventories exemption — definitions.

Compiler's Comments

2021 Amendment: Chapter 86 in (4)(c) after "department" substituted "no later than March 31 of each year" for "each calendar quarter". Amendment effective March 26, 2021.

2009 Amendment: Chapter 343 in definition of freeport merchandise in (c) at beginning after "person" deleted "or other group" and near middle after "merchandise" deleted "class"; in definition of business inventories in (a) at beginning of second sentence inserted exception clause and inserted (b) including farm implements and construction equipment held pursuant to a purchase incentive rental program; inserted definition of purchase incentive rental program; and made minor changes in style. Amendment effective April 24, 2009.

Retroactive Applicability: Section 5, Ch. 343, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008."

1995 Amendment: Chapter 99 at end of definition of business inventories, after "rented", deleted "or mobile homes held by a dealer or distributor as part of his stock in trade"; and made minor changes in style. Amendment effective March 9, 1995.

1983 Amendment: In (5), after ""Business inventories" includes goods" substituted "primarily intended for sale and not for lease" for "intended for sale or lease".

1981 Amendment: In (1), substituted "and business inventories are exempt" for "is exempt"; in (4), substituted "the freeport merchandise class" for "this class"; and added definition of business inventories.

Administrative Rules

ARM 42.21.116 Exempt intangible personal property deduction for commercial and industrial property.

Case Notes

Tax Exemption for Business Inventory While Taxing Livestock Not Violative of State or Federal Equal Protection Laws: The Supreme Court reversed a lower court decision that held that taxing livestock while exempting business inventories was unconstitutional in that the law denied certain individuals equal protection under the federal and state constitutions. The Supreme Court ruled that a middle tier scrutiny was not required; rather the proper test was a rational basis test to determine if there was a basis for treating inventory and livestock differently. Under the rational basis test, it was clear that the Legislature had acted rationally in applying different classifications, and historically the two properties had been treated differently. Mont. Stockgrowers Ass'n v. St., 238 M 113, 777 P2d 285, 46 St. Rep. 1132 (1989).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.) expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Attorney General's Opinions

Grain Stored in Farmer's Granaries: Grain stored in a farmer's granaries does not qualify for the business inventories exemption set forth in 15-6-202. Such grain is taxable as class six property under 15-6-136 (now repealed), but if it is held in the possession of the original producer for less than 7 months following harvest, it qualifies for the tax exemption provided in 15-6-207. 41 A.G. Op. 13 (1985).

Sugar Refinery's Piled Sugar Beets Exempt From Tax — Business Inventory: If the products of a sugar refinery qualify as business inventory under 15-6-202, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods". While not defined by the Legislature, the term "raw materials" is generally defined as the material or substance out of which other products or the final product is made. 40 A.G. Op. 82 (1984).

15-6-203. Veterans' exemptions — clubhouse — land — incompetent veterans' trusts.

Compiler's Comments

2017 Amendment: Chapter 249 in (1)(a) at beginning inserted "There is an exemption from taxation for" and at end substituted "owned, rented, leased, or used primarily" for "erected"; in (1)(a)(i) near beginning after "by" deleted "or belonging to" and at end substituted "and" for "that is used primarily"; in (1)(a)(ii) at end after "gain or profit" deleted "is exempt from taxation"; in (1)(c) substituted current language requiring savings to be realized by the society or organization for former text that read: "The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960"; and made minor changes in style. Amendment effective May 3, 2017.

Retroactive Applicability: Section 3, Ch. 249, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

2011 Amendment: Chapter 107 in (1)(a) at beginning substituted "clubhouse, building, or land" for "clubhouse or building" and at end after "rather than for gain or profit" deleted "together with the personal property necessarily used in the building"; in (1)(b) at beginning after "The" inserted "clubhouse or building"; inserted (1)(b)(i) concerning the application of the exemption to personal property; inserted (1)(c) providing that the exemption applies to land owned by the society or organization since January 1, 1960; and made minor changes in style. Amendment effective April 1, 2011.

Retroactive Applicability: Section 3, Ch. 107, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010."

1999 Amendment: Chapter 204 in (1) in first sentence after "is used" substituted "primarily" for "exclusively" and substituted "personal property" for "library and furniture" and inserted second sentence regarding application of tax exemption; and made minor changes in style. Amendment effective March 29, 1999.

Retroactive Applicability: Section 3, Ch. 204, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after December 31, 1998."

Administrative Rules

ARM 42.19.502 Exemptions involving an ownership test.

ARM 42.19.506 Exemptions involving a use test.

ARM 42.20.102 Applications for property tax exemptions.

ARM 42.20.102A Additional documentation requirements for property tax exemption applications.

Case Notes

Constitutionality:

The provisions of this section exempting property purchased with funds received from the United States as pensions or compensation are constitutional, being a valid exercise of legislative power. Henderson v. Missoula, 106 M 596, 79 P2d 547 (1938).

It was within the power of the Legislature to declare it the policy of the state, based upon an admissible construction of the federal statutes in that behalf, that title to funds received from the United States as pension, etc., after their delivery to the guardian should remain in the United States, and that the benefit of such statutes should extend to real property purchased with such funds. Henderson v. Missoula, 106 M 596, 79 P2d 547 (1938).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.) expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Collateral References

Real Property Tax Exemptions: Improving Information Management and Informing Policy Decisions, Performance Audit, Mont. Leg. Audit Div. (May 2023), https://leg.mt.gov/content/Committees/Administration/audit/2023-24/Meetings/March-2023/21P-06.pdf.

15-6-204. Money and credits exemption.

Compiler's Comments

2005 Amendment: Chapter 532 in (2) near beginning after "credits are" substituted "for the purposes of this section, all money" for "hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined" and at end after "offset" deleted "provided, however, that credits as herein defined shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana"; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

Evidence of Debt Secured by Mortgages: Chapter 64, L. 1929 (this section, 15-24-501 (now repealed), and 15-24-508 (now repealed)), in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon, does not violate the state or federal constitution. Bank of Miles City v. Custer County, 93 M 291, 19 P2d 885 (1933).

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. Subsection (1) of this section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Collateral References

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

15-6-205. State water conservation projects exempt.

Compiler's Comments

2005 Amendment: Chapter 532 made minor changes in style. Amendment effective October 1, 2005.

Collateral References

Real Property Tax Exemptions: Improving Information Management and Informing Policy Decisions, Performance Audit, Mont. Leg. Audit Div. (May 2023), https://leg.mt.gov/content/Committees/Administration/audit/2023-24/Meetings/March-2023/21P-06.pdf.

15-6-206. Irrigation and drainage facilities — when exempt.

Case Notes

Statute Unconstitutional: This section is unconstitutional since at the time of its enactment an exemption for agricultural irrigation equipment was not specifically provided for under Art. XII, sec. 2, 1889 Mont. Const. Passage of this statute was unconstitutional from its inception because the Legislature was without authority to give legal effect to the statute. The statute would have been constitutional if the Legislature had reenacted it under the 1972 Constitution. Bucher v. Powell County, 180 M 145, 589 P2d 660 (1979).

15-6-207. Agricultural producer exemptions — products — unused beet equipment — low-value buildings, implements, and machinery.

Compiler's Comments

2005 Amendment — Code Commissioner Correction: Chapter 532 inserted (3) exempting all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100 from taxation. Amendment effective October 1, 2005.

Chapter 532 also inserted a new (4) providing that all agricultural implements and equipment were exempt from taxation if the tax rate in 15-6-138 reached zero. However, Senate Bill No. 48, approved as Ch. 531, L. 2005, removed the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries. Thus, the amendment in Ch. 532 inserting a new subsection (4) contingent on the tax rate in 15-6-138 reaching zero was rendered void by Ch. 531, so pursuant to sec. 81, Ch. 130, L. 2005, the code commissioner did not codify the new subsection (4).

2003 Amendment: Chapter 577 inserted (1)(g) exempting biological control insects from taxation; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 285 at end of (1)(c) after "products" deleted "except livestock"; in (1)(d) substituted "all livestock and the unprocessed products of livestock" for "except as provided in subsection (1)(e), livestock that have not attained the age of 24 months as of February 1 or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)"; deleted former (1)(e) that read: "(e) swine that have not attained the age of 6 months as of January 1"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1)(d), at end, inserted "or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)"; and made minor changes in style.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1)(d) substituted "February" for "March"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: In (1)(a), after "unprocessed", substituted "agricultural products on the farm or in storage" for "perishable fruits and vegetables in farm storage"; in (1)(c), after "all", deleted "nonperishable" and after "livestock" deleted "held in possession of the original producer for less than 7 months following harvest"; and in (1)(d), after "months as of", deleted "The last day of any month if assessed on the average inventory basis or on" and after "March 1" deleted "if assessed as provided in 15-24-911(1)(a)".

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

1987 Amendment: Inserted (1)(b) exempting producer-held grain; in (1)(d), relating to livestock, changed reference to subsection (1)(d) to reference to subsection (1)(e) and changed "9 months" to "24 months"; in (1)(e), relating to swine, changed "3 months" to "6 months"; inserted (1)(f) relating to poultry; and inserted (1)(g) relating to bees. Amendment effective January 1, 1988.

1985 Amendments: Chapter 570 in (1)(c) at beginning inserted "except as provided in subsection (1)(d)", and after "livestock", deleted "defined as cattle, sheep, horses, or mules".

Chapter 627 exempted certain sugar beet equipment.

Administrative Rules

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.21.154 Annual valuation of personal property.

ARM 42.21.155 Categories for personal property — trended depreciation schedules — trend factor calculation.

Case Notes

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. This section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

Attorney General's Opinions

Grain Stored in Farmer's Granaries: Prior to exemption of producer-held grain in 1987, grain stored in a farmer's granaries was taxable as class six property under 15-6-136, but if it was held in the possession of the original producer for less than 7 months following harvest, it qualified for the tax exemption provided in this section. Such grain did not qualify for the business inventories exemption set forth in 15-6-202. 41 A.G. Op. 13 (1985).

15-6-208. Mineral exemptions — small coal or metal mines producer — travertine — bentonite.

Compiler's Comments

2005 Amendment: Chapter 559 inserted (4) related to bentonite. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 451 deleted former (3)(a) and (3)(b) that read: "(a) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(b) Production from horizontally completed wells, as defined in 15-23-601, is exempt from taxation for the first 18 months of production as provided in 15-23-612"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 inserted (3)(b) to provide a temporary tax exemption for production from horizontally completed wells; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

1993 Amendment: Chapter 89 inserted (4) exempting from property taxation the first 1,000 tons of travertine and building stone extracted in a tax year; and made minor changes in style.

Applicability: Section 2, Ch. 89, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

1987 Amendment: Inserted (3) relating to new production.

Effective Date — Applicability: Section 28, Ch. 655, L. 1987, provided: "This act is effective on passage and approval [approved April 13, 1987] and applies retroactively, within the meaning of 1-2-109, to taxable quarters beginning on or after April 1, 1987. The tax rate and filing method applicable to a well that qualifies as interim production under section 10 [15-23-601, now repealed] but which did not qualify as new production under 15-23-601 [now repealed] prior to the applicability date of this act does not change for tax periods prior to the applicability date."

1983 Amendment: In (1), increased amount of coal exempt from taxation from 20,000 tons to 50,000 tons.

Nonseverability: Section 3, Ch. 303, L. 1983, provided: "It is the intent of the Legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid, and the prior law as reflected in sections 15-6-208 and 15-35-103 prior to the passage of this act shall remain in full force and effect."

Case Notes

Strict Construction: Article XII, sec. 2, 1889 Mont. Const. (see Art. VIII, sec. 5, 1972 Mont. Const.), expressed the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions. Subsection (1) of this section authorizing exemptions from taxation was therefore to be construed strictly; nothing was to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under 15-6-101. Cruse v. Fischl, 55 M 258, 175 P 878 (1918).

15-6-209. Community services buildings exempt.

Compiler's Comments

1997 Amendment: Chapter 166 in (1), in introductory clause, substituted "3 acres" for "1 acre"; in (1)(a), at end, deleted "and does not sell food or beverages under license from the state of Montana"; in (1)(b)(i), after "activities", inserted "that are recognized in the state plan on aging adopted by the department of public health and human services"; in (1)(b)(ii), at end, deleted "or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of public health and human services"; inserted (3) allowing sale of food and beverages by an exempt community service organization; in (4), in two places, substituted "land" for "lot"; adjusted subsection references; and made minor changes in style. Amendment effective March 27, 1997.

Application for Exemption: Section 2, Ch. 166, L. 1997, provided: "To qualify for the exemption under 15-6-209 for tax year 1997, a community service organization that sells food and beverages under license with the state or that has 3 acres of land shall apply for the exemption on a form available from the department of revenue within 30 days of passage and approval of [this act]." Approved March 27, 1997.

Effective Date — Retroactive Applicability: Section 3, Ch. 166, L. 1997, provided: "[This act] is effective on passage and approval [approved March 27, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 546 in (1)(b), at end, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

1981 Amendment: Substituted "1981" for "1976" in subsection (2).

Administrative Rules

ARM 42.19.502 Exemptions involving ownership test.

ARM 42.19.506 Exemptions involving use test.

ARM 42.20.102 Applications for property tax exemptions.

ARM 42.20.102A Additional documentation requirements for property tax exemption applications.

15-6-215. Exemption for motion picture and television commercial property.

Compiler's Comments

2005 Amendment: Chapter 542 near end substituted "61-3-321(2)" for "61-3-560 and 61-3-561". Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, near end inserted "and registration fees under 61-3-560 and 61-3-561". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Preamble: The preamble attached to Ch. 525, L. 1989, provided: "WHEREAS, Montana has abundant scenery, resources, and accommodations that are uniquely suited to the filming of motion pictures and television commercials; and

WHEREAS, the motion picture industry and the television commercial filming industry are increasingly recognizing Montana's intrinsic beauty and character that enhance the products produced by both industries; and

WHEREAS, the State of Montana and her citizens welcome the filming industry to this beautiful state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to extend the state's inherent hospitality to these industries by exempting from taxation certain property used in the production of motion pictures and television commercials."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

15-6-217. Exemption for vehicle of certain health care professionals.

Compiler's Comments

2003 Amendment: Chapter 224 near end of first sentence after "chapter 3" deleted reference to chapter 5; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

2001 Amendment: Chapter 436 in introduction after "state" inserted "is exempt from the registration fees imposed in 15-24-301 if the motor vehicle" and at end substituted "located in an area that has been" for "located in a medically underserved area is exempt from taxation as provided in 15-24-301"; inserted (1) providing exemption if facility is located in area designated by secretary of federal department of health and human services as health professional shortage area; inserted (2) providing exemption if facility is located in area determined to have critical shortage of nurses; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 5, Ch. 246, L. 1999, provided that this section is effective July 1, 1999.

15-6-218. Intangible personal property exemption.

Compiler's Comments

2005 Amendment: Chapter 318 in (1) at beginning deleted exception clause; deleted former (3) that read: "(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter"; in (3) deleted former first sentence that read: "The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property", near middle inserted "of centrally assessed property", and at end deleted "according to the provisions in subsection (3)"; deleted former (5) that read: "(5) The department shall report intangible personal property annually to the revenue and transportation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001"; and made minor changes in style. Amendment effective April 21, 2005.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.22.105 Reporting requirements.

ARM 42.22.110 Deductions for intangible personal property.

Case Notes

Administrative Rule Invalid — Conflict With Statute: When an administrative rule restricts a broad statutory exemption such as the broad definition of goodwill in 15-6-218, the rule is invalid. The Department of Revenue may define goodwill only in a way that allows the taxpayer to propose alternative methodology or information related to valuing goodwill. Gold Creek Cellular of Mont. L.P. v. Dept. of Revenue, 2013 MT 273, 372 Mont. 71, 310 P.3d 533.

Use of Earnings-to-Price Ratios Upheld for Valuation of Centrally Assessed Property — Substantial Evidence Before STAB Upheld: The State Tax Appeal Board (STAB) (now Montana

Tax Appeal Board) upheld the method used by the Department of Revenue (DOR) to centrally assess PacifiCorp's property, a method based on earnings-to-price ratios. PacifiCorp challenged that method of valuation. The District Court reversed STAB because of an "admission" made by one of DOR's expert witnesses during a hearing that the witness was not familiar with the method of valuation used by DOR. The Supreme Court reversed, holding that, despite the "admission" of DOR's expert, there was substantial evidence in the record, in the form of testimony by other experts and publications, to support the method of valuation relied on by DOR and that evidence supported STAB's decision to tax PacifiCorp's property at 100% of value based on that method of valuation. The Supreme Court held that the District Court had erroneously substituted its judgment for that of STAB, when the applicable standard was whether there was substantial evidence in the record to support STAB's decision. PacifiCorp v. St., 2011 MT 93, 360 Mont. 259, 253 P.3d 847.

Collateral References

Study of Taxation of Centrally Assessed and Utility Property, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

15-6-219. Personal and other property exemptions.

Compiler's Comments

2021 Amendment: Chapter 483 inserted (1)(j) concerning the tax exemption for fiber optic or coaxial cable and conditions on and requirements for claiming the exemption; inserted (2) concerning termination of the exemption from taxation described in (1)(j); and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 7, Ch. 483, L. 2021, provided: "[This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act]." Effective July 1, 2021.

Preamble: The preamble attached to Ch. 483, L. 2021, provided: "WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements."

2019 Amendment: Chapter 230 inserted (9) regarding housetrailer, manufactured home, or mobile home receiving an exemption as provided in 15-6-242; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 4, Ch. 230, L. 2019, provided: "[This act] applies to property tax years beginning after December 31, 2019."

Termination Provision Repealed: Section 1, Ch. 444, L. 2017, repealed sec. 7, Ch. 407, L. 2015, which terminated subsection (8) of this section December 31, 2025. Effective October 1, 2017.

2015 Amendments — Composite Section: Chapter 374 in (4) after "bicycle" inserted "or a moped". Amendment effective October 1, 2015.

Chapter 407 inserted (8) regarding air and water pollution control and carbon capture equipment; and made minor changes in style. Amendment effective May 5, 2015, and terminates December 31, 2025.

Chapter 440 inserted (9) related to manufacture of ammunition components; and made minor changes in style. Amendment effective May 6, 2015, and terminates December 31, 2024.

Preamble: The preamble attached to Ch. 407, L. 2015, provided: "WHEREAS, Montana industries are required to install certain air and water pollution control and carbon capture equipment to comply with state and federal standards as a result of recent and anticipated regulatory action, including but not limited to:

(1) the Utility Mercury and Air Toxics Rule;
(2) the Regional Haze Rule;
(3) the Clean Power Plan Rule;
(4) the Nitrogen Oxide Primary National Ambient Air Quality Standards;
(5) the Sulfur Dioxide Primary National Ambient Air Quality Standards;
(6) the Cooling Water Intakes 316(b) Rule;
(7) the Particulate Matter 2.5 National Ambient Air Quality Standards;
(8) the Effluent Guidelines for Coal-Fired Electrical Generating Units;
(9) the Maximum Achievable Control Technology Standards for industrial boilers;
(10) the Numeric Nutrient Criteria;
(11) the Portland Cement Maximum Achievable Control Technology Standards;

(12) Total Maximum Daily Loads;

(13) National Pollutant Discharge Elimination System, including stormwater discharge; and

(14) Additional new or future regulatory actions requiring the control of air or water pollution.

WHEREAS, compliance with these regulations requires investments of hundreds of millions of dollars and ultimately impacts consumers; and

WHEREAS, technologies to comply with these regulations are often unproven or not commercially or economically available; and

WHEREAS, these regulations address important protections for public health; and

WHEREAS, many of these regulations require installation of pollution control technologies that decrease the efficiency of existing equipment at industrial facilities; and

WHEREAS, reduced tax rates for pollution control equipment will improve public health by providing an incentive for early compliance when possible and ultimately making regulatory compliance more affordable; and

WHEREAS, incentivizing advancements and investments in carbon sequestration is important to the future of Montana's economy and consistent with the goals in Montana's state energy policy, including expanded technological innovation through enhanced oil recovery; and

WHEREAS, the Legislature of the State of Montana finds that it is appropriate to exempt certain air and water pollution control and carbon capture equipment from property taxation and reduce property taxes for carbon transportation and sequestration equipment."

Transition After Termination — Carryover of Abatement: Section 4, Ch. 407, L. 2015, provided: "(1) (a) An exemption or property tax rate reduction that a taxpayer receives under the provisions of law in effect in 15-6-135, 15-6-158, or 15-6-219, prior to the termination date in [section 7]:

(i) may be carried forward for the remaining number of years left under the certification; and

(ii) is not impaired by [this act].

(b) A taxpayer is entitled to the exemption or property tax rate reduction for the period of time established in the section at the time the exemption or property tax rate reduction was first allowed.

(2) This section applies to all exemptions and property tax rate reductions that are removed or repealed by [section 7], including 15-6-135 for pollution control equipment and 15-6-158 for carbon sequestration."

Applicability — Retroactive Applicability: Section 6, Ch. 407, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to air and water pollution control and carbon capture equipment and carbon sequestration equipment placed in service after January 1, 2014."

Section 15, Ch. 440, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Severability: Section 13, Ch. 440, L. 2015, was a severability clause.

2009 Amendment: Chapter 295 in (5)(c) after "weekly" inserted "semimonthly, or monthly"; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 2, Ch. 295, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2005 Enactment — Coordination — Code Commissioner Correction: Section 19, Ch. 532, L. 2005, a coordination section, provided that if Senate Bill No. 48 was passed and approved and it removed the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries, then 15-6-219, as enacted in sec. 6, Ch. 532, L. 2005, was to be amended as follows: deleted former (8) that read: "(8) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(d) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(e) all goods and equipment that are intended for rent or lease;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;
(j) radio and television broadcasting and transmitting equipment;
(k) cable television systems;
(l) coal and ore haulers; and
(m) theater projectors and sound equipment."

Senate Bill No. 48, including removal of the class eight property tax provision that would have phased out the taxation of class eight property, was approved as Ch. 531, L. 2005, so sec. 6 of Senate Bill No. 68, enacting 15-6-219, was codified as directed in sec. 19, Ch. 532, L. 2005.

Pursuant to sec. 81, Ch. 130, L. 2005, in (4) the code commissioner substituted "61-8-102" for "61-1-123".

Effective Date: This section is effective October 1, 2005.

15-6-220. Agricultural processing facilities exemption.

Compiler's Comments

2021 Amendment: Chapter 430 in (1)(a) at end substituted "an oilseed processing facility" for "a canola seed oil processing facility"; deleted former (2) concerning definition of canola seed oil processing facility that read: "(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity"; in (6) inserted definition of oilseed; in (7) inserted definition of oilseed processing facility; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 2, Ch. 430, L. 2021, provided: "[This act] applies to property tax years beginning after December 31, 2021."

2019 Amendment: Chapter 290 inserted (1)(f) exempting machinery and equipment used in a hemp processing facility from property taxation; inserted definition of hemp processing facility; and made minor changes in style. Amendment effective October 1, 2019, and terminates December 31, 2029.

Applicability: Section 2, Ch. 290, L. 2019, provided: "[This act] applies to machinery and equipment placed into service after December 31, 2019."

2017 Amendment: Chapter 383 inserted definition of pulse crops and pulse processing facility; inserted (1)(e) concerning machinery and equipment used in pulse processing facility; and made minor changes in style. Amendment effective October 1, 2017, and terminates December 31, 2027.

Applicability: Section 2, Ch. 383, L. 2017, provided: "[This act] applies to machinery and equipment placed into service after December 31, 2017."

2005 Amendment: Chapter 532 inserted (1)(c) exempting personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy; inserted (1)(d) exempting manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; inserted definitions of industrial dairy and industrial milk processor; and made minor changes in style. Amendment effective October 1, 2005.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Effective Date: Section 31(3), Ch. 285, L. 1999, provided that this section is effective January 1, 2003.

15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants.

Compiler's Comments

2021 Amendment: Chapter 251 inserted (1)(b) concerning property is owned and operated by a nonprofit corporation and constructed using a home investment partnerships program grant; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 2, Ch. 251, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

2019 Amendment: Chapter 446 in (1)(a) in two places and in (1)(e) after "general partner" inserted "or limited liability company member"; in (1)(a) substituted "limited liability company" for "limited liability corporation" and near middle substituted "incorporated or admitted under a certificate of authority" for "incorporated and admitted; in (1)(b) at end deleted "which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located"; in (1)(d) after "underserved population" deleted "and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42"; in (2) substituted "Prior to applying to the department for the tax exemption provided for in this section" for "Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b)" and at end deleted "for consideration in granting the allocation of tax credits"; inserted (3) regarding satisfying nonprofit partner or LLC member requirement; deleted former (3) that read: "(3) For purposes of this section the following definitions apply:

(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2)"; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 2, Ch. 446, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2009 Amendment: Chapter 2 in (1)(a) near middle after "housing authority" substituted "as defined in" for "created under"; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 3, Ch. 452, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1998."

Effective Date: Section 4, Ch. 452, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 22, 1999.

Administrative Rules

ARM 42.20.102 Applications for property tax exemptions.

ARM 42.20.102A Additional documentation requirements for property tax exemption applications.

15-6-223. Timber exemption.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

15-6-224. Nonfossil energy generation.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Administrative Rules

ARM 42.4.104 Energy generating systems.

Attorney General's Opinions

"Nonresidential Structure" to Refer to Entire System: The exemption given to each "nonresidential structure" formerly in 15-6-201 referred to each energy generating system, not to its individual parts. The reference to nonfossil forms of energy generation is defined in 15-32-102 to be a system for capturing or converting energy into usable sources. The legislative intent behind 15-6-201 indicated the intention of encouraging, through tax incentives, the development of alternative energy systems. Whether a single structure contains all the components that generate energy, thereby making it a system, must be made on a case-by-case basis. 40 A.G. Op. 6 (1983).

15-6-225. Small electrical generation equipment exemption.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendments — Composite Section: Chapter 405 inserted (1)(b) requiring a generation facility to be powered by alternative renewable energy source to qualify for exemption; inserted (2)(a) defining alternative renewable energy source; deleted former (2)(b) that read: "(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 524 in (1) at beginning deleted "Except as provided in subsection (1)(b)" and after "qualifying" deleted "generation facilities built and operated after July 1, 2001, are exempt from taxation"; and made minor changes in style. Amendment effective April 26, 2003.

Retroactive Applicability: Section 7, Ch. 524, L. 2003, provided: "[Sections 1 and 4] [amendments to 15-6-225 and 15-32-402 (now repealed)] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

Effective Date: Section 29(1), Ch. 591, L. 2001, provided that this section is effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124 (now repealed), 15-32-102, 15-32-109 (now repealed), 15-32-115 (now repealed), 15-32-201 (now repealed), and 15-32-402 (now repealed)] apply to tax years beginning after December 31, 2001."

Administrative Rules

ARM 42.4.104 Energy generating systems.

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-6-227. Property on railroad land leased by nonprofit organizations.

Compiler's Comments

2015 Amendment: Chapter 104 in (1) near middle substituted "69-14-102" for "69-14-101". Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

Effective Date: Section 3, Ch. 370, L. 2003, provided that this section is effective on passage and approval. Approved April 16, 2003.

Retroactive Applicability: Section 4, Ch. 370, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

15-6-228. Property subject to registration fee.

Compiler's Comments

2005 Enactment — Coordination: Section 245, Ch. 542, L. 2005, a coordination section, provided that if both Senate Bill No. 68, approved as Ch. 532, L. 2005, and Senate Bill No. 285 were passed and approved, then 15-6-228, as enacted in sec. 4, Ch. 532, L. 2005, was to be amended as follows: in introductory clause substituted "registration fee" for "fee in lieu of taxes"; in (4) and (8) substituted references to 61-1-101 for references to 61-1-111, 61-1-112, 61-1-114, 61-1-131, and 61-1-139; and made minor changes in style.

Senate Bill No. 285 was approved as Ch. 542, L. 2005, so the language in sec. 245, Ch. 542, L. 2005, was substituted for sec. 4 of Senate Bill No. 68, enacting 15-6-228, as directed in the coordination instruction.

Effective Date: This section is effective October 1, 2005.

15-6-229. Exemption for land adjacent to transmission line right-of-way easement — application — limitations.

Compiler's Comments

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

Effective Date: Section 15, Ch. 2, Sp. L. May 2007, provided that this section is effective May 25, 2007.

15-6-230. Temporary exemption for certain tribal property — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 423 in (1) at beginning substituted "Subject to subsections (2) and (3)" for "Subject to subsection (2)"; inserted (2) concerning department notification of county prior to and after approval of an exemption; in (4) inserted last sentence concerning annual certification to county; inserted (6)(a) concerning recapture of property taxes when a trust application is denied or the 5-year exemption period expires and providing taxable value to the county treasurer; inserted (6)(b) concerning appraisal of property granted an exemption under this section and use of appraisal for recapture of property taxes; and made minor changes in style. Amendment effective May 7, 2021.

Applicability: Section 4, Ch. 423, L. 2021, provided: "[This act] applies to applications for exemption received on or after [the effective date of this act]." Effective May 7, 2021.

Effective Date: Section 6, Ch. 288, L. 2011, provided that this section is effective January 1, 2012.

Existing Tax Liens Not Extinguished: Section 3, Ch. 288, L. 2011, provided: "[This act] does not extinguish existing property taxes, including but not limited to taxes due and owing, delinquent taxes, tax liens, or tax deeds on property." Effective January 1, 2012.

Administrative Rules

ARM 42.20.118 Tribal government's application for a temporary property tax exemption.

Law Review Articles

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

15-6-234. Duty to report change in use.

Compiler's Comments

Effective Date: Section 7, Ch. 372, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 30, 2015.

15-6-235. New property tax exemptions — department notification to local governments.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Administrative Rules

ARM 42.20.102 Applications for property tax exemptions.

ARM 42.20.102A Additional documentation requirements for property tax exemption applications.

15-6-240. Intangible land value property exemption — application procedure.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 111, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 2, Ch. 111, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

Effective Date: This section is effective October 1, 2017.

Applicability: Section 6, Ch. 441, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Severability: Section 5, Ch. 441, L. 2017, was a severability clause.

Administrative Rules

ARM 42.19.407 Intangible land value property tax assistance program for residential property.

Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-6-241. Mobile home exemption.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

Applicability: Section 3, Ch. 258, L. 2019, provided: "[This act] applies to property tax years beginning after December 31, 2019."

Administrative Rules

ARM 42.20.174 Mobile home exemption ownership determination.

15-6-242. Exemption — abandoned housetrailer, manufactured home, or mobile home.

Compiler's Comments

Applicability: Section 4, Ch. 230, L. 2019, provided: "[This act] applies to property tax years beginning after December 31, 2019."

Effective Date: This section is effective October 1, 2019.

15-6-243. Fiber optic or coaxial cable abatement — review and comment by local taxing jurisdictions.

Compiler's Comments

Effective Date: Section 5, Ch. 483, L. 2021, provided: "[This act] is effective July 1, 2021."

Applicability: Section 7, Ch. 483, L. 2021, provided: "[This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act]." Effective July 1, 2021.

Preamble: The preamble attached to Ch. 483, L. 2021, provided: "WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements."

Part 3
Property Tax Assistance

Part Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-6-301. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 583, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 583, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 510 in definition of PCE after "implicit price deflator" inserted "(price index)" and after "as published" substituted "in the national income and product accounts" for "quarterly in the survey of current business"; in definition of PCE inflation factor after "tax year means the PCE" substituted "price index value for the first quarter" for "for April" and after "divided by the PCE" substituted "price index value for the first quarter of 2015" for "for April 2015". Amendment effective May 14, 2021.

Retroactive Applicability: Section 5, Ch. 510, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2020."

2017 Amendments — Composite Section: Chapter 7 in (6)(b) substituted "15-6-311" for "15-6-305 [15-6-311]". Amendment effective October 1, 2017.

Chapter 272 in definition of primary residence in (b) substituted "when the taxpayer's combined residence in the dwellings is at least 7 months of the tax year" for "when the taxpayer resides in one dwelling for less than 7 months during the tax year and another dwelling for less than 7 months of the same tax year, but lives in the dwellings for more than 7 months of the tax year"; in definition of qualifying income in (b) substituted "15-6-311" for "15-6-305 [15-6-311]"; inserted definition of qualifying property; and made minor changes in style. Amendment effective May 3, 2017.

Chapter 275 in (6)(b) substituted "15-6-311" for "15-6-305 [15-6-311]". Amendment effective October 1, 2017.

Effective Date: Section 33, Ch. 361, L. 2015, provided that this section is effective on passage and approval. Approved April 29, 2015.

Code Commissioner Correction: The code commissioner inserted the bracketed reference to 15-6-311 in the definition of qualifying income to reflect an amendment that was adopted by the House Taxation Committee on April 14, 2015. The amendment that was adopted by the House Taxation Committee referenced section 12, which corresponds to 15-6-311. When section 12 was renumbered section 13 during the legislative process, the section reference, by apparent oversight, was not changed to section 13.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Administrative Rules

ARM 42.19.401 Property tax assistance program.

ARM 42.19.402 Inflation adjustment for property tax assistance program.

ARM 42.19.405 Definitions.

ARM 42.19.407 Intangible land value property tax assistance program for residential property.

15-6-302. Property tax assistance — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 672, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 2, Ch. 672, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

2017 Amendments — Composite Section: Chapter 7 deleted former (5)(c) that read: "(c) Applicants and participants in the property tax assistance program provided for in [former] 15-6-134(1)(c) and the disabled or deceased veterans program provided for in [former] 15-6-211 as those sections existed on December 31, 2014, must be included in the annual verification process and are not required to submit a new application"; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 275 in former (5)(c) in two places deleted brackets around "former" (rendered void by Ch. 7). Amendment effective October 1, 2017.

2015 Code Commissioner Correction: The code commissioner in (5)(c) in two places inserted "[former]" for clarity.

Effective Date: Section 33, Ch. 361, L. 2015, provided that this section is effective on passage and approval. Approved April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Administrative Rules

ARM 42.19.401 Property tax assistance program.

15-6-305. Property tax assistance program — fixed or limited income — inflation adjustments.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 583, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 583, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 510 in (3) inserted new final sentence regarding decreases in qualifying income levels. Amendment effective May 14, 2021.

Retroactive Applicability: Section 5, Ch. 510, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2020."

2017 Amendment: Chapter 7 in (2) substituted "15-6-134" for "15-6-134(2)". Amendment effective October 1, 2017.

Effective Date: Section 33, Ch. 361, L. 2015, provided that this section is effective on passage and approval. Approved April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Administrative Rules

ARM 42.19.401 Property tax assistance program.

ARM 42.19.402 Inflation adjustment for property tax assistance program.

ARM 42.19.405 Definitions.

Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-6-311. Disabled veteran program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 583, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 583, L. 2023, provided: "[This act] applies to property tax years beginning after December 31, 2023."

2021 Amendment: Chapter 510 in (5) inserted new final sentence regarding decreases in qualifying income levels. Amendment effective May 14, 2021.

Retroactive Applicability: Section 5, Ch. 510, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2020."

2017 Amendments — Composite Section: Chapter 7 in (1) substituted "15-6-302" for "15-6-305 [15-6-302]". Amendment effective October 1, 2017.

Chapter 275 in (1) substituted "15-6-302" for "15-6-305 [15-6-302]". Amendment effective October 1, 2017.

Effective Date: Section 33, Ch. 361, L. 2015, provided that this section is effective on passage and approval. Approved April 29, 2015.

Code Commissioner Correction: As enacted in Ch. 361, L. 2015, a potential erroneous reference was made in (1) to section 12, which corresponds to 15-6-305 and the property tax assistance program for limited or fixed incomes. The correct reference appears to be section 11, which corresponds to 15-6-302 and relates to the criteria for meeting program eligibility requirements. The code commissioner inserted the bracketed reference to 15-6-302 to indicate this error.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Administrative Rules

ARM 42.19.405 Definitions.

ARM 42.20.102 Applications for property tax exemptions.

Attorney General's Opinions

Qualifications for Exemption: The property tax exemption provided by section 15-6-211 (now repealed) was a purely state-granted right and was not required by federal statute. A surviving spouse's entitlement to the property tax exemption under former section 15-6-211terminated upon remarriage, was not reinstated upon conclusion of the second marriage, and applied only to the residence as to which the veteran was granted the exemption immediately prior to death. A condition of a surviving spouse's entitlement was a determination that the veteran was 100% disabled due to a service-connected disability prior to death and was otherwise eligible for the exemption. 41 A.G. Op. 93 (1986).

Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-6-312. Time period for property tax assistance.

Compiler's Comments

Effective Date: Section 4, Ch. 272, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 3, 2017.

CHAPTER 7
APPRAISAL

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Law Review Articles

A Historical Perspective on Montana Property Tax: 25 Years of Statewide Appraisal and Appeal Practice, Powell, 70 Mont. L. Rev. 21 (2009).

Chapter Collateral References

Agricultural Land Taxation in Montana, 1984 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

Part 1
General Methods

15-7-101. Classification and appraisal — duties of department of revenue.

Compiler's Comments

2011 Amendment: Chapter 356 inserted (3) requiring department to establish combined appraised value; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

Severability: Section 2, Ch. 353, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications."

Administrative Rules

Title 42, chapter 20, ARM Real property.

ARM 42.20.101 Assessment of city and town lots and improvements.

Case Notes

Status of Property for Taxation Purposes Not Relevant to Determination of Its Status Under Property Law: The method by which property is assessed for purposes of taxation has no bearing on whether the structure is real or personal property. Pac. Metal Co. v. NW. Bank of Helena, 205 M 323, 667 P2d 958, 40 St. Rep. 1301 (1983).

Jurisdiction of District Court to Enjoin Revision: The District Court acted beyond its jurisdiction by enjoining Board of Equalization (duty now performed by Department of Revenue) from revising, grading, and valuation of nonirrigated farmland pursuant to this section (prior to amendment). State ex rel. Lord v. District Court, 154 M 269, 463 P2d 323 (1969).

Injunction Against Valuations: Taxpayers were not entitled to an injunction under 15-1-405 against County Assessor and County Commissioners to prohibit use of valuations furnished by reclassification office in making up 1965 tax assessment roll, when there was no showing of irreparable injury and the law could furnish all relief to which complainants were entitled. State ex rel. Keast v. Krieg, 145 M 521, 402 P2d 405 (1965).

Hearings on Value Classification: The State Board of Equalization (duty now performed by Department of Revenue), acting under sections 429.7 through 429.13, R.C.M. 1947 (now this section, 15-8-112, and 15-7-102 through 15-7-104, 15-7-104 now repealed), and pursuant to section 84-710, R.C.M. 1947 (now repealed), held "show cause hearings" to afford opportunity to protest Board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses or hear evidence, and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. St. Bd. of Equalization v. Kovich, 142 M 201, 383 P2d 818 (1963).

Jurisdiction of District Court: District Court had jurisdiction of action by taxpayers against State and County Boards of Equalization (duties now performed by Department of Revenue) when the amended complaint sufficiently alleged that the appraisal leading to an assessment was being done contrary to this act. State ex rel. Fulton v. District Court, 140 M 166, 369 P2d 416 (1962).

Predecessor Act Unconstitutional: A predecessor to this act, Ch. 198, L. 1955, which purported to tax one class of property only and excluded and exempted all other classes of property, including personal property, violated Art. XII, sec. 2, 1889 Mont. Const. (but see Art. VIII, sec. 5, 1972 Mont. Const.). Schladweiler v. St. Bd. of Equalization, 131 M 13, 306 P2d 673 (1957), reaffirming Stoner v. Timmons, 59 M 158, 196 P 519 (1921).

15-7-102. Notice of classification, market value, and taxable value to owners — appeals.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 424, L. 2023, in (3)(a)(i) near middle inserted "and centrally assessed property described in 15-23-101"; inserted (3)(a)(iv) in temporary version and (3)(a)(iii) in version effective January 1, 2025, regarding centrally assessed property objection deadline; inserted (3)(a)(v)(A) in temporary version and (3)(a)(iv)(A) in version effective January 1, 2025, regarding objection to valuation for centrally assessed property being limited to once each valuation cycle; inserted (3)(a)(v)(B) in temporary version and (3)(a)(iv)(B) in version effective January 1, 2025, regarding exhaustion of right to object and consideration of extenuating circumstances; in (6) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 2023.

Section 2, Ch. 638, L. 2023, in (3)(a)(i) near beginning of first sentence inserted "class ten property described in 15-6-143"; deleted former (3)(a)(iii) (see sec. 2, Ch. 638, L. 2023, for former text); and made minor changes in style. Amendment effective January 1, 2025.

Section 6, Ch. 691, L. 2023, in (6) near middle of third sentence inserted "negative property features that differentiate the subject property from the department's comparable sales"; and made minor changes in style. Amendment effective May 19, 2023.

Transition: Section 10, Ch. 424, L. 2023, provided: "There is a transition year resulting from the change from an annual valuation cycle to a 2-year valuation cycle for certain centrally assessed property. For the property provided for in 15-23-101(2)(b), the tax year 2023 values must be used for tax year 2024, with adjustment for any acquisitions or dispositions of property occurring between January 1, 2023, and December 31, 2023."

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 104 in (3)(c) after references to the objector inserted references to a representative of the objector; inserted (3)(c)(iii) regarding required documentation if the cost approach was used by the department to value residential property; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 142 in (6) in three places substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Chapter 265 inserted (1)(b)(iii) concerning the market value for the prior reappraisal cycle; inserted (1)(b)(iv) concerning an explanation for the increase in valuation if the market value has increased by more than 10%; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2019 Amendment: Chapter 444 in (1)(a) after "A notice must be mailed" inserted "or, with property owner consent, provided electronically"; in (1)(b) after "informational" inserted "and informal classification and appraisal review"; inserted (1)(b)(iv) regarding an option to request an informal classification and appraisal review; in (3)(a) at end" inserted "or by checking a box on the notice and returning it to the department in a manner prescribed by the department"; in (3)(a)(ii) in two places, in (3)(a)(iii) in two places, and in (4)(a) inserted "or by checking a box on the notice"; in (5) after "written objection" inserted "or objection made by checking a box on the notice and supplemental information provided by a taxpayer that elects to check a box on the notice"; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 2, Ch. 444, L. 2019, provided: "[This act] applies to property tax years beginning after December 31, 2019."

2017 Amendments — Composite Section: Chapter 7 in (3)(e) near beginning of third sentence substituted "department" for "county tax appeal board [department]". Amendment effective October 1, 2017.

Chapter 20 in (2)(a) near beginning substituted "classification and appraisal" for "assessment"; in (3)(a) near middle substituted "informal classification and appraisal" for "assessment"; in

(3)(a)(ii) in second sentence inserted "in writing", substituted "classification and appraisal" for "assessment", and after "2-year" substituted "valuation" for "appraisal", in third sentence substituted "An objection" for "Any reduction in value resulting from an objection", substituted "classification and appraisal" for "assessment", and after "2-year" substituted "valuation" for "reappraisal", and inserted last sentence regarding application of an objection to second year of a valuation cycle; in (3)(a)(iii) in second sentence inserted "in writing" and substituted "classification and appraisal" for "assessment", in third sentence substituted "An objection" for "Any reduction in value resulting from an objection" and substituted "classification and appraisal" for "assessment", and inserted last sentence regarding application of an objection to a subsequent year of a valuation cycle; in (3)(e) in third sentence substituted "department" for "county tax appeal board [department]", substituted "completed" for "conducted", and after "valuation date" inserted "pursuant to 15-8-201"; and made minor changes in style. Amendment effective February 17, 2017.

Chapter 275 in (3)(e) in third sentence substituted "The department shall" for "The county tax appeal board [department] shall". Amendment effective October 1, 2017.

Chapter 441 in (1)(b)(i) inserted "the intangible land value assistance program provided for in 15-6-240". Amendment effective October 1, 2017.

Applicability: Section 6, Ch. 441, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Severability: Section 5, Ch. 441, L. 2017, was a severability clause.

2015 Amendments — Composite Section — Code Commissioner Correction: Chapter 336 in (3)(b) deleted former first sentence that read: "For properties valued using sales price or the capitalization of net income method as an indication of value, the form must include a provision that the objector agrees to confidentiality requirements for receipt of comparable sales data from information received from realty transfer certificates under 15-7-308"; deleted former (3)(b)(i) that read: "(i) data from comparable sales used by the department to value the property"; inserted (3)(c) regarding providing sales data at request of objector; and made minor changes in style. Amendment effective April 28, 2015.

Chapter 361 in (1)(a) in first sentence near beginning inserted "or provide electronically", near middle substituted "notice that includes the land classification, market value, and taxable value of the land and improvements owned" for "notice of the classification of the land owned", and at end deleted "and the appraisal of the improvements on the land" and in second sentence at beginning inserted "A notice must be mailed to the owner"; in (1)(a)(iii) at beginning deleted "except as provided in subsection (1)(b)"; deleted former (1)(b) that read: "(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate"; in (1)(b)(i) near middle substituted "property tax assistance programs provided for in Title 15, chapter 6, part 3" for "property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211"; in (1)(c) near middle substituted "sales comparison approach" for "comparable sales method" and substituted "income approach" for "income method"; in (2)(a) near middle substituted "mail or provide electronically the notice in written or electronic form" for "mail the notice of classification and appraisal on a standardized form"; in (2)(c) in first sentence near beginning substituted "mail or provide electronically the notice to a new owner" for "mail the notice of classification and appraisal to a new owner", near middle inserted "realty", and at end inserted "or provided electronically" and at end of second sentence after "mailing" inserted provision regarding information available electronically; in (3)(a) near end substituted "on written or electronic forms" for "in writing to the department on forms"; in (3)(a)(i) near end substituted "30 days from the date on the notice" for "30 days after receiving the notice of classification and appraisal from the department"; in (3)(a)(ii) in first sentence near middle after "15-6-134" deleted "and class ten property described in 15-6-143" and near end substituted "made only once" for "made at any time but only once" and inserted second and third sentences regarding 30-day objection timeframe; inserted (3)(a)(iii) regarding 30-day objection timeframe for class ten property; in (3)(b) in first sentence near beginning substituted "the sales comparison approach or the income approach" for "sales price or the capitalization of net income method", near middle substituted "allows the objector to agree" for "the objector agrees" (amendment in first sentence rendered void by Ch. 336), and in second sentence substituted provision regarding an objection that relates to residential or commercial property for "Within 4 weeks of submitting an objection, if the objection relates to residential and commercial property, the department shall provide the objector by posted mail or e-mail, unless the objector waives receiving the information"; in (3)(d) near beginning substituted "income approach" for "capitalization of net income method"; in (3)(e) near middle of second sentence after "property" deleted "independent appraisals of the property" and inserted third and fourth sentences regarding independent appraisals provided by the taxpayer; in (3)(f) at end of first sentence inserted "by mail or electronically" and near middle of second sentence inserted "or data available for the property"; in (4)(a) substituted "objection on written or electronic forms provided by the department" for "objection in writing"; in (4)(b) substituted "provided to the objector by mail or electronically its stated reason" for "stated its reason"; in (6) substituted "pursuant to 15-15-102, must be filed within 30 days from the date on the notice of the department's determination" for "must be filed within 30 days after notice of the department's determination is mailed to the taxpayer"; and made minor changes in style. Amendment effective April 29, 2015.

In (3)(e) near beginning of second sentence the code commissioner inserted the bracketed reference to department to correct an apparent error.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2011 Amendments — Composite Section: Chapter 356 inserted (1)(d) requiring notice from department to contain combined appraised value; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 399 in (3)(a) in second sentence before "within 30 days" inserted language relating to property other than class three, class four, and class ten property and inserted third sentence relating to time for submitting objection for class three, class four, and class ten property; inserted (3)(b) and (3)(c) relating to properties valued using sales price or capitalization of net income method; in (3)(e) inserted second sentence restricting increase in appraised value; and made minor changes in style. Amendment effective July 1, 2012.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

2009 Amendment: Chapter 483 inserted (1)(c)(i) relating to notice of property tax assistance programs; and made minor changes in style. Amendment effective May 10, 2009.

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2005 Amendments — Composite Section: Chapter 532 in (1)(b) near end after "under" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)". Amendment effective October 1, 2005.

Chapter 584 in (1)(b) near end after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2003 Amendment: Chapter 114 in (1)(b) near end substituted "exemptions under 15-6-201(1)(z) and (1)(aa)" for "exemption under 15-6-201". Amendment effective October 1, 2003.

2001 Amendment: Chapter 444 in (1)(a) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 56 in second sentence in (2)(c) substituted "The department shall notify the county tax appeal board of the date of the mailing" for "The date of the mailing is the date reported to the county tax appeal board pursuant to 15-15-101." Amendment effective October 1, 1999.

Chapter 584 in (1)(b) before "incremental" inserted "annual" and after "reappraisal" inserted "under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 414 in (2)(a), at beginning, inserted exception clause; inserted (2)(c) concerning mailing of notices to new owner under contract for deed; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 463 at beginning of (1)(a)(iii) inserted exception clause; inserted (1)(b) concerning notice if valuation change is due to phasing in of reappraisal; deleted former (1)(c)(ii) and (1)(c)(iii) that read: "(ii) the amount of the prior year's taxes resulting from levied mills;

(iii) an estimate of the current year's taxes based on the prior year's mills"; in (1)(d) substituted reference to subsection (1)(c) for reference to subsection (1)(b); and made minor changes in style. Amendment effective April 30, 1997.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1995 Amendments: Chapter 30 in first sentence of (3) increased from 15 to 30 the number of days within which a request for an assessment review must be submitted after receipt of a notice of classification and appraisal; and in second sentence of (6) increased from 15 to 30 the number of days within which an appeal to the county tax appeal board must be filed. Amendment effective February 6, 1995.

Chapter 574 inserted (1)(b) providing specific items required to be included in notice for taxpayer's informational purposes; inserted (1)(c) providing that misinformation in informational notice does not affect notice validity and may not be used to challenge notice legality; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "department shall", deleted "through its agent as specified in subsection (2)"; in (2)(a), near beginning, substituted "department" for "county assessor"; in (4) and (4)(b), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendments: Chapter 227 in (1), near beginning, substituted "owner or purchaser" for "owner and purchaser"; in (3), in first sentence, substituted "request and assessment review by submitting an objection in writing to the department" for "submit his objection in writing to the department's agent" and inserted provision that the submission be on forms provided by the Department within 15 days after receipt of the notice of classification and appraisal, inserted second sentence providing that the review be informal and is not subject to contested case procedure, at beginning of third sentence substituted "As a part of the review" for "In an objection to the appraisal of the property" and near end, after "taxpayer", substituted "in support of the taxpayer's opinion as to" for "as evidence of", in fourth sentence, after "place of", substituted "the review" for "hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing", and near beginning of fifth sentence substituted "review" for "hearing"; in (4), near beginning, substituted "review" for "hearing"; in (5), at beginning of last sentence, substituted "The department" for "Each county appraiser"; in (6), in first sentence after "department", inserted "after the review provided for in subsection (3)" and before "appeal" inserted "first" and substituted second sentence providing that appeal to county tax appeal board must be filed within 15 days after notice is mailed to the taxpayer for "The property owner may appeal the base valuation and the classification determination"; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 594 inserted (2)(b) requiring that a notice must advise the taxpayer that in order to be eligible for a refund, taxes must be paid under protest; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1991 Amendment: (Temporary version) Inserted (2)(b) providing what a notice must contain if property valuation increases; in (3), after "appraisal", inserted "as it reflects the market value of the property as determined by the department" and inserted second sentence concerning what may be considered as evidence in an objection to an appraisal; in (6)(a), near middle of second sentence after "base", deleted "year", deleted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111", and inserted last three sentences concerning what the Tax Appeal Board may consider as evidence, the Department's adjustment of valuation, and percentage adjustment based upon the sales assessment ratio study; inserted (6)(b) providing time for filing a declaratory judgment action; inserted (6)(c) concerning consolidation of actions; inserted (6)(d) prohibiting restraining order or injunction and providing for disposition of protested tax; and made minor change in style. Amendment effective April 27, 1991.

(Version effective January 1, 1994, but the effective date was changed to January 1, 1993, by sec. 2 and 3, Ch. 13, Sp. L. July 1992) In (3), in first sentence after "appraisal", inserted "as it reflects the market value of the property as determined by the department" and inserted second sentence concerning what may be considered as evidence in an objection to an appraisal; in (6), in second sentence after "base", deleted "year", deleted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111", and inserted last two sentences concerning what the Tax Appeal Board may consider as evidence and providing for Department adjustment of base value; deleted (7) that read: "(7) The percentage adjustments, stratum, and area designations must be adopted by administrative rule. An annual hearing must be held to accept testimony on the percentage adjustments, stratum, and area designations. The department shall present its findings and the proposed rules to the revenue oversight committee"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 13(2), Ch. 680, L. 1991, provided that this section (version effective January 1, 1994, now effective January 1, 1993, pursuant to sec. 2 and 3, Ch. 13, Sp. L. July 1992) applies to all taxable years beginning after December 31, 1993. The applicability date was changed to taxable years beginning after December 31, 1992, by sec. 1, Ch. 13, Sp. L. July 1992.

Termination Date: Section 14, Ch. 680, L. 1991, provided that the amendments to this section made in sec. 1, Ch. 680, L. 1991, terminate December 31, 1993. The termination date was changed to December 31, 1992, by sec. 2, Ch. 13, Sp. L. July 1992. These amendments are reflected in the temporary version and the version effective July 1, 1993. The version effective July 1, 1993, was deleted by sec. 2 and 3, Ch. 13, Sp. L. July 1992.

1989 Amendments: Chapter 9 near beginning of (1) inserted phrase referring to Department's agent; at beginning of (2) substituted language requiring County Assessor to assign assessment and mail classification and appraisal notice for language that required notice sent by Department; and made minor changes in grammar. Amendment effective February 13, 1989.

Chapter 636 at end of (6) substituted "The property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111" for former language that read: "the property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study. The property owner may not appeal the stratum or area designations as specified in 15-7-111"; inserted (7) requiring adoption of percentage adjustments, stratum, and area designations by administrative rule; and made minor changes in phraseology. Amendment effective April 28, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Effective Date — Applicability: Section 6, Ch. 636, L. 1989, provided: "[This act] is effective on passage and approval [approved April 28, 1989] and applies to taxable years beginning after December 31, 1989."

1987 Amendment: Inserted last two sentences in (6) concerning what is appealable. Amendment applicable to taxable years beginning after December 31, 1987.

1986 Amendment: Inserted (2) requiring standardized notice.

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever was later.

Effective Date: Section 7, Ch. 29, Sp. L. June 1986, provided: "This act is effective on passage and approval and applies to tax year 1986." Approved July 16, 1986.

Preamble: The preamble to Ch. 29, Sp. L. June 1986, provided: "WHEREAS, the Department of Revenue should carry the burden of substantiating exceptional increases in assessments made under section 15-7-111, MCA, before placement on assessment books; and

WHEREAS, each property taxpayer in the state should be properly notified regarding the classification and value of the taxpayer's property for property tax purposes; and

WHEREAS, the lack of a standardized property tax classification and appraisal notice results in a variety of notices being sent by the counties with a wide range in the clarity of the notices; and

WHEREAS, incomplete or incomprehensible tax classification and appraisal notices create much confusion and misunderstanding regarding the property tax system and, in particular, the property revaluation process as implemented in the 1986 tax year.

THEREFORE, the Legislature of the State of Montana finds it appropriate to direct the Department of Revenue to submit assessments made under section 15-7-111, MCA, with exceptional increases for review by the county tax appeal boards before placement on assessment books, to adopt a standardized property tax classification and appraisal notice and to send such notice to taxpayers with exceptional increases in 1986 assessments, and to extend the application deadline for reduction in 1986 valuations."

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

1983 Amendments: Chapter 105, at end of (1), inserted "only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;
(b) change in classification;
(c) change in valuation; or
(d) addition or subtraction of personal property affixed to the land".

Chapter 526, in (1), after "owner" inserted "and purchaser under contract for deed"; and after "land owned" inserted "or being purchased".

Administrative Rules

ARM 42.20.102 Applications for property tax exemptions.
ARM 42.20.173 Statutory deadline for classification and appraisal reviews.
ARM 42.20.454 Consideration of sales price as indication of market value.
ARM 42.20.455 Consideration of independent appraisals as indication of market value.

Case Notes

No Separate Study of Depreciation by Obsolescence Required — Corporation Sale Price Properly Considered in Determining Taxable Value: PacifiCorp, a company subject to central assessment of its property by the Department of Revenue (DOR), argued that its property had been overvalued, and that it had therefore been unlawfully required to pay more taxes, because the obsolescence of its property had not been correctly accounted for. The Supreme Court held that additional depreciation deductions for PacifiCorp's property were not warranted; that 15-8-111(2)(b) does not require the DOR to conduct a separate, additional obsolescence study when no evidence suggests that obsolescence exists that has not been accounted for in the taxpayer's filings; and that the State Tax Appeal Board (now Montana Tax Appeal Board) correctly determined that the sale price of the company was properly considered and the price verified that the DOR had not overvalued the company. PacifiCorp v. St., 2011 MT 93, 360 Mont. 259, 253 P.3d 847.

Filing Application for Reduction of Property Valuation Synonymous With Filing Appeal to Tax Appeal Board: The filing of an application for a reduction of property valuation pursuant to 15-15-102 is synonymous with filing an appeal to the County Tax Appeal Board. The 15-day (now 30-day) filing requirement for an appeal is extended if the taxpayer has submitted a timely request for assessment review under subsection (3) of this section and does not commence until the Department of Revenue has responded to the request. If the taxpayer is aggrieved by the Department's appraisal after the review, the taxpayer can then appeal to the County Tax Appeal Board within 15 days (now 30 days) after receiving notice of the Department's determination. As used in this section, the term "submit" is a less restrictive requirement than filing, implying that the receiving party is not required to act but that a unilateral action on the part of a taxpayer will suffice. Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855, 53 St. Rep. 954 (1996).

Unconstitutional Provision Disallowing Appeal of Yearly Property Tax Percentage Adjustments: The provisions of this section prohibiting a property owner from appealing the yearly percentage adjustments made as the result of the sales assessment ratio study, the stratum, or area designations are an unconstitutional violation of Art. VIII, sec. 7, Mont. Const., which provides independent appeal procedures for taxpayer grievances. (The offensive provisions were subsequently deleted by 1991 amendment of this section.) Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533, 47 St. Rep. 1869 (1990).

Appellate Review of Appraisal Methods: Section 15-7-102 gives the State Tax Appeal Board (now Montana Tax Appeal Board) specific power to hear tax appraisal appeals, including the power to pass judgment on appraisal methods. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

State Directives as to Assessments: Under former law, Boards of County Commissioners could not ignore directives of the State Board of Equalization (duties now performed by Department of Revenue) on subject of timberland valuation and make their own valuation on theory that State Board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, County Boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P2d 948 (1971).

Summary Judgment — Failure to Comply With Section: In declaratory judgment action in which notice of reclassification was found not to comply with this section, the District Court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without considering further issues raised by plaintiffs since they lacked standing as to those issues. Mittelstadt v. Buckingham, 156 M 407, 480 P2d 831 (1971).

15-7-103. Classification and appraisal — general and uniform methods.

Compiler's Comments

2015 Amendment: Chapter 361 in (6) substituted first sentence concerning reappraisal for former first sentence that read: "In any periodic revaluation of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on the taxable portion of its market value in the same year" and in second sentence substituted "valuation date used" for "year used"; and in (7) deleted former second sentence that read: "The sewage disposal or domestic water supply systems may not be included twice by including either of them in the valuation and assessing them separately." Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2013 Amendment: Chapter 357 in (3) in second sentence after "other" inserted "site-specific and" and inserted "including any information provided by the taxpayer such as"; inserted (3)(a) through (3)(c) concerning classification information provided by taxpayer; and made minor changes in style. Amendment effective October 1, 2013.

Applicability: Section 3, Ch. 357, L. 2013, provided: "[This act] applies to property tax years beginning after December 31, 2013."

2011 Amendment: Chapter 356 in (3) in first sentence at beginning substituted "Land classified as agricultural land or forest land must be subclassified" for "and graded within each class" and after "soil" inserted "type"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

1999 Amendment: Chapter 584 in (5) after "15-7-111" deleted "after January 1, 1986" and after "appraised on" inserted "the taxable portion of"; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1987 Amendment: In (5), relating to base year for revaluation purposes, after "January 1" changed "1979" to "1986". Amendment applicable to taxable years beginning after December 31, 1987.

1985 Amendment: In (5) substituted "15-6-134" for "[15-6-112]".

Subsection Codification: Section 4, Ch. 583, L. 1985, instructed that sections 1 and 2 be codified in Title 15, chapter 6, since those sections both set out exemptions from taxation. However, sec. 1, Ch. 583, L. 1985 (SB 67), was amended after introduction to address appraisal and assessment of sewage disposal and water supply systems. Therefore, section 1 was codified as subsection (6) of 15-7-103 for logic and convenience. This placement of section 1 outside of chapter 6 does not alter the apparent meaning or application of section 1 in any degree.

1983 Amendment: In (3), after "classified by" substituted "parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land" for "40-acre tracts or fractional lots".

Moratorium on Rulemaking by Department: In HB 851 (Ch. 510, L. 1983), the Legislature declared a moratorium on the adoption or amendment of rules governing the assessed valuation of agricultural lands. The bill, which was not codified, provided: "Whereas, the Department of Revenue has recently proposed the repeal of its current administrative rules governing the assessed valuation of agricultural lands and has proposed new rules governing such assessed valuation; and

Whereas, the rules proposed by the Department will increase the assessed valuation of all agricultural lands and will increase the assessed valuation of some agricultural lands by more than 10 times; and

Whereas, the House Agriculture Committee and the Legislature as a whole seriously question the need for and wisdom of the proposed increases, particularly in times of severe economic hardship for farmers and ranchers.

Therefore, it is the intent of this bill to establish a temporary moratorium on the effective date of any rules proposed by the Department of Revenue in the area of assessed valuation of agricultural lands, in order that any such proposals may be more carefully reviewed by the Legislature.

Section 1. Proposed rules not to be effective until January 1, 1986. The rules governing the assessed valuation of agricultural lands proposed for adoption by the department of revenue in Montana Administrative Register Notice No. 42-2-209 and published at pages 58 through 64 of Issue No. 2 of the 1983 Montana Administrative Register and any rules substantially equivalent to those rules may not be made effective by the department of revenue until January 1, 1986.

Section 2. Current rules to remain in effect. Any repeal or substantial amendment of rules governing the assessed value of agricultural lands now published as ARM 42.20.141 through 42.20.146 may not take effect prior to January 1, 1986."

Statement of Intent: The statement of intent attached to HB 851 (Ch. 510, L. 1983) provided: "It is the intent of the legislature that the Department of Revenue work closely with agricultural associations and representatives of the agricultural community in developing administrative rules on the valuing of agricultural lands for property taxation. The Department may adopt administrative rules prior to the next legislative session so long as those rules are not implemented for taxation purposes prior to January 1, 1986.

The legislature further intends to review these rules in 1985 to ensure the Department has worked closely with the agricultural groups in developing rules and that those rules treat agricultural land fairly for purposes of property taxation in relation to the Montana Constitution, statutes, and other property."

Administrative Rules

Title 42, chapter 18, ARM Montana appraisal plan.

ARM 42.19.102 Commercial appraisal firms.

ARM 42.20.101 City and town lots and improvements.

ARM 42.20.105 Condominiums.

ARM 42.20.156 Land classification change criteria.

ARM 42.20.610 Classification of easements on agricultural land.

ARM 42.20.655 Classification and valuation of one-acre of land beneath residences located on agricultural land and nonqualified agricultural land.

ARM 42.20.675 Irrigated farm land valuation.

ARM 42.20.676 Nonirrigated agricultural land valuation.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board (now Montana Tax Appeal Board) erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's (now Montana Tax Appeal Board) blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988), and partially overruled in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648, and NW. Land & Dev. of Mont., Inc. v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44, 40 St. Rep. 470 (1983).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Uniform Method Mandatory: When a county conducted a property appraisal through a private firm prior to the effective date of this section and the Department of Revenue adopted that appraisal prior to the adoption of a general and uniform method of appraising, an injunction against the use of the appraisal was proper. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

County May Not Ignore State Board Directive — Increase of Valuation: Under former law, Boards of County Commissioners could not ignore directives of State Board of Equalization (duties now performed by Department of Revenue) on subject of timberland valuation and make their own valuation on theory that State Board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, County Boards did not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P2d 948 (1971).

Authority of County Board of Equalization: Under former law, the County Board of Equalization (duties now performed by Department of Revenue) possessed jurisdiction and authority to direct and sanction classification, appraisal, and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land was actually devoted. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Assessment of Agricultural Land: Under former law, a County Board of Equalization (duties now performed by Department of Revenue) properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Attorney General's Opinions

Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

Taxation of Land Separated From Agricultural Land: Land separated or split off from agricultural land and no longer used for agricultural purposes is subject to a rollback tax. 35 A.G. Op. 29 (1973).

15-7-105. Purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

15-7-106. Courses of instruction, examination, and certification — additional courses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

1993 Special Session Amendment: Chapter 27 in (2), at beginning, deleted "Twice each year"; deleted former (3) that read: "(3) The department shall issue a certificate to each appraiser successfully completing a course of instruction and passing an examination in any of these fields"; inserted (4) relating to conducting other courses; inserted (5) concerning certificate of completion; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-7-107. Certification required.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), at beginning, deleted "Within 1 year after his employment by the department or by July 1, 1980, whichever occurs later"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Statement of Intent: The statement of intent adopted with SB 71 (Ch. 602, L. 1979) provided: "The Senate Taxation Committee understands that the cost produced by this bill will be minimal because the Department of Revenue will continue to offer yearly appraisal seminars to the appraisers it employs on the same basis as at present. The only additional cost may result from conducting the semiannual examinations required by the bill.

In allowing the Department of Revenue to promulgate rules requiring appraisers to complete continuing education courses, the Senate Taxation Committee expects the department to require only that appraisers attend the annual appraisal seminars now held by the department and possibly complete examinations on the material presented."

15-7-108. Land split.

Compiler's Comments

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

15-7-110. Purpose — reappraisal cycle.

Compiler's Comments

Effective Date: Section 33, Ch. 361, L. 2015, provided that this section is effective on passage and approval. Approved April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Administrative Rules

ARM 42.20.173 Statutory deadline for classification and appraisal reviews.

15-7-111. Periodic reappraisal of certain taxable property.

Compiler's Comments

2023 Amendments — Composite Section: (Both versions) Section 4, Ch. 424, L. 2023, in (1)(a) deleted former second sentence that read: "All other property must be revalued annually", at beginning of second sentence deleted "Beginning January 1, 2015", and inserted last sentence regarding exception from annual valuation for centrally assessed property; inserted (1)(b) regarding centrally assessed property revaluation time periods; and made minor changes in style. Amendment effective October 1, 2023.

(Version effective January 1, 2025) Section 3, Ch. 638, L. 2023, in (1)(a) in second sentence substituted "All property within class three, class four, and class ten must be revalued every 2 years" for "Beginning January 1, 2015, all property within class three and class four must be revalued every 2 years, and all property within class ten must be revalued every 6 years"; in (2) at end of first sentence after "subsection (1)" deleted "and shall phase in the value of class ten property" and at end of second sentence after "same class" deleted "and the phased-in value of class ten property"; in (3) substituted current text concerning when the reappraisal of class three, class four, and class ten property is complete for former (3) (see sec. 3, Ch. 638, L. 2023, for former text); in (5) at end of first sentence substituted "within class three, class four, and class ten" for "within classes three and four", in third sentence near middle inserted "and class ten" and at end after "2 years" deleted "and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years", and deleted final two sentences (see sec. 3, Ch. 638, L. 2023, for former text); and made minor changes in style. Amendment effective January 1, 2025.

Transition: Section 10, Ch. 424, L. 2023, provided: "There is a transition year resulting from the change from an annual valuation cycle to a 2-year valuation cycle for certain centrally assessed property. For the property provided for in 15-23-101(2)(b), the tax year 2023 values must be used for tax year 2024, with adjustment for any acquisitions or dispositions of property occurring between January 1, 2023, and December 31, 2023."

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

2021 Amendment: Chapter 446 inserted (7) requiring the department to send certain information to taxpayers on each notice of appraisal and to publish the information. Amendment effective October 1, 2021.

2019 Amendment: Chapter 163 in (4) substituted "revenue interim committee" for "revenue and transportation interim committee" and after "report" inserted "in accordance with 5-11-210"; and made minor changes in style. Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2015 Amendment: Chapter 361 in (1) in first sentence near middle substituted "reappraisal" for "revaluation" and at end inserted "as provided in this section" and inserted third sentence regarding revaluation cycles beginning January 1, 2015; in (2) in first sentence near beginning after "shall value" deleted "and phase in the value of" and at end inserted "and shall phase in the value of class ten property" and in second sentence near middle after "valuation" deleted "and phased-in value" and at end inserted "and the phased-in value of class ten property"; substituted (3) regarding reappraisal of class three, four, and ten property for former (3) that read: "(3) The revaluation of class three, four, and ten property is complete on December 31, 2008. The amount of the change in valuation from the 2002 base year for each property in classes three, four, and ten must be phased in each year at the rate of 16.66% of the change in valuation"; substituted (4) providing for revenue and transportation interim committee report for former (4) that read: "(4) During the end of the second and fourth year of each revaluation cycle, the department shall provide the revenue and transportation interim committee with a sales assessment ratio study of residences to be used to allow the committee to be apprised of the housing market and value trends"; substituted (5) regarding reappraisal plan for class three, four, and ten property for former (5) that read: "(5) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%"; inserted (6) regarding property inspections and reviews; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2009 Amendments — Composite Section: Chapter 2 in (1) at end of first sentence substituted "class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143" for "classes three, four, and ten"; and in (5) at beginning of first sentence after "department" deleted "of revenue". Amendment effective October 1, 2009.

Chapter 483 inserted (3) establishing the phasein of value for certain classes of property; inserted (4) requiring the department to provide sales assessment ratio studies during interims; in (5) in two places substituted "2015" for "2009"; and made minor changes in style. Amendment effective May 10, 2009.

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

Preamble — 2007 Property Reappraisal Study: The preamble attached to Ch. 382, L. 2007, provided: "WHEREAS, section 15-7-111, MCA, requires the periodic revaluation of class three agricultural land, class four residential and commercial property, and class ten forest lands; and

WHEREAS, class three, class four, and class ten property in each county must be revalued by January 1, 2009; and

WHEREAS, recent periodic revaluations have resulted in disparate changes in assessed valuations across the state; and

WHEREAS, these disparate changes in assessed valuations have a significant effect on property taxpayers, local governments, and school districts; and

WHEREAS, Article VIII, section 3, of the Montana Constitution requires that the state equalize the valuation of all property that is to be taxed in the manner provided by law; and

WHEREAS, the Legislature has not developed a prospective method for dealing with the periodic revaluation of property; and

WHEREAS, some responses to periodic revaluations have been constitutionally suspect; and

WHEREAS, the 60th Legislature desires to respond to the new revaluation of property in a systematic and rational way.

THEREFORE, it is the purpose of this bill to require the Revenue and Transportation Interim Committee to conduct a study of periodic revaluation of property and to make recommendations to the next Legislature and the Governor."

2007 Interim Study on Property Reappraisal Cycle: Section 1, Ch. 382, L. 2007, provided: "(1) The revenue and transportation interim committee, provided for in 5-5-227, shall conduct an interim study of the periodic revaluation of taxable property that is required by 15-7-111. In the study, the committee shall:

(a) evaluate, using the best data available for the revaluation of property that goes into effect January 1, 2009:

(i) changes in the productivity value of class three agricultural land and nonqualifying agricultural land by county;

(ii) changes in market value of class four residential and commercial property by county; and

(iii) changes in the productivity value of class ten forest lands by county;

(b) consider strategies to mitigate the effects of changes in revaluation, including strategies to maintain:

(i) equity among property taxpayers; and

(ii) the financial integrity of local governments and school districts;

(c) review the department of revenue's methods for revaluing class three, class four, and class ten property and consider procedures that would improve the periodic revaluation process;

(d) review other matters that the committee considers relevant in the conduct of the study; and

(e) make recommendations to the 61st legislature.

(2) The committee may request the assistance of the legislative services division, the legislative fiscal division, the department of revenue, other state agencies, the general public, and other interested parties in the conduct of the study.

(3) The committee shall complete the study by September 15, 2008, and report to the 61st legislature its findings and recommendations, including recommendations for legislation." Effective July 1, 2007, and terminates September 15, 2008.

2005 Amendment: Chapter 554 in (3) in third sentence after "revalued by January 1" substituted "2009" for "2008". Amendment effective October 1, 2005.

2003 Amendment: Chapter 606 in (1) at end deleted former second and third sentences that read: "The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class"; and in (3) in first sentence at beginning deleted "Beginning January 1, 2001", in third sentence substituted "January 1, 2008, effective for January 1, 2009" for "January 1, 2003", and deleted former last sentence that read: "The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county." Amendment effective May 9, 2003.

Severability: Section 11, Ch. 606, L. 2003, was a severability clause.

Retroactive Applicability: Section 13(1), Ch. 606, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

2000 Amendment: Chapter 11 deleted former (4) and (5) that read: "(4) (a) If the value of an individual property is equal to or less than 75% of the appraised value of the improvements situated on the land, then the assessed value of the land is the land's appraised value as phased in under subsection (1) and the other provisions of subsection (1) do not apply.

(b) Subject to subsection (4)(c), if the value of an individual property is greater than 75% of the appraised value of the improvements situated on the land, then the value of the land must be determined as follows:

(i) the department shall calculate the average value of improvements in the state;

(ii) if the value of the improvements on an individual property is greater than the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation; and

(iii) if the value of the improvements on an individual property is less than or equal to the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation.

(c) The value of land upon which improvements are situated may not exceed the phased-in value of the land.

(5) For purposes of subsection (4), the following definitions apply:

(a) "average value of improvements" means the statewide arithmetic mean of the appraised value of all improvements that have a market value in excess of $7,500;

(b) "improvements" means residential dwellings and includes housetrailers, mobile homes, and manufactured homes;

(c) "land" includes contiguous parcels or lots under single ownership up to 5 acres"; and made minor changes in style. Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendment: Chapter 584 in (1) near end of fourth sentence after "rate" substituted "of 25% of the change" for "of 2% of the total change" and at end inserted "from December 31, 1998, to the appropriate percentage of taxable market value for each class"; in (3) near beginning of first sentence substituted "January 1, 2001" for "January 1, 2007", at end of third sentence substituted "January 1, 2003, and each succeeding 6 years" for "January 1, 2010, and each succeeding 3 years", and inserted fourth and fifth sentences requiring phase in of valuation changes each year until next appraisal; inserted (4) outlining procedure when value of property is equal to or less and equal to or greater than 75% of appraised value of improvements and prohibiting value with improvements from exceeding phased-in value of land; and inserted definitions of average value of improvements, improvements, and land. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in (1), at end of first sentence, substituted "classes three, four, and ten" for "the state", inserted second sentence concerning annual revaluation, substituted third sentence concerning completion of revaluation of designated classes on December 31, 1996, for former sentence that read: "The department shall complete this revaluation program by December 31, 1996", deleted former fourth through sixth sentences that read: "A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued by December 31, 1996. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county", and inserted fourth sentence concerning phasein of change in valuation; inserted (2) concerning newly constructed, remodeled, or reclassified property; in (3), near beginning of first sentence, substituted "2007" for "1997" and at end substituted "classes three, four, and ten" for "the state at least every 3 years" and in third sentence, after "all", inserted "class three, four, and ten" and after "revalued" substituted "by January 1, 2010, and each succeeding" for "at least every"; and made minor changes in style. Amendment effective April 30, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 463, L. 1997, provided: "A statement of intent is required for this bill because 15-7-111 gives rulemaking authority to the department of revenue for phasing in newly constructed, remodeled, and reclassified property consistent with the phasing in of reappraised property. The legislature contemplates that the rules adopted by the department should address, at a minimum, the manner in which the reappraised portion of new, remodeled, or reclassified property will be determined and phased in."

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1992 Special Session Amendment: Chapter 13, Sp. L. July 1992, deleted version that was to be effective July 1, 1993.

(Version effective January 1, 1993) Inserted (1) requiring revaluation of all taxable property by December 31, 1996, and requiring that Department furnish a copy of the plan to each county's Board of County Commissioners; in (2), at beginning, inserted "Beginning January 1, 1997"; and made minor changes in style. Amendment effective August 6, 1992.

1991 Amendment: (Temporary version) In (4)(a) inserted second sentence concerning residential improvements; inserted (4)(b) concerning reappraisal based upon sales assessment ratio study for tax years 1991 through 1993; in (8)(a), after "ratios to", inserted "within plus or minus 5% of"; and inserted (9) concerning public hearing in an area based on certain results of sales assessment ratio study. Amendment effective April 27, 1991.

(Version effective July 1, 1993) In (2)(b)(i) and (2)(b)(ii), after "performed", the Code Commissioner deleted "pursuant to subsection (4)(a)" because the amendment in sec. 8, Ch. 680, L. 1991, rendered the reference erroneous. This version was deleted by sec. 4, Ch. 13, Sp. L. July 1992.

(Version effective January 1, 1994, but the effective date was changed to January 1, 1993, by sec. 2, 3, and 4, Ch. 13, Sp. L. July 1992) In two places reduced time of revaluation from 5 years to 3 years; and deleted (2) through (8) that read: "(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.

(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.

(4) For the taxable year beginning January 1, 1990, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential land and improvements, agricultural 1-acre homesites and improvements, and commercial land and improvements. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.

(5) The study required in subsection (4) must be based on:

(a) commonly accepted statistical standards and methodology;

(b) a statistically valid sample of sales, using data from realty transfer certificates filed for up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis; and

(c) the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratios for a specific area.

(6) For purposes of conducting the study required by subsection (4), the department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.

(7) The department shall use the following procedure to validate sales information:

(a) Department staff who did not participate in the determination of appraised values are required to review the sales transactions evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale used in the study was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The sales information entered in the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. However, the department shall annually publish a report containing the results of all sales assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded between the time of the assessment and the time of the sales.

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

(8) (a) The department shall have equalized property values throughout the state and may not make further adjustments to values under this section when the assessments for each stratum within each area identified in subsection (6) are rescaled to bring all ratios to common value 1 and when the sample size produces a standard error of less than 5%.

(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and the adjustments required by that study.

(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1". Amendment effective January 1, 1994.

Applicability: Section 13(1), Ch. 680, L. 1991, provided: "[Section 2] [temporary version] applies retroactively, within the meaning of 1-2-109, to property tax year 1991 and is applicable to taxable years 1992 and 1993."

Section 13(2), Ch. 680, L. 1991, provided that this section (version effective January 1, 1994, now effective January 1, 1993, pursuant to sec. 2, 3, and 4, Ch. 13, Sp. L. July 1992) applies to all taxable years beginning after December 31, 1993. The applicability date was changed to taxable years beginning after December 31, 1992, by sec. 1, Ch. 13, Sp. L. July 1992.

Termination Date: Section 14, Ch. 680, L. 1991, provided that the amendments to this section made in sec. 2, Ch. 680, L. 1991, terminate December 31, 1993. The termination date was changed to December 31, 1992, by sec. 2, Ch. 13, Sp. L. July 1992. These amendments are reflected in the temporary version and the version effective July 1, 1993. The version effective July 1, 1993, was deleted by sec. 4, Ch. 13, Sp. L. July 1992.

1989 Amendment: At end of third sentence of (1) deleted "or that no less than 20% of the property in each county shall be revalued in each year"; substituted language in (4) relating to property to be studied for former language that read: "For the taxable year beginning January 1, 1988, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential real property and improvements, of all commercial and industrial real property and improvements, and of all other real property and improvements. The study must include such property as vacant land, agricultural improvements, and the 1-acre homesite beneath the agricultural residence"; in (5)(a) substituted "commonly accepted statistical standards and methodology" for former language that read: "the standards and methodology adopted by the international association of assessing officers in their publication "Standard on Assessment Ratio Studies""; deleted former (5)(b) that read: "(b) assessments of the property described in subsection (4) as of January 1 of the year immediately preceding the taxable year for which the study is conducted"; in (5)(b) substituted "up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis" for "the taxable year immediately following the assessment date identified in subsection (5)(b)"; substituted language in (6) requiring the Department to designate residential property areas and commercial property areas for former language that statutorily designated sales assessment areas (see 1987 MCA for text); deleted former (7) that read: "(7) The department shall use the following procedures to resolve situations in similar areas of the state that have inadequate numbers of sales to conduct the statistically valid sample in a specific tax year:

(a) an extension of the time period from which sales are drawn and an adjustment of the sales price to acknowledge the different time period. At a minimum, the time adjustment must coincide with the consumer price index for that same time period.

(b) the use of fee appraisals in lieu of sales prices. The fee appraisal must be conducted by a certified appraiser who is not an employee of the department.

(c) the input of assessment ratio statistics developed from a model of the area. The information to be input into the study must be statistically valid and must be developed by a certified statistician who is not an employee of the department"; in (7)(a) substituted language relating to staff review of sales transactions for former language that read: "Department field staff are required to manually review each sales transaction evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale was a valid, arm's-length transaction"; in (7)(b) substituted language relating to confidentiality of sales information and reporting of sales assessment studies for former language that read: "The valid sales information must be transmitted to the department. The department staff shall enter the sales information on the computer-assisted appraisal system in order to make the sales assessment ratio study. The sales information contained on the computer-assisted appraisal system is considered confidential, as provided in 15-7-308"; at end of (7)(c) substituted "between the time of the assessment and the time of the sales" for "or that are wholly new construction after the assessment date identified in subsection (5)(b)"; in (8) substituted language relating to requirement of equalized property values and when further adjustments of values are prohibited for former language that read: "The department shall have equalized property values throughout the state when the following conditions are met:

(a) the overall assessment level for each stratum within each area identified in subsection (6) is within an interval of plus or minus 10% of the legal level of assessment, given an adequate sample size;

(b) coefficients of dispersion with respect to the weighted mean assessment ratio for residential properties located within each area identified in subsection (6) are equal to or less than 20%;

(c) coefficients of dispersion with respect to the weighted mean assessment ratio for income-producing properties located within each area identified in subsection (6) are equal to or less than 20%; and

(d) coefficients of dispersion with respect to the weighted mean assessment ratio for other types of real property and improvements located within each area identified in subsection (6) are equal to or less than 20%"; deleted former (10) that read: "(10) (a) When the overall assessment level of each stratum exceeds 10% of the legal level of assessment and when the coefficients of dispersion with respect to the weighted mean for each stratum exceed 20%, the department shall make percentage adjustments to the valuations of all the properties in a specific area stratum. The percentage adjustments must create compliance with subsection (9). The percentage adjustments must account for unique factors that affect values in the various areas.

(b) Under this method, all taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and any percentage adjustments required by that study"; and made minor changes in phraseology. Amendment effective April 28, 1989.

Effective Date — Applicability: Section 6, Ch. 636, L. 1989, provided: "[This act] is effective on passage and approval [approved April 28, 1989] and applies to taxable years beginning after December 31, 1989."

1987 Amendments: Chapter 596 inserted (2) requiring 1-year delay in placing new values on tax rolls; and inserted (3) relating to appeal of new values.

Chapter 613 in second and third sentences of (1), requiring periodic revaluation, substituted "reappraisal plan" for "plan of rotation" and in second sentence, after "department", deleted "fixing the order of revaluation of property in each county on the basis of the last revaluation of taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties"; and inserted (4) through (10) requiring a stratified sales assessment ratio study and setting forth the procedure (see Ch. 613, L. 1987, for full text). Amendment applicable to taxable years beginning after December 31, 1987.

Extension of Revaluation Cycle: Chapter 350, L. 1981, provided: "Section 1. Policy. It is the policy of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

Section 2. Purpose. (1) It is the purpose of this act to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of 15-7-111 through 15-7-114 in a manner that implements the policy provided for in section 1.

(2) This act serves to extend the current cycle only. It is intended that after the extended cycle, the department will implement the provisions of 15-7-111 through 15-7-114 and return to the 5-year cycle.

Section 3. Extension of current revaluation cycle. (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1983, and representing a 5-year period commencing January 1, 1979, is hereby extended for an additional 2 years, ending December 31, 1985. The new values determined during this period shall be placed on the tax rolls commencing January 1, 1986.

(2) It is not necessary for the department of revenue to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1986.

(3) The extension provided for in subsection (1) does not affect the validity of any assessments made or to be made or any taxes levied or to be levied during the period January 1, 1979, to December 31, 1985."

Severability: Section 5, Ch. 294, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Administrative Rules

Title 42, chapter 18, ARM Montana appraisal plan.
ARM 42.18.121 Adoption of Montana reappraisal plan and manuals.
Title 42, chapter 20, subchapter 1, ARM Valuation of real property.
ARM 42.20.107 Valuation methods for commercial properties.
ARM 42.20.108 Income approach.
ARM 42.20.109 Capitalization rates.
ARM 42.20.156 Land classification change criteria.
ARM 42.20.173 Statutory deadline for classification and appraisal reviews.

Title 42, chapter 20, subchapter 6, ARM Agricultural land.
ARM 42.22.1316 Industrial property certification requirements.

Case Notes

Department of Revenue Properly Phased in Increases — Property Tax — Plain Reading of Statute: The petitioners filed for declaratory judgment and writ of mandate based on the Department of Revenue's 2009 reclassification of their agricultural property. The petitioners argued that the Department failed to correctly phase in increases under 15-7-111 and that the subsection used by the Department only applied to reclassification of property among different classes. Following a remand from the Supreme Court based on class action certification, the District Court granted the Department's motion for summary judgment. On appeal, the Supreme Court affirmed, holding that 15-7-111 was not ambiguous, that the department followed the plain language of the statute, that the Department's failure to promulgate rules did not have a substantive effect on the proceeding, and that the petitioner's equal protection concerns were not valid. Lucas Ranch, Inc. v. Dept. of Revenue, 2015 MT 115, 379 Mont. 28, 347 P.3d 1249.

Six-Year Appraisal Cycle — No Violation of Equal Protection Rights When Property Value Significantly Decreases at Beginning of Cycle: The value of the taxpayer's property significantly declined in the year following its tax appraisal. After the Department of Revenue refused to conduct a midcycle reevaluation of the property, the taxpayer challenged the constitutionality of the 6-year tax cycle, arguing that the Department should conduct a midcycle reevaluation to relieve it from paying taxes based on an inflated value of the property and that the failure to do so subjected the taxpayer to disparate treatment in violation of its equal protection rights. The District Court agreed and ordered the Department to conduct a midcycle reevaluation. The Department appealed and the Supreme Court reversed, concluding that a 6-year cyclical plan of reappraisal does not violate a taxpayer's rights when the property depreciates in value during the cycle because the Montana Constitution requires only a periodic attainment of equality of tax treatment. The court also determined that the District Court had improperly exercised legislative authority in ordering the Department to conduct a reevaluation. Covenant Inv., Inc. v. Dept. of Revenue, 2013 MT 215, 371 Mont. 186, 308 P.3d 54.

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in this section violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under this section, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held this section unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in this section, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 2 and 483, L. 2009, and in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in this section to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in 15-1-406 requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as 15-8-115, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

Former Statute Unconstitutional — Stratified Sales Assessment Ratio Violative of Equal Protection: After the Supreme Court's decision in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990), the 1991 Legislature amended this section to require the Department of Revenue to use a stratified ratio sales study to adjust property values in a given district during an appraisal cycle (see 1991 Session Laws). The Legislature also provided for a right to appeal adjusted values and for shorter appraisal cycles. After the 1991 legislation became effective, Sheehy sued the Department of Revenue. The Supreme Court held the new law also to be unconstitutional in that the across-the-board 4% factor used to adjust property values in areas with widely disparate appraisals was as unconstitutional as the 30% factor struck down in Barron. The Supreme Court noted that the method may achieve uniformity between areas but not between individual properties where inequities already exist. Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181, 50 St. Rep. 1464 (1993). See also Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997), and Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999).

Stratified Sales Assessment Ratio — Unconstitutional: On September 11, 1990, the Montana Supreme Court held that the stratified sales assessment ratio study offends state constitutional principles. The order was issued with the reasons to be stated later. The application of the order was prospectively continued to December 31, 1990, to allow collection of 1990 taxes. On October 12, 1990, the court issued its written order explaining that the use of 1990 tax values derived from the stratified sales assessment ratio study and the subsequent application of a percentage factor to certain residential properties, which in 1989 were assessed or appraised at or above their true market values, resulted in unfair discrimination by requiring those property owners to bear a disproportionate share of the state tax burden in violation of the equal protection and due process requirements of both the U.S. and Montana Constitutions. The court further found that application of the ratio violated statutory appraisal provisions requiring general and uniform appraisal, assessment, and equalization of all taxable property in the state. Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533, 47 St. Rep. 1869 (1990), followed in DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993), and followed, with regard to the unconstitutionality of a 2% phasein of changes in real property value (revised Ch. 584, L. 1999) on equal protection grounds, in Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

15-7-112. Equalization of valuations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 638, L. 2023. Amendment effective January 1, 2025.

2015 Amendment: Chapter 361 substituted current section concerning equal taxable value for former section that read: "The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided." Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

No Error in Appraising Fair Market Value of Electric Generation Assets Differently When Owned by Different Utilities — Equal Protection Constitutionality of Unit Method of Property Valuation Affirmed: Defendant utility company appealed a District Court decision regarding the equality of the state's tax assessments, claiming that the state deprived the utility of equal protection by failing to properly equalize defendant's property tax burden with other comparable electric generation facilities in Montana. The Department of Revenue explained that the relatively higher appraisal values of defendant's properties arose from the fact that the different companies had different total market values as a unit, so their individual properties also had different market values despite the fact that the individual properties might be physically similar. The Supreme Court noted that the unit method of valuation was held to pass constitutional equal protection scrutiny in W. Union Tel. Co. v. St. Bd. of Equalization, 91 M 310, 7 P2d 551 (1932), and the court declined to revisit the issue of the constitutionality of the method itself. The court held that there is nothing constitutionally significant in the bare fact that the Department of Revenue appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities. The basic rule of equal protection is that persons that are similarly situated with respect to a legitimate governmental purpose of law must receive like treatment. The first prerequisite of a meritorious equal protection claim is that the state had adopted a classification that affects two or more similarly situated groups in an unequal manner. Here, the District Court's determination that defendant failed to establish that the state's use of the unit method of valuation deprived defendant of equal protection was affirmed. Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 M 124, 172 P3d 1241 (2007).

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under 15-7-111, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of

$658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held 15-7-111 unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in 15-7-111, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

"Method" Not Reference to Any Single Approach but Rather to Consistent Process for Determining Market Value: The District Court concluded that use of the word "method" in this section allowed the Department of Revenue to use only one approach when appraising property and estimating market value. The Supreme Court disagreed, holding that "method" does not refer to any single approach but rather refers to a consistent process for arriving at market value, the details of which may vary from place to place depending on available data. "Method" will necessarily include a number of different approaches, such as the market data approach, the income approach, the cost approach, or some combination of these approaches, depending on the market in the area where appraisals occur. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Use of Single Approach to Estimating Market Value Not Required: The constitutional framers did not intend for equalization to require the use of a single approach to estimating market value. Rather, the framers anticipated and intended that the Department of Revenue could use a number of different approaches, including the income approach and the market data approach. The Department's method of assessing property and estimating market value is by no means perfect, but the interdisciplinary method is a reasonable attempt to equalize appraisal of real property, comports with the most modern and accurate appraisal practices available, and meets the constitutional requirement for equalization of property values. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997). See also Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Constitutionality: The Montana appraisal plan and its implementing legislation are constitutional. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

Violation of Administrative Procedure Act: The Montana appraisal plan, adopted August 25, 1975, was void because it was never legally adopted in accordance with the Montana Administrative Procedure Act. Patterson v. Dept. of Revenue, 171 M 168, 557 P2d 798 (1976).

15-7-113. Program exclusive.

Compiler's Comments

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-7-114. Law supplemental.

Compiler's Comments

Severability: Section 5, Ch. 294, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Case Notes

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-7-131. Policy.

Compiler's Comments

2015 Amendment: Chapter 361 substituted "the reappraisal of taxable property" for "periodic revaluation of taxable property". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

15-7-138. Notice of classification and appraisal to single address for owners of undivided interest.

Compiler's Comments

2003 Amendment: Chapter 315 inserted (1)(a)(ii) providing that for multiple undivided mining claim interests, upon request of all owners, the department shall send the notice and separate assessments to each owner; inserted (1)(a)(iii) providing that requests for separate assessment and notice are limited to mining claims as the multiple undivided interests existed on or prior to April 30, 2001, and that additional division of interests after that date may not result in additional separate assessments; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.19.601 Notification of classification and appraisal to owners of multiple undivided ownerships.

15-7-139. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 104 in (7)(a) at beginning inserted "Subject to subsection (7)(b)"; inserted (7)(b) prohibiting using a denial of permission to enter certain property as a basis to not adjust the estimated value of the real or personal property when permission is limited to entering the land and conducting an exterior inspection of the property; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 142 in (7)(a) and in (7)(a)(ii) in first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

Name Change — Directions to Code Commissioner: Pursuant to sec. 48, Ch. 142, L. 2021, in (7)(b) the code commissioner changed "state tax appeal board" to "Montana tax appeal board".

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 361 in (7)(b) near middle of third sentence substituted "reappraisal valuation date" for "reappraisal base year". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2011 Amendment: Chapter 356 in (7)(b) in last sentence near middle substituted "15-7-103(6)" for "15-7-103(5)". Amendment effective October 1, 2011.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

2003 Amendment: Chapter 593 inserted (7)(b) authorizing a tax appeal board to adjust the estimated value of real or personal property when an appraisal is conducted by a certified appraiser; and made minor changes in style. Amendment effective May 9, 2003.

Notification of Appraisal and Audit — Termination: Section 3, Ch. 5, L. 2003, provided: "For property identified by the department of revenue as posted private land pursuant to 45-6-201, the department shall, not later than [60 days after the effective date of this act] [April 7, 2003], mail notice to the owner of the posted private land that property valuation staff employed by the department may enter the property to appraise or audit property for property tax purposes. The notice must include the provisions of [section 1(3) and (4)] [15-7-139(3) and (4)]." Section 3, Ch. 5, L. 2003, is effective February 6, 2003, and terminates September 1, 2003.

Effective Date: Section 6, Ch. 5, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 6, 2003.

Administrative Rules

ARM 42.18.125 Extension of time for landowners to respond to access notices from Department.

ARM 42.18.127 Property tax fee appraisal requirements when taxpayer denies Department access to property to conduct appraisal or audit.

ARM 42.18.128 Definitions.

15-7-140. Notice appraisal and audit — statement of rights.

Compiler's Comments

Effective Date: Section 6, Ch. 5, L. 2003, provided: "[This act] is effective on passage and approval." Approved February 6, 2003.

Administrative Rules

ARM 42.18.125 Extension of time for landowners to respond to access notices from Department.

Part 2
Agricultural Appraisal

Part Compiler's Comments

Repeal of Rollback Tax — Oversight Committee Report: Although Ch. 201, L. 1981 (SB 183), repealing the rollback tax on agricultural land, was not introduced at the request of the Revenue

Oversight Committee, the committee report entitled “Montana’s Greenbelt Law”, Legislative Council, 1980, addresses the subject of the rollback tax.

Unpaid Rollback Taxes Discharged: Section 2, Ch. 201, L. 1981, provided: “All rollback taxes unpaid or paid under protest on the effective date of this act [March 31, 1981] that constitute a lien on real property in the state are discharged and stricken from the respective tax records.”

Severability: Section 5, Ch. 201, L. 1981, was a severability section.

Section Not Codified: Section 84-437.17, R.C.M. 1947, which provided for refunding of late fees paid under the pre-1974 agricultural assessment statutes, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 56, L. 1974.

Part Administrative Rules

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

Part Case Notes

Assessment of Agricultural Land: Under former law, a County Board of Equalization (duty now performed by Department of Revenue) properly assessed plaintiff's property on basis of “market value” rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. St. Bd. of Equalization, 155 M 49, 466 P2d 582 (1970), certiorari denied, 400 US 940, 27 L Ed 2d 244, 91 S Ct 232 (1970).

Collateral References

Agricultural Property Taxation Study, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

15-7-201. Legislative intent — value of agricultural property.

Compiler’s Comments

2019 Amendment: Chapter 169 in (5)(b)(iii) substituted current text concerning allowable water costs for former text that read: “Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of $15 for each acre of irrigated land. Total allowable water costs may not exceed $50 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are $5 an acre for pivot sprinkler irrigation systems; $10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the valuation date specified by the department in 15-7-103(6). By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year’s energy costs to reflect costs in the energy cost base year”; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 2, Ch. 169, L. 2019, provided: “[This act] applies to tax years beginning after December 31, 2020, and to the reappraisal cycle beginning January 1, 2021.”

2015 Amendment: Chapter 361 in (5)(b)(iii)(B) near end of first sentence substituted “valuation date specified” for “year specified”. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: “[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015.”

2013 Amendment: Chapter 357 inserted (7)(g) and (7)(h) concerning methods for adjusting land productivity values and definitions; and made minor changes in style. Amendment effective October 1, 2013.

Applicability: Section 3, Ch. 357, L. 2013, provided: “[This act] applies to property tax years beginning after December 31, 2013.”

2011 Amendment: Chapter 356 in (3) in two places substituted reference to productive capacity for reference to production categories and after “determined” deleted “from the productive capacity of the land”; in (4)(a) and (4)(b) substituted “subclass” for “land use and production category”; in (5)(a) substituted “for each subclass” for “in each land use based on production categories”; in (5)(b)(iii)(B) in first sentence at end substituted “15-7-103(6)” for “15-7-103(5)”; in (5)(c) in second sentence near end substituted "1,200-pound cow" for "1,000-pound cow"; in (7)(e) near beginning inserted "and subclass"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

2009 Amendment: Chapter 483 in (5)(b)(iii) substituted "$15" for "$5.50" and "$50" for "$40"; in (5)(b)(iii)(A) substituted "$5 an acre" for "zero", "$10" for "$4.50", and "$15" for "$9"; in (5)(c) near end of first sentence inserted "spring" before "wheat"; and made minor changes in style. Amendment effective May 10, 2009.

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2001 Amendment: Chapter 459 in (4)(c) in first clause after "rate and" inserted "unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule" and at end of first full sentence substituted "the next revaluation cycle" for "new agricultural land valuation schedules are adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)"; in (5)(b) near middle substituted "which may include grazing fees, crop and livestock share arrangements, cost of production data" for "grazing fees, crop share arrangements" and at end substituted "using the best available data" for "as follows"; in (5)(b)(i) near beginning substituted "and cost of production data" for "and grazing fees" and at end inserted "and other sources of publicly available information if considered appropriate by the advisory committee"; in (5)(b)(ii) near beginning after "Crop share" inserted "and livestock share" and near middle substituted "typical agricultural business practices" for "the rental value of the land"; in (5)(b)(iii) near middle of first sentence inserted "unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule" and in second sentence increased costs to $40 per acre from $30 per acre; in (5)(c) in second sentence at end substituted "animal unit months (AUM), defined as the average monthly requirement of pasture forage to support a 1,000-pound cow with a calf or its equivalent" for "the average grazing fee for a 1,000-pound animal"; in (5)(d) at beginning of first sentence inserted "Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule" and at beginning of second sentence substituted "Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data" for "Commodity price data and grazing fees", near middle after "averaged" deleted "for the 7-year period", and near end substituted "yearly data" for "commodity prices or grazing fees"; in (7) at end of first sentence deleted "to compile and review the data required by subsections (4) and (5)"; inserted (7)(a) through (7)(e) concerning advisory committee compiling data, recommending adjustments to share percentages, recommending base periods, evaluating capitalization rate, and verifying income; in (7)(f) in first full sentence before "value" inserted "recommended"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: (Temporary version) Chapter 563 in (4), after "to take effect", deleted "on January 1, 1994, and, thereafter, on the effective date"; in (5)(b)(iii) inserted last clause of first sentence regarding base water costs, inserted second sentence regarding total allowable costs, and inserted last clause regarding labor and energy costs; and made minor changes in style. Amendment effective April 26, 1995.

(Version effective January 1, 1997, and applicable to 1997 and later land valuation schedules) In (4), after "to take effect", deleted "on January 1, 1994, and, thereafter" and before "date" deleted "effective"; in (4)(c) substituted "adopted by the department, after considering the recommendations from the advisory committee as provided in subsection (7)" for "computed as required by law"; in (5)(b)(iii) inserted last clause of first sentence regarding base water costs, inserted second sentence regarding total allowable costs, and inserted last clause regarding labor and energy costs; in (5)(b)(iii)(B), in four places, substituted reference to energy cost base year for "1992", in first sentence inserted last clause describing energy cost base year, and in second sentence substituted "of the year following the energy cost base year" for "1993"; and made minor changes in style. Amendment effective January 1, 1997.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Applicability: Section 6, Ch. 563, L. 1995, provided: "(1) [Sections 1 and 3] [15-7-201 (temporary version) and 15-7-221 (now repealed)] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

(2) [Section 2] [15-7-201 (version effective January 1, 1997)] applies to tax years beginning after December 31, 1996."

1993 Amendment: (Temporary version) Chapter 267 made minor changes in style.

(Version applicable to 1994 and later land valuation schedules) In (3), after "Within each class, land", substituted "must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield" for "shall be assessed at a value that is fairly based on its productive capacity"; in (4) substituted "January 1, 1994" for "the date that the revaluation cycle commencing January 2, 1986"; in (4)(b) substituted a provision that "I" is to be determined as provided in subsection (5) for a former formula for the determination (see 1991 MCA for the formula); at end of first sentence of (4)(c) substituted "and is equal to 6.4%" for "to be determined by the department as provided in subsection (9)" and inserted second sentence maintaining rate until new valuation schedules are computed; in (5) substituted provisions that net income must be determined separately in each land use based on production categories and on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period, provisions for determining the cost of the items, and a provision establishing the base period used to determine net income for former (5) that read: "(5) Net income shall be:

(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and

(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university"; in (6) substituted "The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5)" for a list of items (see 1991 MCA for text) that the Department had to compile data for; in (7), at beginning of first sentence, substituted the Governor for the Department as the appointing authority, before "review" inserted "compile and", and after "data" substituted "required by subsections (4) and (5)" for "prepared by Montana state university and advise the department on the implementation of subsections (2) through (6)", in second sentence, after "university", inserted "college of agriculture", inserted third sentence requiring the committee to recommend agricultural land valuation schedules to the Department, and inserted fourth sentence providing that the value of irrigated land may not be below the value the land would have if not irrigated; deleted (8) through (10) that related to separate net income determinations for certain lands and calculation of the capitalization rate and the effective tax rate (see 1991 MCA for text); and made minor changes in style. Amendment effective April 2, 1993.

Preamble: The preamble attached to Ch. 267, L. 1993, provided: "WHEREAS, the Montana Legislature adopted a plan in 1975 for cyclical reappraisal of nonagricultural land; and

WHEREAS, nonagricultural land has been through three reappraisal cycles since 1972, with the values of the third cycle becoming effective January 1, 1993; and

WHEREAS, agricultural land has not been reappraised since 1963 and the Montana Legislature has determined that reappraisal of agricultural land is necessary for the overall improvement of Montana's property tax system; and

WHEREAS, the Montana Legislature has traditionally kept the total taxable value of an entire class of property relatively constant between reappraisal cycles by adjusting tax rates; and

WHEREAS, the Montana Legislature desires to keep the total taxable value of agricultural land constant despite reappraisal; and

WHEREAS, the new method of determining productive capacity of various subclasses of agricultural land results in significant increases or decreases in individual reappraised values; and

WHEREAS, the Montana Legislature finds that it is equitable and desirable for the tax system as a whole that the increases and decreases in taxable value of agricultural land be phased in over the appraisal cycle; and

WHEREAS, the Montana Legislature considers it appropriate to provide for the reappraisal of agricultural land and to provide for a phasein of the changes in taxable values over the reappraisal cycle."

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

1991 Amendments: Chapter 172 in (4) substituted "January 1, 1993" for "January 1, 1991" (rendered void by Ch. 680). Amendment effective March 26, 1991.

Chapter 680 in (4), after "effect on", deleted "January 1, 1991, or on" and after "15-7-111" inserted "and, thereafter, on the effective date when each revaluation cycle takes effect". Amendment effective April 27, 1991.

Termination Date Amended: Section 2, Ch. 172, L. 1991, amended the termination date enacted in sec. 10, Ch. 681, L. 1985, to provide that the law enacted by sec. 1, Ch. 681, terminates January 1, 1993. Amendment effective March 26, 1991.

Applicability Date Amended: Section 3, Ch. 172, L. 1991, amended the applicability date enacted in sec. 3, Ch. 705, L. 1985, to provide that the law enacted by sec. 1, Ch. 705, applies to revaluations taking effect January 1, 1993. Amendment effective March 26, 1991.

Retroactive Applicability: Section 5, Ch. 172, L. 1991, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Code Commissioner Explanation: Chapter 172, L. 1991, amended sec. 10, Ch. 681, L. 1985, to terminate the amendments to this section made by Ch. 681 on January 1, 1993. Chapters 680 and 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to terminate the amendments made by Ch. 681, L. 1985, on January 1, 1991, the date the amendments would have terminated pursuant to Ch. 681, L. 1985. Because the termination provisions conflict, the Code Commissioner has terminated the amendments at the earlier date of January 1, 1991.

1985 Amendments — Code Commissioner Explanation: Chapter 681 combined (2) and former (3); in second sentence of (2) at beginning inserted "Except as provided in subsections (3) and (4)", after "each class" inserted "of agricultural land, such", and after "ability to produce" deleted "taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated"; and inserted (4) concerning revaluation beginning January 1, 1986. Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 705 near end of (3) inserted "productive capacity" and deleted "ability to produce, taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated"; substituted (4) concerning computation of agricultural land valuation schedules for "(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values"; and inserted (5) through (10) concerning calculation of net income, compilation of data, appointment of advisory committee, and calculation of rates. Amendment effective January 1, 1986.

Although the provisions of both Ch. 705 and Ch. 681 become effective January 1, 1986, the amendments in Ch. 681 are to be used in setting the agricultural land valuation schedules that are placed on the tax rolls in January of 1986 (see new (4) inserted by Ch. 681) while the amendments in Ch. 705 are effective January 1, 1986, in order to accumulate data under the capitalization of net income formula of Ch. 705 to determine the agricultural land valuation schedules to be placed on the tax rolls in January of 1991.

Effective Date — Applicability Date: Section 3, Ch. 705, L. 1985, provided: "This act is effective January 1, 1986, and applies to any revaluation of property as provided in 15-7-111 after January 1, 1986."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Interim Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

1983 Amendment: In (1), in two places before "properties" substituted "agricultural" for "farm"; after "capability of" substituted "agricultural land" for "farms"; inserted (2) through (4) that read: "(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986; provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated.

(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values." Amendment effective January 1, 1986.

Administrative Rules

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.20.675 Irrigated farm land valuation.

ARM 42.20.676 Nonirrigated agricultural land valuation.

ARM 42.20.683 Specialty and unique crops.

Case Notes

Department of Revenue Properly Phased in Increases — Property Tax — Plain Reading of Statute: The petitioners filed for declaratory judgment and writ of mandate based on the Department of Revenue's 2009 reclassification of their agricultural property. The petitioners argued that the Department failed to correctly phase in increases under 15-7-111 and that the subsection used by the Department only applied to reclassification of property among different classes. Following a remand from the Supreme Court based on class action certification, the District Court granted the Department's motion for summary judgment. On appeal, the Supreme Court affirmed, holding that 15-7-111 was not ambiguous, that the department followed the plain language of the statute, that the Department's failure to promulgate rules did not have a substantive effect on the proceeding, and that the petitioner's equal protection concerns were not valid. Lucas Ranch, Inc. v. Dept. of Revenue, 2015 MT 115, 379 Mont. 28, 347 P.3d 1249.

15-7-202. Eligibility of land for valuation as agricultural.

Compiler's Comments

2021 Amendment: Chapter 86 in (3) at end of last sentence substituted "Montana state university-Bozeman college of agriculture" for "Montana state university-Bozeman department of agricultural economics and economics". Amendment effective March 26, 2021.

2019 Amendment: Chapter 224 inserted (5) allowing certain parcels of land to be eligible for provisional agricultural classification for 5 years to allow crops to reach salable maturity followed by a required application for agricultural classification; and made minor changes in style. Amendment effective May 1, 2019.

Retroactive Applicability: Section 4, Ch. 224, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018, and to the reappraisal cycle beginning January 1, 2019."

2015 Amendment: Chapter 9 in (1)(b)(iii) inserted "that are part of a family-operated farm, family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production consisting"; deleted former (4) and (5) that read: "(4) Parcels that do not meet the qualifications set out in subsections (1) and (2) may not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(5) Land may not be classified or valued as agricultural land or nonqualified agricultural land if it has stated covenants or other restrictions that effectively prohibit its use for agricultural purposes"; and made minor changes in style. Amendment effective February 17, 2015.

2007 Amendments — Composite Section: Chapter 478 in (1)(b)(i) after "ownership" inserted "that are actively devoted to agricultural use"; in (1)(b)(i)(A) near beginning after "15-1-101" substituted "and if, except as provided in subsection (3)" for "A parcel of land is presumed to be used primarily for raising agricultural products if" and deleted former third sentence that read: "The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products"; inserted (1)(b)(i)(B) allowing agricultural classification if the parcels would have met the qualification set out in subsection (1)(b)(i)(A) were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage; in (2)(a) at beginning inserted exception clause; inserted (3) setting out requirements for grazing land to be classified as agricultural; and made minor changes in style. Amendment effective May 8, 2007.

Chapter 510 inserted (2)(c) allowing parcels of land less than 20 acres to qualify as agricultural land if the parcels previously totaled more than 20 acres and were reduced for a public use by a federal, state, or local government; and made minor changes in style. Amendment effective May 16, 2007.

Applicability — Retroactive Applicability: Section 3, Ch. 478, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006."

Section 4, Ch. 510, L. 2007, provided: "(1) [This act] applies to parcels reduced to less than 20 acres because of a public use proceeding by the federal government, the state, a county, or a municipality regardless of when the proceeding occurred if those parcels have not been further divided since the proceeding.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2006. Taxpayers are not allowed refunds of taxes resulting from a reclassification of parcels under [this act]."

2005 Amendments — Composite Section: Chapter 376 in (1)(c)(ii) near middle after "other than" inserted "nonqualified agricultural"; in (4) near middle after "agricultural" inserted "land or nonqualified agricultural land", after "it" inserted "has" and deleted "is subdivided land with", and after "stated" inserted "covenants or other" and deleted former second sentence that read: "For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes"; in (6) in second sentence near middle after "made is" inserted "valued as provided in 15-6-133(1)(c) and is" and at end substituted "15-6-133(3)" for "15-6-133(1)(c)"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 543 inserted (1)(b)(iii) regarding requirements for taxation of certain parcels of land as agricultural land. Amendment effective January 1, 2006.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

Effective Date — Applicability: Section 2, Ch. 543, L. 2005, provided: "[This act] is effective January 1, 2006, and applies to tax years beginning after December 31, 2005."

1995 Amendments: Chapter 474 at beginning of (2) deleted "Except as provided in subsection (8)"; and deleted (8) that read: "(8) Subject to the provisions of subsections (1), (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property."

Chapter 485 inserted (1)(c)(ii) classifying as agricultural certain land devoted to residential use or that is used for agricultural buildings; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 2, Ch. 474, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

1993 Amendment: Chapter 627 near beginning of (1)(a), before "acres", substituted "160" for "20" and near end, before "commercial", inserted "residential"; inserted (1)(b) establishing criteria for parcels of land of 20 acres or more but less than 160 acres to be eligible for classification as agricultural land; inserted first two sentences of (6) requiring application before land less than 160 acres may be classified as agricultural; in (8) included subsection (1) in subsection references; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 5(2), Ch. 627, L. 1993, provided that this section applies to tax years beginning after December 31, 1993.

1991 Amendments: Chapter 590 in (4), in first sentence before "prohibiting", inserted "effectively" and inserted second sentence defining subdivided land as parcels larger than 20 acres and subdivided for commercial or residential purposes; and made minor changes in style. Amendment effective April 24, 1991.

Chapter 705 at beginning of (2) inserted exception clause; at end of (2)(a) substituted "agricultural products as defined in 15-1-101" for "livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber"; and inserted (8) classifying property upon which sod, ornamental, nursery, or horticultural crops are grown or produced, excluding improvements, as agricultural land. Amendment effective April 29, 1991.

Chapter 773 in (8), at end, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction, substituted reference to class eleven property for reference to class fourteen property.

Retroactive Applicability: Section 2, Ch. 590, L. 1991, provided that this section applies to taxable years beginning after December 31, 1990.

Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Termination Amended: Section 5, Ch. 680, L. 1991, and sec. 11, Ch. 783, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination date of the amendments to this section contained in sec. 10, Ch. 681, L. 1985.

Effective Date — Retroactive Applicability: Section 3, Ch. 705, L. 1991, provided: "[This act] is effective on passage and approval [approved April 29, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1986 Amendment: Inserted (1) relating to parcels totaling 20 acres or more; in (2) near beginning, inserted "totaling less than 20 acres"; and in (3) substituted "subsections (1) and (2)" for "subsection (1)".

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

1985 Amendments: Chapter 681 deleted former (1)(a)(iii) that read: "it is used for growing timber, or"; and inserted (6) that read: "For the purposes of this part, growing timber is not an agricultural use." Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 699 at the beginning of (1), referring to certain land devoted to agricultural use, substituted "Contiguous or noncontiguous parcels of land under one ownership that are" for "Land which is"; substituted (1)(a) relating to $1500 in annual gross income for "the area of such land is not less than 5 contiguous acres when measured in accordance with provisions of 15-7-206, and it has been actively devoted to agriculture during the last growing season, and it continues to be actively devoted to agricultural use, which means:

(i) it is used to produce field crops including but not limited to grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is used for growing timber, or

(iv) it is in a cropland retirement program"; substituted (1)(b) that reads: "the parcels would have met the qualification set out in subsection (1)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice" for "it agriculturally produces for sale or home consumption the equivalent of 15% or more of the owners' annual gross income regardless of the number of contiguous acres in the ownership"; deleted former (1)(c) that read: "it is used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms"; inserted (2) relating to parcels in a platted subdivision; inserted (5) relating to continued valuation of land as agricultural; and made minor changes in phraseology.

Coordination of 1985 Amendment: Section 5, Ch. 699, L. 1985, provided: "In the event neither Senate Bill No. 48 nor House Bill No. 240 nor any other bill that separates timberland from agricultural land in class 3, as described in 15-6-133, is passed and approved, make the following amendment:

Section 1. [Amending 15-7-202.]

Following: subsection (1)(b)

Insert: "(c) the parcel contains over 15 contiguous acres under one ownership and is capable of producing timber of commercial quality that can be economically harvested in commercial quantity.""

Senate Bill No. 48 failed to pass the 49th Legislature; House Bill No. 240 was passed and approved and was enacted as Ch. 743, L. 1985, but did not separate timberland from agricultural land. Senate Bill No. 33 was passed and approved, becoming Ch. 681, L. 1985, and in sec. 2 separated timberland from agricultural land. Thus, the amendment to be made by the coordinating instruction is void.

Effective Date — Applicability: Section 6, Ch. 699, L. 1985, provided: "This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1985."

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: For preamble to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

Statements of Intent: For statement of intent attached to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

The statement of intent attached to Ch. 699, L. 1985, provided: "A statement of intent is attached to Senate Bill 431 to provide guidelines to the department of revenue in adopting rules under the extension of rulemaking authority granted by section 3 of the bill [an extension of rulemaking authority that was not codified] in order to implement certain provisions.

Section 1 amends 15-7-202 to define eligibility of land for valuation as agricultural because of difficulty in administering existing law. For that reason subsection (1) requires that the land produce and that the owner, or the owner's agent, employee, or lessee market stated threshold measurements of agricultural products or gross sales of products. It is the intent of the legislature that the department adopt rules that would provide for methods of determining whether these thresholds are met in instances where the land is primarily used to grow crops that are not marketed but consumed by livestock, poultry, or other animals in an agricultural operation."

Administrative Rules

ARM 42.20.156 Land classification change criteria.

Title 42, chapter 20, subchapter 6, ARM Agricultural land.

ARM 42.20.602 Steps in determining the classification of agricultural land.

ARM 42.20.603 Steps necessary to value agricultural land that does not have a published soil survey.

ARM 42.20.604 Steps in determining the productivity of agricultural land.

ARM 42.20.675 Irrigated farm land valuation.

ARM 42.20.676 Nonirrigated agricultural land valuation.

ARM 42.20.683 Specialty and unique crops.

Case Notes

Subdivision Lots Not to Be Reclassified as Nonagricultural Land When Agricultural Use Continues: The defendant purchased 230 acres of agricultural property and subdivided 30 acres subject to restrictive covenants providing that the subdivided lots could be used only for residential purposes. Although the defendant did not sell any of the lots and continued to use the lots for agricultural purposes, the Department of Revenue reclassified the land as residential tract land based on the restrictive covenants. The Supreme Court affirmed the District Court's finding that the defendant's continued use of the land for agricultural purposes belied any claim that the covenants effectively prohibited agricultural purposes and that upon sale of any of the lots the Department of Revenue could then reevaluate whether the covenants effectively prohibit agriculture. Dept. of Revenue v. Heidecker, 2013 MT 171, 370 Mont. 464, 304 P.3d 726.

Attorney General's Opinions

Mere Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

15-7-203. Agricultural uses only considered in valuation.

Administrative Rules

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.640 Classification of land 160 acres or larger in size.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

ARM 42.20.675 Irrigated farm land valuation.

ARM 42.20.676 Nonirrigated agricultural land valuation.

ARM 42.20.681 Agricultural commodity prices and values.

ARM 42.20.682 Family farm.

ARM 42.20.683 Specialty and unique crops.

15-7-206. Improvements on agricultural land.

Compiler's Comments

2019 Amendment: Chapter 224 in (2) substituted "residential improvements" for "agricultural improvements". Amendment effective May 1, 2019.

Retroactive Applicability: Section 4, Ch. 224, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018, and to the reappraisal cycle beginning January 1, 2019."

1995 Amendment: Chapter 485 inserted (2) valuing 1 acre of land beneath agricultural improvements at the class with the highest productive value and production capacity of agricultural land; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 6(1), Ch. 485, L. 1995, provided: "[Sections 1 through 3] [15-6-134, 15-7-202, and 15-7-206] apply to tax years beginning after December 31, 1995."

Administrative Rules

ARM 42.20.156 Land classification change criteria.

ARM 42.20.610 Classification of easements on agricultural land.

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

ARM 42.20.683 Specialty and unique crops.

15-7-207. Continuance of valuation as agricultural land.

Compiler's Comments

1981 Amendment: Deleted the last sentence of the section, which read: "Liability to the rollback tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use under the conditions prescribed in this part."

Administrative Rules

ARM 42.20.156 Land classification change criteria.

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-208. Reclassification by department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at beginning of first sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1983 Amendment: In first sentence, after "owner" inserted "or any purchaser under contract for deed".

Administrative Rules

ARM 42.20.602 Steps in determining the classification of agricultural land.

ARM 42.20.603 Steps necessary to value agricultural land that does not have a published soil survey.

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-209. Reclassification by owner — lien.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at end of (1) and at beginning of (2) substituted "department" for "county assessor"; in (2), near end, substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1981 Amendments: Chapter 201, at the end of (1), deleted "and the county assessor shall cause the following statement to be recorded by the county clerk and recorder: "On the .... day of ...., 19.., this land became subject to the rollback tax imposed by 15-7-204"".

Chapter 585 added subsection (2) relating to lien releases.

Administrative Rules

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

15-7-210. Tax on change of use of part of tract.

Compiler's Comments

1981 Amendment: Substituted "reclassification by the department" for "liability for the rollback tax applicable thereto".

Administrative Rules

ARM 42.20.156 Land classification change criteria.

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

Attorney General's Opinions

Mere Filing of Subdivision Plat Does Not Defeat Agricultural Status: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property rather than "residential" and thus lower the owner's tax liability. 36 A.G. Op. 51 (1976).

15-7-212. Tract crossing county line — whole.

Administrative Rules

ARM 42.20.620 Application and classification requirements for agricultural land totaling less than 160 acres.

ARM 42.20.645 Classification and assessment of land that does not meet agricultural, nonqualified agricultural, or forest land eligibility requirements.

Part 3
Realty Transfer Act

Part Compiler's Comments

Severability: Section 11, Ch. 528, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Part Administrative Rules

Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.

Part Case Notes

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

15-7-302. Purpose.

Administrative Rules

ARM 42.20.201 Statement of intent as to purpose.

15-7-303. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 deleted definition of partial interest that read: ""Partial interest" means a percentage interest in property when less than 100%"; and made minor changes in style. Amendment effective March 12, 1997.

15-7-304. Report of transfers — change of ownership records.

Compiler's Comments

1995 Amendment: Chapter 532 in (2), in first sentence after "recorder", substituted "and the" for "or a" and inserted second through fourth sentences providing that when the grantor is not the person to whom the property is assessed, the Department may not substitute the grantee's name. Amendment effective April 21, 1995.

Effective Date — Applicability: Section 3, Ch. 532, L. 1995, provided: "[This act] is effective on passage and approval and applies to all transfers after [the effective date of this act]." Effective April 21, 1995.

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agent"; in (2), at beginning, deleted "No agent of" and at end substituted "the department as provided by rule" for "him"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.18.150 Official record for real and personal property.
ARM 42.20.106 Definitions.
ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.204 Change of assessment roll.
ARM 42.20.205 Accuracy of realty transfer certificate.

Case Notes

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

15-7-305. Realty transfer certificate required.

Compiler's Comments

2005 Amendment: Chapter 70 in (3)(b) in first sentence at end substituted "water right ownership update forms" for "and provide the forms required under 85-2-423 and this part" and inserted second sentence requiring form to be part of or attached to realty transfer certificate; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 15, Ch. 70, L. 2005, was a saving clause.

1997 Amendment: Chapter 167 in (3), at beginning, inserted exception clause and inserted second sentence requiring Departments and the Water Court to develop and provide necessary forms; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997, provided: "[This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date."

Administrative Rules

ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.204 Change of assessment roll.

15-7-306. Rules.

Administrative Rules

ARM 42.20.106 Definitions.
Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.

15-7-307. Certificate — exceptions.

Compiler's Comments

2011 Amendment: Chapter 399 in (13) at end substituted "or a sale pursuant to a bankruptcy court order" for "bankruptcy action, or mortgage foreclosure"; and made minor changes in style. Amendment effective July 1, 2012.

2003 Amendment: Chapter 114 in first sentence near beginning substituted "required" for "imposed"; in (4) at beginning inserted "a transfer by"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 532 in introductory clause, after "part", substituted "applies" for "shall not apply" and after "to" inserted "all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred." Amendment effective April 21, 1995.

Effective Date — Applicability: Section 3, Ch. 532, L. 1995, provided: "[This act] is effective on passage and approval and applies to all transfers after [the effective date of this act]." Effective April 21, 1995.

Termination Amendment: Section 5, Ch. 680, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments made to this section by Ch. 681, L. 1985.

Retroactive Applicability: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively to taxable years beginning after December 31, 1990.

1985 Amendment: Inserted (3) relating to timberland used for producing timber. Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Interim Study Committee Bill: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Taxation in Montana", Montana Legislative Council, December 1984.

Preamble: For preamble to Ch. 681, L. 1985, see Compiler's Comments to 15-7-201.

Statement of Intent: For statement of intent attached to Ch. 681, L. 1985 (SB 33), see Compiler's Comments to 15-7-201.

Administrative Rules

Title 42, chapter 20, subchapter 2, ARM Realty transfer rules.
ARM 42.20.201 Intent.
ARM 42.20.202 Realty transfer certificate.
ARM 42.20.203 Exemptions from disclosing sale price.
ARM 42.20.204 Change of assessment roll.

15-7-308. Disclosure of information restricted — exceptions.

Compiler's Comments

2015 Amendment: Chapter 336 in (1) at end of last sentence after "compilations" inserted language regarding sales used by the department after the property taxpayer signs written or electronic confidentiality agreement. Amendment effective April 28, 2015.

2007 Amendment: Chapter 366 in (2) in first sentence after "to the information" deleted "in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information" and after "update form" inserted "or any other form". Amendment effective July 1, 2008.

2005 Amendment: Chapter 70 in (2) in first sentence near middle substituted "water right ownership update form" for "water right transfer certificate". Amendment effective March 24, 2005.

Saving Clause: Section 15, Ch. 70, L. 2005, was a saving clause.

1997 Amendment: Chapter 167 in (1), at beginning, inserted exception clause; and inserted (2) regarding confidentiality provisions. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 5, Ch. 167, L. 1997, provided: "[This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date."

1993 Special Session Amendment: Chapter 27 after "clerk and recorder" deleted "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.20.201 Intent.

Case Notes

Taxpayer to Be Given Access to Realty Transfer Certificates Used in Assessing Taxpayer's Property: DeVoe appealed the assessed value established by the Department of Revenue for his apartment complex. The Department stated that it had based the valuation on the transfer of comparable properties but argued that the realty transfer certificates (RTCs) pertaining to those properties were confidential and not subject to discovery by DeVoe. The Supreme Court, relying on O'Neill v. Dept. of Revenue, 227 M 226, 739 P3d 456 (1987), held that fairness and procedural due process require that when market value is established based on comparable sales, the RTCs of those transactions should be made available to the protesting taxpayer. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Limited Disclosure of Realty Transfer Certificate Information: The language of this section protects the confidentiality of a realty transfer certificate (RTC) when the demand for individual privacy exceeds the merits of public disclosure. However, when limited disclosure of relevant RTC information is crucial to a fair and informed decision by a tax appeal board or court, such disclosure outweighs individual privacy. Therefore, in contested tax proceedings, relevant information from an RTC must be disclosed to the taxpayer party, tax boards, and reviewing courts. During pendency of the proceedings, RTC information will not be available to the public, and after the proceedings any portion of the record containing disclosed RTC information must be sealed. Under this holding, a taxpayer may apply to the District Court for a subpoena to compel the Department of Revenue to release relevant RTC information. The subpoena must identify the specific information requested with as much precision as possible. Issuance and scope of the subpoena lies within the discretion of the District Court. O'Neill v. Dept. of Revenue, 227 M 226, 739 P2d 456, 44 St. Rep. 1037 (1987).

Law Review Articles

A Growing Awareness of Privacy in America, Towe, 37 Mont. L. Rev. 39 (1976).

15-7-310. Penalty.

Administrative Rules

ARM 42.2.325 Access to information.

Part 4

Appraisal of Residential Property in Areas of Changing Use

Part Case Notes

Use of More Than One Approach to Property Valuation — Market Data Approach: Section 15-8-111 defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, 15-8-111 would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993).

15-7-402. Application for residential appraisal of certain land and improvements.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-7-403. Rollback tax — computation.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (2), at beginning, substituted "department" for "department's agent". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

CHAPTER 8

ASSESSMENT PROCEDURE

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

Montana's Property Taxes: Assessment and Classification, 1975-76 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

County Assessors to Become Employees: Sections 158 through 164, Ch. 27, Sp. L. November 1993, provided: "Section 158. Assessors qualifying as employees. (1) A person serving as a county assessor on January 1, 1994, may qualify to become an employee of the department of revenue upon satisfying the following conditions:

(a) The assessor shall notify the department in a written statement received by January 4, 1994, of the assessor's intention to become an employee.

(b) The assessor shall resign from that office effective no later than January 24, 1994.

(2) This section does not apply to a person who is an assessor because the office of assessor was consolidated with another county office prior to [the effective date of this section] [effective December 27, 1993].

Section 159. Classification and salary for qualifying assessor. (1) The position for which a qualifying county assessor is employed as provided in [section 158] [not codified] must be classified in accordance with the classification standards for state employees.

(2) The initial salary for qualifying assessors is determined as follows:

(a) If an assessor's salary as established by resolution of the board of county commissioners for fiscal year 1994 is greater than the market salary under 2-18-312 [now repealed] for the grade of the new position, the initial salary is the same as the amount set by the resolution of the board of county commissioners.

(b) If an assessor's salary as established by the board of county commissioners for fiscal year 1994 is less than the applicable entry-level salary under 2-18-312 [now repealed], the initial salary is the entry-level salary for the grade of the new position.

(3) If, after initial employment, a qualifying assessor is transferred to a different position because of a disciplinary action against the assessor, the assessor's salary must be determined according to the rules and policies governing employee disciplinary actions.

(4) If, after initial employment, a qualifying assessor voluntarily seeks and obtains a transfer to a different employment position, the person's salary must be based upon the grade classification of that new position without regard to this section.

Section 160. Benefits for qualifying assessors. (1) In addition to other benefits provided by law, county assessors qualifying for employment with the department of revenue under [section 158] [not codified] are entitled to the following benefits:

(a) credit for time served as an assessor for completing new employee probationary requirements and for determining years of service for annual vacation leave entitlements;

(b) an initial allowance of annual leave of 40 hours. Annual leave taken must first be credited against this initial allowance. Cash compensation is not allowed under 2-18-617 for any portion of this initial allowance that is unused at termination of employment.

(c) an initial allowance of sick leave of 40 hours. Sick leave taken must first be credited against this initial allowance. A lump-sum payment is not allowed under 2-18-618 for any portion of this initial allowance that remains at termination of employment.

(2) All uninterrupted time served as an assessor is considered as state service for the purposes of 2-18-304.

Section 161. Required employment — department excused from hiring practices. (1) The department of revenue shall employ:

(a) any assessor who qualifies under [section 158] [not codified] to become an employee of the department; and

(b) deputy assessors appointed before November 12, 1993, with continuous service through January 4, 1994, who by that date make a written request for employment.

(2) The department is exempt from compliance with any statute, rule, or policy that requires competitive, formal hiring practices in employing qualifying assessors. Hiring preferences and the provisions of Title 2, chapter 18, part 12, do not apply to the hiring of eligible former assessors.

(3) Deputy assessors who become employees of the department are considered employees transferring between agencies of the same jurisdiction for the purposes of 2-18-617 and 2-18-618.

Section 162. Department contract for county assessor. (1) The department of revenue may, with the consent of the assessor, contract with the county for the assessor to perform assessment work as assigned by the department. Under this contract, the department shall reimburse the county for one-half of the wages and benefits of the assessor. An assessor performing work under this contract is not considered to be an employee of the department for any purpose. However, the department may pay the assessor's salary and benefits and be reimbursed by the county for the county's share of the salary and benefits.

(2) As a condition for the continuation of a contract under this section, the contract must provide that the assessor meet the qualification and certification standards required for department assessment personnel who perform comparable duties.

Section 163. Consolidation of office of county assessor — special procedure — transfer of records. (1) The board of county commissioners may consolidate the office of county assessor with another county office. For a consolidation under this section, the notice of hearing need only be published once, notwithstanding the provisions of 7-1-2121. The publication may not be less than 3 days prior to the date of the hearing. In all other respects, the notice must be published in accordance with 7-4-2307.

(2) If the assessor becomes an employee of the department of revenue as provided in [section 161] [not codified], the order of the county commissioners combining the offices under this section must be made and entered no later than January 14, 1994. After January 14, 1994, the office of the county assessor may be consolidated pursuant to Title 7, chapter 4, part 23.

(3) Notwithstanding the provisions of 7-4-2311, when an order is made under subsection (2) to consolidate the office of assessor with another office, the outgoing assessor shall deliver and transfer to the department all of the books, files, papers, documents, maps, plats, and records of the office. The department shall maintain necessary records and documents within the county for public access during normal business hours, unless the department needs the records and documents for appraisal purposes. The records and documents may be made available from county officials.

Section 164. State not obliged to reimburse county for assessor salary. Except for contracts under [section 162] [not codified] between the department of revenue and a county regarding its county assessor, the department may not pay or reimburse a county for any part of the salary or benefits earned by an assessor or deputy assessor after January 14, 1994." Effective December 27, 1993.

Severability: Section 172, Ch. 27, Sp. L. November 1993, was a severability clause.

Part Case Notes

Supervisory Role of Department of Revenue Over County Assessor's Employees — No Duty Owed to Assessor: Geiger sued the Department of Revenue, alleging that the Department was negligent in its management of the Dawson County Assessor's Office. The District Court granted the Department's motion for a directed verdict. The Supreme Court affirmed the District Court decision, holding that the Department had no duty to Geiger from which negligence could arise. The actions taken by the Department in reducing the number of employees in the Assessor's Office, supervising employees in the Office, withdrawing the delegation to the Assessor to hire and fire state employees, and issuing an audit report examining deficiencies in the Assessor's Office were all done pursuant to the statutory authority of the Department, which it carried out in a nonnegligent fashion. Geiger v. Dept. of Revenue, 260 M 294, 858 P2d 1250, 50 St. Rep. 1050 (1993).

15-8-101. Department responsibilities.

Compiler's Comments

Subsection Not Codified: Subsection (3) of section 84-402, R.C.M. 1947, which dealt with the salaries of County Assessors and Deputy County Assessors, was not codified in the MCA because it is redundant with 7-4-2503. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 405, L. 1973, as amended by sec. 49, Ch. 566, L. 1977.

Administrative Rules

ARM 42.22.109 Adoption of appraisal methods and appraisal standards.

Case Notes

Equalization of the Assessment of Properties: Prior to the amendment of this section in 1973, the State Board of Equalization (duties now performed by Department of Revenue) had the power and the duty to equalize the assessment of properties at a percentage of their market value. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Mandamus: A county may be compelled by a Writ of Mandate to comply with a directive of the State Board of Equalization (duties now performed by Department of Revenue), under the wording of this section prior to the 1973 amendment, although nine other counties have not yet followed the Board's directive. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Attorney General's Opinions

Revenue Department Not Zoning Authority — Designation of Property for Assessment Purposes Only: The Department of Revenue is not a bona fide zoning authority that may designate an area as commercial for outdoor advertising purposes. A property designation made by the Department applies to tax assessment classifications only and may not be extended to zoning restrictions. 42 A.G. Op. 43 (1987).

Establishment and Elimination of Deputy Position in County Office — Authority Resident With County: As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government. 42 A.G. Op. 23 (1987).

15-8-102. County to furnish office space — allowable charge.

Compiler's Comments

1999 Amendment: Chapter 586 in first and third sentences after "courthouse" inserted "or other county building"; in first sentence after "department's" deleted "assessment and appraisal"; inserted second sentence limiting rate charged department to rate charged state agencies for space in state buildings; and inserted fourth sentence defining county building. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 27 deleted (1) that read: "(1) The county assessors of the various counties of the state are agents of the department of revenue for the purpose of locating and providing the department a description of all taxable property within the county, together with other pertinent information, and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment rolls. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection"; deleted (3) that read: "(3) The department must provide maps for the use of its agents, showing the private lands owned or claimed in the county and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge and must be paid from the state general fund"; substituted "department's assessment and appraisal staff" for "county assessor, his deputies and staff, and the state appraiser and staff"; deleted former last sentence that read: "Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department"; and made minor changes in style. Amendment effective January 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 27, Sp. L. November 1993, provided: "With the adoption of the 1972 Montana constitution, the state assumed responsibility for the appraisal, assessment, and valuation of property for property tax administration. Although the state was granted this new responsibility and authority by the constitution, county assessors were retained by local governments to assist the state in the assessment function, acting as agents of the department of revenue. Through the implementation and use of electronic data processing and other technological advances, many of the assessment functions previously performed by county assessors have changed dramatically.

Recognizing the need to make state and local government more responsive and efficient, it is the intent of the legislature that all appraisal and assessment duties relating to property taxation be assigned to the department of revenue. This action transfers from county assessors to the department the responsibility and authority to perform any assessment functions.

Acknowledging the talents and skills of county assessors, it is the intent of the legislature that current county assessors may choose to become employees of the department of revenue and that their respective counties may consolidate the office of county assessor with another county office.

If the current county assessor does not choose to become a state employee and the county chooses to retain the separate office of county assessor, the department of revenue shall, with the consent of the county assessor, contract with the county for the county assessor to perform specific duties as assigned by the department. If under this agreement the county assessor produces satisfactory work quality and output for the department, the department may continue the contract as long as the person currently serving as county assessor retains the position. The department may also contract for any successor county assessor in counties that retain the separate office of county assessor to perform duties assigned by the department.

It is further the intent of the legislature that all present deputy county assessors become employees of the department of revenue, with the same preferences and benefits as other state employees.

To allow for the efficient administration of the property tax appraisal and assessment, it is the intent of the legislature that the department of revenue use other efficiency measures, such as creating regional county appraisal and assessment offices, adjusting office hours of department field offices, and restructuring the organizational structure of the property assessment division.

The legislature grants to the department of revenue general rulemaking authority for the accomplishment of these administrative changes."

Office Hours: Section 166, Ch. 27, Sp. L. November 1993, provided: "Notwithstanding the provisions of 2-16-117, the department of revenue may determine by rule the office hours for property appraisal and assessment field offices located in the various counties. This section does not apply to any other offices of the department." Effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

County Assessor as Agent of Department of Revenue: Section 7-4-2110 grants to the Board of County Commissioners supervisory control of County Assessors "under such limitations and restrictions as are prescribed by law". This section is such a limitation and removes supervision of all internal operations of the County Assessor's office from the County Commissioners and places it with the Department of Revenue. (See 1993 special session amendment.) Cantwell v. Geiger, 228 M 330, 742 P2d 468, 44 St. Rep. 1574 (1987).

Attorney General's Opinions

Departmental Responsibility for Operation of County Assessor's Office — Exceptions: The Department of Revenue is responsible for the internal operation of a County Assessor's office, including employment practices, except with regard to County Assessors and their deputies, who serve at the instance of the electorate or appointing power, as determined statutorily. (See 1993 special session amendment.) 42 A.G. Op. 52 (1988).

Establishment and Elimination of Deputy Position in County Office — Authority Resident With County: As between the state and county governments, the authority to establish a deputy position and the commensurate authority to eliminate a deputy position in the office of the county reside with county government. 42 A.G. Op. 23 (1987).

Office Space for Department of Revenue — County to Pay if Reasonably Available: The County Commissioners are required to pay for office space for the Department of Revenue if space is reasonably available in the county courthouse or other government buildings. If such space is not reasonably available and must be contracted for, the Department of Revenue must pay the cost. 38 A.G. Op. 84 (1980).

County Assessor — Status Under Self-Government Charter: A self-government unit does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of County Assessor. 37 A.G. Op. 68 (1977).

Salaries of Assessors — Deputy Assessors — Staff: The terms of employment of Assessors and Deputy Assessors are regulated by the Department of Revenue, and the Assessor receives as salary the sum provided by statute for the County Clerk and Recorder. Deputy Assessors receive salaries equivalent to that of the Deputy Clerk and Recorder. Staff salaries are regulated by the Department. (See 1993 special session amendment.) 36 A.G. Op. 68 (1976).

15-8-104. Department audit and review of taxable value — costs paid by department.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), after "proceeds of mines", deleted "and oil and gas wells". Amendment effective March 12, 1997.

1993 Special Session Amendment: Chapter 27 in (2), in first sentence, substituted "may conduct reviews" for "shall conduct audits" and in last sentence substituted "review" for "audit" and "may be directed" for "shall be primarily directed"; in (3), after "audit", inserted "or review"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: Inserted (2) relating to audits of commercial personal property; and in (3) substituted "any audit performed under subsection (1) or (2)" for "the audit". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendment: In (1), deleted "business inventories" after "gas wells"; and deleted subsections (2) and (3) relating to business inventories.

Administrative Rules

ARM 42.21.159 Property audits and reviews.

ARM 42.21.160 Definitions.

15-8-111. Appraisal — market value standard — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 529, L. 2023. Amendment effective May 18, 2023.

Retroactive Applicability: Section 3, Ch. 529, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning January 1, 2023."

2021 Amendment: Chapter 104 in (3)(a) inserted last sentence regarding use of the same valuation method to value residential properties in the same neighborhood or subdivision; inserted (3)(b) providing requirements when the department values residential property under the cost approach; inserted (10) defining compelling reason; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 8, Ch. 104, L. 2021, provided: "[This act] applies to state tax appeal board proceedings filed after [the effective date of this act] and to appraisals performed by the department of revenue after [the effective date of this act]." Effective October 1, 2021.

2017 Amendment: Chapter 26 in (4)(a) at beginning substituted "market value" for "wholesale value", at end of first sentence substituted "provided in published national agricultural and implement valuation guides" for "shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri", inserted second and third sentences concerning Montana-specific values and rulemaking, and in last sentence before "the average wholesale value" deleted "the guide or" and at end before "wholesale value category" deleted "publication or". Amendment effective February 17, 2017.

2015 Amendment: Chapter 361 in (1) near middle substituted "appraised" for "assessed"; in (2)(b) substituted "the cost approach" for "construction cost"; in (2)(c) near beginning substituted "income approach" for "capitalization-of-net-income method"; in (5)(a) near end of first sentence substituted "sales comparison approach" for "comparable sales method"; in (5)(b) near end of first sentence substituted "income approach" for "capitalization-of-net-income method"; in (5)(c) at end of first sentence and near beginning of second sentence substituted "cost approach" for "construction-cost method"; in (7) substituted "is the market value multiplied by the tax rate for each class of property" for "is the percentage of market or assessed value established for each class of property"; in (8) near beginning of first sentence substituted "market value" for "assessed value"; in (8)(d) substituted "100%" for "the applicable percentage" and at end deleted "minus any portion of market value that is exempt from taxation under 15-6-222"; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2011 Amendments — Composite Section: (Temporary version) Chapter 373 inserted (3)(c)(ii) concerning townhome or townhouse; and made minor changes in style. Amendment effective May 12, 2011.

(Version effective July 1, 2012) Inserted (4)(c)(ii) concerning townhome or townhouse; and made minor changes in style.

Chapter 399 inserted (3) regarding valuation of class four residential and commercial property; and made minor changes in style. Amendment effective July 1, 2012.

Applicability: Section 7, Ch. 373, L. 2011, provided that this section applies to tax years beginning after December 31, 2011.

2005 Amendments — Composite Section: Chapter 379 inserted (3)(c) pertaining to the establishment of condominium property value by the department; inserted (4) establishing when the department shall use comparable sales, capitalization-of-net-income, or construction-cost method in valuing condominium property; and made minor changes in style. Amendment effective April 25, 2005.

Chapter 532 in (6)(d) at end after "under" substituted "15-6-222" for "15-6-201(1)(z) and (1)(aa)". Amendment effective October 1, 2005.

Chapter 584 in (6)(d) at end after "15-6-201" substituted "(1)(bb) and (1)(cc)" for "(1)(z) and (1)(aa)". Amendment effective May 6, 2005. The amendment by Ch. 532 rendered this amendment void.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

2000 Amendment: Chapter 11 in (6)(d) deleted reference to 15-6-201(1)(bb). Amendment effective May 25, 2000.

Applicability: Section 18(3), Ch. 11, Sp. L. May 2000, provided: "[Sections 1 through 5] [15-6-136, 15-6-138, 15-6-201, 15-7-111, and 15-8-111] apply to tax years beginning after December 31, 2001."

1999 Amendments — Composite Section: Chapter 531 in (6) near beginning inserted "and 15-6-145"; and inserted (6)(f) pertaining to railroad transportation properties. Amendment effective April 30, 1999.

Chapter 584 in (6) inserted references to 15-6-134 and 15-6-143; inserted (6)(d) providing that properties in 15-6-134 under class four will be assessed at percentage of market value minus exempt portion; and made minor changes in style. Amendment effective May 10, 1999.

Chapter 589 inserted (2)(c) concerning determination of market value using capitalization of net income and comparable sales and construction costs; and made minor changes in style. Amendment effective October 1, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Applicability: Section 2, Ch. 589, L. 1999, provided that this section applies on and after January 1, 2000, to tax years beginning after December 31, 1999.

1997 Amendments: Chapter 299 in (3)(a) substituted "average wholesale value category as shown in the Guides 2000, Northwest Region Official Guide" for "loan value as shown in the Official Guide, Tractor and Farm Equipment" and after "published by" substituted "the North American equipment dealers association" for "the national farm and power equipment dealers association" and inserted second sentence requiring the Department to use comparable publication or wholesale value category if guide or category unavailable; and made minor changes in style. Amendment effective April 17, 1997.

Chapter 496 in (1)(c), in first sentence near beginning after "the market value of", substituted "special mobile equipment and" for "all motor trucks", near middle, after "and machinery", deleted "and vehicles of all kinds", and near end, after "manuals or the value", deleted "of the vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Retroactive Applicability: Section 2, Ch. 299, L. 1997, provided: "[This act] [15-8-111] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 397 at end of (6)(a) inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Special Session Amendment: Chapter 27 in (2)(c), after "kinds", deleted "including but not limited to boats and all watercraft"; in introductory clause of (3), after "department", deleted "or its agents"; deleted former (6)(d) that read: "Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland"; in (6)(d), at beginning, deleted "Beginning January 1, 1994"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in (6)(a), at end, inserted "or 15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 at end of (6)(a) inserted reference to 15-23-516. Amendment effective April 27, 1991.

Chapter 783 at beginning of (6)(d) inserted "Beginning January 1, 1990, and ending December 31, 1993"; and inserted (6)(e) concerning assessing at 100% of the forest productivity value for forest land under class thirteen (now class ten, pursuant to sec. 16, Ch. 773, L. 1991, a coordination instruction) property. Amendment effective July 1, 1991.

Termination Amendment: Section 5, Ch. 680, L. 1991, amended sec. 10, Ch. 681, L. 1985, to remove the termination of the amendments made to this section by Ch. 681, L. 1985.

Retroactive Applicability: Section 13(3), Ch. 680, L. 1991, provided that sec. 5, Ch. 680, L. 1991, applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Coordination Instruction: Section 16(1), Ch. 773, L. 1991, provided: "If House Bill No. 340 is passed by the 52nd legislature and approved by the governor, then the code commissioner is instructed, at the time of codification of that enactment, to change references in that enactment from class thirteen property to class ten property." House Bill No. 340 was approved May 17, 1991, as Ch. 783, L. 1991. Therefore, the Code Commissioner has changed references to the respective tax classes where they appear in this section in accordance with the coordination instruction.

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Applicability: Section 17(1), Ch. 783, L. 1991, provided that the amendment to this section applies to taxable years beginning after December 31, 1993.

Termination: Section 19, Ch. 783, L. 1991, provided that 15-8-111(6)(d) terminates January 1, 1994.

1989 Amendment: At end of (6)(a) inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1987 Amendments: Chapter 370 near middle of (1), requiring assessment at full market value, changed "(5)" to "(6)" (deleted by Ch. 618).

Chapter 453 in (2)(c), relating to certain book values, near middle of first sentence before "boats", deleted "aircraft and". Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 593 inserted (2)(b) relating to construction cost reductions. Amendment applicable to taxable years beginning after December 31, 1987.

Chapter 618 in (1), after "except as", inserted "otherwise" and at end, after "provided", deleted "in subsection (5) of this section and in 15-7-111 through 15-7-114"; at end of (3), relating to market value exceptions, after "property" deleted "in 15-6-134 through 15-6-140 and 15-6-145 through 15-6-149"; inserted (3)(c) that reads: "as otherwise authorized in Title 15 and Title 61"; in (5), relating to percentage of market or assessed value, after "property", deleted "in classes four through eleven and fifteen through nineteen", after "market" inserted "or assessed", and at end, after "property" deleted "in 15-6-134 through 15-6-141 and 15-6-145 through 15-6-149"; and deleted former (8) that read: "(8) The taxable value of all property in 15-6-131 and classes two, three, and thirteen is the percentage of assessed value established in 15-6-131(2), 15-6-132, 15-6-133, and 15-6-143 for each class of property."

1987 Statement of Intent: The statement of intent attached to Ch. 593, L. 1987, read: "It is the intent of this legislation to embody into statute the current practice of the department of revenue in determining depreciation, including functional obsolescence and economic obsolescence. This bill is not intended to change the current practice of the department of revenue."

June 1986 Amendments — Composite Section: This section was amended by Ch. 34 and Ch. 35, Sp. L. June 1986, and a composite section was prepared by the Code Commissioner. Chapter 34 created a new class eighteen property and Ch. 35 created a new class nineteen property. Both chapters included citations to these new classes.

Chapter 34 in (3) and (5) substituted "15-6-148" for "15-6-147"; and in (5) substituted "eighteen" for "seventeen".

Chapter 35 in (3) and (5) substituted "15-6-149" for "15-6-147"; and in (5) substituted "nineteen" for "seventeen".

The Code Commissioner has codified the references from Ch. 35 because they are inclusive of the references made by Ch. 34.

Applicability: Section 6, Ch. 34, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Section 10, Ch. 35, Sp. L. June 1986, provided: "This act applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1985."

Preamble: The preamble to Ch. 34, Sp. L. June 1986, provided: "WHEREAS, in 1978 mining claims were taxed at "the price paid to the United States . . ."; and

WHEREAS, in 1979 Montana law was changed to tax mining claims as any other property; and

WHEREAS, in 1985 Montana law was further changed to require proof of $1,500 in agricultural income before a parcel of property could be classified as agricultural; and

WHEREAS, most mining claims are in mountainous, remote terrain that is unfit for agriculture; and

WHEREAS, owners of mining claims are receiving assessment notices increasing the valuation of their property as much as 600%; and

WHEREAS, mining claims were valued at a minimal amount under the philosophy that once they began producing, the owner would pay proceeds taxes; and

WHEREAS, the current revaluation will discourage production because owners will not be able to pay the taxes.

THEREFORE, the Legislature of the State of Montana finds it appropriate to create a separate class of property for mining claims and to tax them at a different tax rate."

March 1986 Amendment: In (3) and (5) substituted "and 15-6-145 through 15-6-147" for "15-6-145, and 15-6-146"; and in (5) substituted "and fifteen through seventeen" for "fifteen, and sixteen".

1985 Amendments: Chapter 463 in (2)(b) at beginning, inserted exception clause; inserted (3)(a) and (3)(b) relating to agricultural implements and machinery; and renumbered former last sentence of subsection (3) as subsection (4).

Chapter 516 in (2)(b) near beginning, after "limited to", deleted "motorcycles". Amendment effective January 1, 1986 (sec. 50, Ch. 516, L. 1985).

Chapter 681 inserted (6)(d) relating to timberland; and in (8), after "three" inserted "and thirteen" and after "15-6-133" inserted "and 15-6-143". Amendment effective January 1, 1986, and terminates January 1, 1991 (sec. 10, Ch. 681, L. 1985).

Chapter 743 in (3) inserted "15-6-145, and 15-6-146"; and in (5) inserted reference to classes fifteen and sixteen and inserted "15-6-145, and 15-6-146". Amendment effective January 1, 1986 (sec. 12, Ch. 743, L. 1985).

1985 Statement of Intent: The statement of intent attached to Ch. 681, L. 1985 (SB 33), provided: "It is the intent of the legislature that the department of revenue use the administrative rules for timberland currently in place on the effective date of this act.

Furthermore, it is the intent of the legislature that the changes embodied in Senate Bill No. 33 would ensure that the taxable value of timber, as a class, will not increase in 1986 as a result of being placed in a separate class and having the tax rate calculated as described in Senate Bill No. 33.

Finally, it is the intent of the legislature that the department of revenue may not subsequently change the valuation method for timber until 1991 or the completion of the next reappraisal cycle as required by 15-7-111."

Interim Study Committee Bill — 1985: Chapter 681, L. 1985, was introduced by request of the Revenue Oversight Committee. See Committee reports entitled: "Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues" and "Agricultural Land Valuation in Montana", Montana Legislative Council, December 1984.

Preamble: The preamble to Ch. 463, L. 1985, which amended 15-8-111, provided: "WHEREAS, the appraisal and assessment of agricultural implements and machinery could be accomplished most efficiently and equitably by the use of the official guide, tractor and farm equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri; and

WHEREAS, the most accurate reflection of market value of agricultural implements and machinery listed by the above official guide is that of loan value as compared to wholesale value in other national guides."

Preamble: The preamble to Ch. 681, L. 1985, provided: "WHEREAS, House Bill 851 (Ch. 510, L. 1983) enacted by the 48th Legislature recognized the difficult economic circumstances of farmers and ranchers by placing a temporary moratorium on the effective date of any Department of Revenue rules revising agricultural land valuations; and

WHEREAS, House Bill 637 (Ch. 644, L. 1983) enacted by the 48th Legislature expanded upon the intent of the Legislature regarding the valuation of agricultural land; and

WHEREAS, House Joint Resolution 35 was adopted in the 1983 Legislative Session, calling for a study of agricultural land taxation; and

WHEREAS, the legislative interim Joint Subcommittee on Agricultural Land Taxation has studied taxes on agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation found that the productive value of agricultural lands actually decreased since the last revaluation of agricultural land; and

WHEREAS, the Joint Subcommittee on Agricultural Land Taxation, with a policy of fairness and fiscal responsibility, recommended that assessed valuations currently in effect for agricultural land, except irrigated land, be continued for the revaluation cycle beginning January 1, 1986; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Joint Subcommittee on Agricultural Land Taxation.

THEREFORE, it is the purpose of this bill to reflect that recommendation by amending section 15-7-201, MCA, and clarifying the legislative intent with respect to the valuation of agricultural lands."

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1983 Amendment: Deleted references to subsections of 15-6-131 in (3), (4), (5), (5)(a), and (7).

1981 Amendments: Chapter 575 substituted "classes four through eleven" for "classes four through ten" in (4); deleted "[and 15-6-121]" at the end of (4); in (7), deleted "[and 15-6-120]" after "15-6-133".

Chapter 578 added (2)(b) that reads: "The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists."

1981 Statement of Intent: A statement of intent was attached to Senate Bill No. 126 requiring the Department of Revenue to adopt certain national appraisal guides for vehicles and equipment. See Ch. 578, L. 1981, for text of the statement of intent.

Coordination: This section was amended twice in 1977, once by Ch. 498 (HB 198) and once by Ch. 566 (HB 70). Section 15 of Ch. 498 provided for coordination in the event that HB 198 and HB 70 passed. Since both bills became law, sec. 15 of Ch. 498 controlled and the amendment to this section by Ch. 498 was not effective.

Administrative Rules

ARM 42.20.301 through 42.20.307 Classification of nonproductive patented mining claims.

ARM 42.20.454 Consideration of sales price as indication of market value.

ARM 42.20.455 Consideration of independent appraisals as indication of market value.

ARM 42.20.655 Classification and valuation of one-acre of land beneath residences located on agricultural land and nonqualified agricultural land.

ARM 42.21.154 Annual valuation of personal property.

ARM 42.21.155 Personal property categories and trended depreciation methodologies.

ARM 42.22.109 Adoption of appraisal methods and appraisal standards.

ARM 42.22.111 Valuation method.

ARM 42.22.1313 Assessment of grain, seed, and fertilizer storage facilities.

Case Notes

Authority of State Tax Appeal Board to Independently Assess Taxpayer's Market Value in Excess of Department of Revenue's Original Assessment: Puget Sound Energy appealed the Department of Revenue's final ad valorem assessment of Puget to the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board). STAB, concluding the Department erred, assessed Puget's value in excess of the Department's assessment. Puget petitioned the District Court for review, arguing STAB lacked authority to adopt an assessment that exceeded the Department's original assessment and violated Puget's due process rights. The District Court agreed. On appeal, the Supreme Court reversed the District Court. Appeals to STAB, in accordance with Art. VIII, sec. 7, Mont. Const., differ depending on whether the appeal is from the county tax appeal board, pursuant to 15-2-301, or is brought directly from a Department decision, pursuant to 15-2-302. Because Puget appealed directly, STAB was the factfinding tribunal and had authority to adopt assessments in excess of the Department's original assessments. Section 15-8-111(1) mandates that all property must be assessed at 100% of its market value and applies equally to the Department and to STAB. Department error does not create an exception for STAB to assess a taxpayer's property at less than 100% of its market value. Puget's due process claim lacked merit, as it placed the determination of ultimate market value before STAB. Puget Sound Energy, Inc. v. Dept. of Revenue, 2011 MT 141, 361 Mont. 39, 255 P.3d 171.

No Separate Study of Depreciation by Obsolescence Required — Corporation Sale Price Properly Considered in Determining Taxable Value: PacifiCorp, a company subject to central assessment of its property by the Department of Revenue (DOR), argued that its property had been overvalued, and that it had therefore been unlawfully required to pay more taxes, because the obsolescence of its property had not been correctly accounted for. The Supreme Court held that additional depreciation deductions for PacifiCorp's property were not warranted; that 15-8-111(2)(b) does not require the DOR to conduct a separate, additional obsolescence study when no evidence suggests that obsolescence exists that has not been accounted for in the taxpayer's filings; and that the State Tax Appeal Board (now Montana Tax Appeal Board) correctly determined that the sale price of the company was properly considered and the price verified that the DOR had not overvalued the company. PacifiCorp v. St., 2011 MT 93, 360 Mont. 259, 253 P.3d 847.

Use of Earnings-to-Price Ratios Upheld for Valuation of Centrally Assessed Property — Substantial Evidence Before STAB Upheld: The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) upheld the method used by the Department of Revenue (DOR) to centrally assess PacifiCorp's property, a method based on earnings-to-price ratios. PacifiCorp challenged that method of valuation. The District Court reversed STAB because of an "admission" made by one of DOR's expert witnesses during a hearing that the witness was not familiar with the method of valuation used by DOR. The Supreme Court reversed, holding that, despite the "admission" of DOR's expert, there was substantial evidence in the record, in the form of testimony by other experts and publications, to support the method of valuation relied on by DOR and that evidence supported STAB's decision to tax PacifiCorp's property at 100% of value based on that method of valuation. The Supreme Court held that the District Court had erroneously substituted its judgment for that of STAB, when the applicable standard was whether there was substantial evidence in the record to support STAB's decision. PacifiCorp v. St., 2011 MT 93, 360 Mont. 259, 253 P.3d 847.

No Error in Appraising Fair Market Value of Electric Generation Assets Differently When Owned by Different Utilities — Equal Protection Constitutionality of Unit Method of Property Valuation Affirmed: Defendant utility company appealed a District Court decision regarding the equality of the state's tax assessments, claiming that the state deprived the utility of equal protection by failing to properly equalize defendant's property tax burden with other comparable electric generation facilities in Montana. The Department of Revenue explained that the relatively higher appraisal values of defendant's properties arose from the fact that the different companies had different total market values as a unit, so their individual properties also had different market values despite the fact that the individual properties might be physically similar. The Supreme Court noted that the unit method of valuation was held to pass constitutional equal protection scrutiny in W. Union Tel. Co. v. St. Bd. of Equalization, 91 M 310, 7 P2d 551 (1932), and the court declined to revisit the issue of the constitutionality of the method itself. The court held that there is nothing constitutionally significant in the bare fact that the Department of Revenue appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities. The basic rule of equal protection is that persons that are similarly situated with respect to a legitimate governmental purpose of law must receive like treatment. The first prerequisite of a meritorious equal protection claim is that the state had adopted a classification that affects two or more similarly situated groups in an unequal manner. Here, the District Court's determination that defendant failed to establish that the state's use of the unit method of valuation deprived defendant of equal protection was affirmed. Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 M 124, 172 P3d 1241 (2007).

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. Although the appraised value of Roosevelt's property declined by $161,757 in 1997, under 15-7-111, he was given credit for only a $3,235 difference and was assessed taxes based on a value of $817,362 rather than the actual 1997 appraised value of $658,840. In District Court, Roosevelt raised numerous alleged statutory and constitutional violations, including equal protection and due process concerns. The District Court held 15-7-111 unconstitutional on its face, in conflict with Art. VIII, sec. 3 and 7, Mont. Const., with the equal protection and due process clauses of both the state and federal constitutions, and with statutes pertaining to the valuation and assessment of real property. On appeal, the Supreme Court cited U.S. v. Raines, 362 US 17, 4 L Ed 2d 524, 80 S Ct 519 (1960), in reversing the holding that the statute was unconstitutional on its face because even though it imposed different tax burdens on various classes of taxpayers, the statute was neutral on its face. However, the court did not find it necessary to address all other issues raised or decided by the District Court beyond the equal protection question. The court first noted that the level of scrutiny applicable to this case did not rise to the level of strict scrutiny, which requires a compelling state interest for statutory classifications that treat otherwise similarly situated persons differently and is reserved for situations when a statutory classification impermissibly interferes with the exercise of a fundamental right or operates to a peculiar disadvantage of a suspect class. Although a legitimate state interest exists in reducing reliance on property taxes and avoiding property tax increases, the method in 15-7-111, which taxed property owners, such as Roosevelt, based on 124% of market value while other taxpayers paid less than full market value, was not rationally related to a legitimate state interest, so the court declined to decide whether a higher level of scrutiny applied to classifications created for property tax assessment. Rather, the court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Use of More Than One Approach to Property Valuation — Market Data Approach: This section defines market value. It is clear from the definition that when the Legislature defined market value as the price at which property would change hands in an arm's-length sale, it evidenced its intent that the market data approach to value, not just the cost approach, can and should be used by the Department of Revenue when it appraises and assesses property, depending upon the available market data. If the Legislature had intended that only one approach be used, this section would be superfluous and the provisions of Title 15, ch. 7, parts 3 and 4, would be ineffective or wholly unnecessary. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), following DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228 (1993). See also CHS, Inc. v. Dept. of Revenue, 2013 MT 100, 369 Mont. 505, 299 P.3d 813.

Construction Costs Alone Not Enough to Establish Market Value: DeVoe appealed the Department of Revenue's valuation of his apartment complex. The Department based its valuation on the construction cost of building a similar complex and argued that the construction cost was equal to market value upon which a 100% assessment was required by law. The Supreme Court, partially overruling NW. Land v. St. Tax Appeal Bd., 203 M 313, 661 P2d 44 (1983), held that market value depends on the price that a willing buyer would pay a willing seller and is affected by the prevailing market and economic conditions and therefore construction costs alone would not necessarily reflect market value for assessment purposes. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Taxpayer to Be Given Access to Realty Transfer Certificates Used in Assessing Taxpayer's Property: DeVoe appealed the assessed value established by the Department of Revenue for his apartment complex. The Department stated that it had based the valuation on the transfer of comparable properties but argued that the realty transfer certificates (RTCs) pertaining to those properties were confidential and not subject to discovery by DeVoe. The Supreme Court, relying on O'Neill v. Dept. of Revenue, 227 M 226, 739 P3d 456 (1987), held that fairness and procedural due process require that when market value is established based on comparable sales, the RTCs of those transactions should be made available to the protesting taxpayer. DeVoe v. Dept. of Revenue, 263 M 100, 866 P2d 228, 50 St. Rep. 1731 (1993).

Department of Revenue to Assess Heavy Equipment at One Hundred Percent of Market Value: The Department of Revenue directed county tax assessors to change their method of appraising the value of equipment. The change in method would have resulted in substantial loss of revenue to counties and would have been based on appraisals of heavy equipment at less than 100% of market value. The Supreme Court held that the administrative rule adopted by the Department was in conflict with the statutory requirement that heavy equipment be assessed at 100% of market value and further held that even if there was a "reasonable necessity" for the rule, the Department had failed to demonstrate the need for the rule change in its notice of proposed rulemaking. Rosebud County v. Dept. of Revenue, 257 M 306, 849 P2d 177, 50 St. Rep. 281 (1993).

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board (now Montana Tax Appeal Board) erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Valuation of Construction Work in Progress Outside Traditional Indicators — No Abuse of Discretion: To determine the value of Puget Sound Power and Light Company (Puget), the Department of Revenue added 40% of the cost indicator, 50% of the income indicator, and 10% of the stock and debt indicator to arrive at an assessed value. The Department then added the market value of Puget's construction work in progress (CWIP) to calculate total value, and the aggregate figure was then multiplied by an agreed percentage to determine the value of Puget's property in Montana. The District Court concluded the Department abused its discretion by failing to integrate the value of CWIP into the three unit value indicators and that the separate treatment for CWIP was erroneous. The Supreme Court found that under ARM 42.22.111, the Department had explicit authority to combine the unit and summation methods of valuation, noting that credible testimony indicated that capitalization of CWIP was too speculative to render an accurate figure for use in the income indicator and that valuation outside the three indicators was a better way to approximate market value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Determining Property Value — Function of Administrative Body: In considering the decision of the State Tax Appeal Board (now Montana Tax Appeal Board) relating to the method of determining the taxable valuation of the respondents' golf course, the District Court overstepped its bounds when it usurped the function of the administrative body and determined the value of the property. Dept. of Revenue v. Grouse Mtn. Dev., 218 M 353, 707 P2d 1113, 42 St. Rep. 1642 (1985), followed in Ostergren v. Dept. of Revenue, 2004 MT 30, 319 M 405, 85 P3d 738 (2004).

Public Use Restriction: In determining a property's market value under this section, the State Tax Appeal Board (now Montana Tax Appeal Board) must use a method of valuation that takes into consideration a public use restriction. A public use restriction is a burden on the property that must be considered in setting a value. Dept. of Revenue v. Grouse Mtn. Dev., 218 M 353, 707 P2d 1113, 42 St. Rep. 1642 (1985).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Value — Determined by Unitary Assessment: A measure of value of utility system property must include consideration of the use to which the property is put and the income from Montana contributed to the entire utility system. Dept. of Revenue v. Pac. Power & Light Co., 171 M 334, 558 P2d 454 (1976).

Compliance With Statute: This section is complied with so long as the same type of property bears the same proportion of tax base. State ex rel. St. Bd. of Equalization v. Vanderwood, 146 M 276, 405 P2d 652 (1965).

Assessment of Pipelines Under Cash Value Standard: Under the "cash value" standard of this section prior to its amendment in 1973, the State Board of Equalization (duties now performed by Department of Revenue) did not act arbitrarily or capriciously in assessing pipeline at 50% of the current replacement cost, even though there was an increase in the assessed value of the property over the preceding year. Treasure St. Pipe Line Co. v. Toole County, 136 M 108, 345 P2d 162 (1959).

Construction of Statute: This section is not affected by 15-23-301 through 15-23-303, and is to be considered in connection with them. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Value and Full Cash Value: All taxable property must be assessed at its full cash value, the terms "value" and "full cash value" being defined as "the amount at which property would be taken in payment of a just debt due from a solvent creditor". Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463 (1917).

Assessment of Real Estate Under Cash Value Standard: Under the "cash value" standard of this section prior to its amendment in 1973, the difficulty which may have confronted the Assessor in ascertaining the full cash value of an interest in real estate reserved by the grantor in himself in a deed conveying the land should not have been taken into account in determining whether such interest was subject to taxation. N. Pac. Ry. v. Mjelde, 48 M 287, 137 P 386 (1913).

15-8-112. Assessments to be made on classification and appraisal.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

2021 Amendment: Chapter 142 in (2) near end of second sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1993 Special Session Amendment: Chapter 27 in (2) substituted "apportion the assessments to" for "transmit such determination and assignment to its agents in"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1986 Temporary Amendment — Not Codified: Section 2, Ch. 29, Sp. L. June 1986, amended 15-8-112 by inserting an exception clause referencing section 1 of the bill that only applied to the 1986 tax year. Section 1 and the amendment in section 2 were not codified because of their temporary nature.

1986 Assessment Review Procedure: Sections 1, 4, and 5 of Ch. 29, Sp. L. June 1986, provided a special procedure for review of 1986 assessments. Section 1 provided for review in the aggregate, by the county tax appeal boards, of assessments that exceeded the 1985 assessment by 180% or more. Section 4 provided for renotification to taxpayers whose 1986 assessment on class four property increased as a result of reappraisal of class four property by 180% or more when compared with 1985. Section 5 extended the application deadline for reduction in 1986 valuations to August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever was later.

Section Not Codified: Section 84-41-100, R.C.M. 1947, which provided that tax deeds may not be held invalid by reason of the prior failure of the County Commissioners to provide for the classification of the lands in the county as required by former law and which also validated tax deeds issued prior to July 1, 1941, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 61, L. 1941, as amended by sec. 10, Ch. 126, L. 1977.

15-8-113. Appeal from percentage assignment.

Compiler's Comments

2021 Amendment: Chapter 142 near end substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1993 Special Session Amendment: Chapter 27 after "department" deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-8-115. Department to defend property tax appeals — costs and judgments.

Compiler's Comments

2021 Amendment: Chapter 142 in (1) near middle of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1999 Amendment: Chapter 85 at beginning of (1) inserted exception clause; near middle of (3) substituted "in which taxes are paid" for "and those funds"; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1993 Special Session Amendment: Chapter 27 in (1), at beginning after "department", deleted "or its designee" and at end substituted "person designated to receive service for the department" for "local county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1983 Amendment: Near beginning of (1), substituted "designee" for "agent".

Case Notes

Failure to Submit Petition to Tax Appeal Board — Motion to Dismiss Granted — Lack of Subject Matter Jurisdiction: Years after the plaintiffs purchased a tax deed certificate, they learned that the real property had been erroneously appraised and overvalued by the Department of Revenue. The plaintiffs requested the defendant board of county commissioners to issue a refund and abatement of the property taxes, which it denied following a hearing. The plaintiffs then filed a petition for judicial review with the District Court. The defendant filed a motion to dismiss based on the District Court's lack of subject matter jurisdiction because the plaintiffs had not followed the administrative appeal process. The District Court granted the motion to dismiss. On appeal, the Supreme Court affirmed, agreeing that the plaintiffs had failed to exhaust administrative remedies. K & J Invs., LLC v. Flathead County Bd. of County Comm'rs, 2020 MT 277, 402 Mont. 33, 476 P.3d 20.

Taxpayer Action Precluded by Statute of Limitations — Running of Statute Not Tolled by Fiduciary Relationship With Department of Revenue — Knowledge of Accrual of Cause of Action Immaterial: Taxpayers brought a civil action against the Department of Revenue and others, seeking a declaratory judgment relief and refund of property taxes assessed in 1989 through 1992, based upon their rights as adjudicated in Dept. of Revenue v. Sheehy, 262 M 104, 862 P2d 1181 (1993). In that case, the Supreme Court found the stratified sales assessment ratio valuation adjustment in 15-7-111 to be unconstitutional. As a consequence of payment of the taxes and the Supreme Court's opinion in Sheehy, the taxpayers alleged that they were entitled to a court-ordered reduction in certain real property appraisals as well as a partial refund of their 1989 through 1992 real property taxes. The Department moved to dismiss the suit on the grounds that each claim was barred by the statute of limitations and that the taxpayers failed to state a claim for which relief could be granted. The District Court dismissed the suit. The Supreme Court noted that the applicable statute of limitations in 15-1-406 requires that suit be commenced within 90 days of imposition of the tax and that it did not matter whether the 1991 version of the statute or the 1995 version of the statute applied to the taxpayers' case because they both contained a similar statute of limitations. The Supreme Court responded to the taxpayers' argument, that the running of the statute of limitations was tolled because the Department acted as a fiduciary in holding the taxpayers' claimed reimbursement, by distinguishing the cases from other jurisdictions cited by the taxpayers upon which the taxpayers based their argument. The Supreme Court also noted that under some statutes, such as this section, the Department is actually a taxpayer's adversary. The Supreme Court also pointed out that contrary to the taxpayers' assertions, whether the taxpayers had knowledge of the accrual of their cause of action is immaterial because under 27-2-102, the statute of limitations begins to run when a cause of action accrues and lack of knowledge of the time of accrual of the cause of action does not postpone the running of the period of limitation. Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

No Bad Faith When State Required to Defend: The plaintiffs argued that they were entitled to attorney fees because the state's defense in a tax assessment case was frivolous or made in bad faith. The Supreme Court ruled that the state had a statutory duty to defend against all claims that a tax assessment was erroneous and that therefore the state's action could not be frivolous or in bad faith. The court also pointed out that the plaintiffs had not met the other requirement for obtaining attorney fees because the state had won the case. Kruse v. Cascade County, 244 M 126, 796 P2d 568, 47 St. Rep. 1445 (1990).

15-8-120. Restricted access to income and expense information submitted to department for property tax purposes.

Compiler's Comments

Effective Date: Section 3, Ch. 18, L. 2023, provided: "[This act] is effective on passage and approval." Approved February 23, 2023.

Applicability: Section 4, Ch. 18, L. 2023, provided: "[This act] applies to income and expense information furnished by a property owner or a property owner's agent on or after [the effective date of this act]." Effective February 23, 2023.

Part 2

When Property Is Assessed

Part Compiler's Comments

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title that applies to several sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Part Case Notes

Tax Assessment to Someone Other Than Owner When Records Disclosed Owner — Tax Assessment Invalid — Subsequent Tax Lien Sale and Issuance of Tax Deed Void — Quiet Title Action Failed: The Supreme Court reversed the District Court and determined that a defective property tax assessment voided a lien sale. It was undisputed that the defendant properly recorded its deed to a lot and that the Department of Revenue received the realty transfer certificate, which showed correctly the conveyance of the lot from the seller to the defendant. It was also undisputed that the Department continued to assess the lot to the seller, rather than to the defendant; that the defendant did not receive any notices of taxes due on the lot; and that the defendant paid all taxes due on the notices it did receive for other property that was purchased from the seller. The defendant argued that, under these facts, the Department's tax assessments on the lot were invalid and therefore rendered void the tax deed to the plaintiff. The District Court disagreed and held that, even though the wrong party was assessed, the tax assessment was valid under 15-8-201. On appeal, the Supreme Court reversed the District Court through the statutory interpretation of 15-8-201. The Supreme Court reasoned that because the provisions requiring the owner to be named are mandatory, and 15-8-201 provides no cure for a defect in the identity of the owner, a tax assessment to a person or entity other than the owner, where the owner is known to the Department through properly recorded transfer records, is not a valid assessment. Because the tax assessment was void, the subsequent tax lien sale and issuance of a tax deed was also voided. The county lacked jurisdiction to hold the tax lien sale on the property because there was no valid assessment. The subsequent tax deed issued to the plaintiff was void, and its quiet title action failed. Zinvest, LLC v. Gunnersfield Enterprises, 2017 MT 284, 389 Mont. 334, 405 P.3d 1270. See also Moran v. Robbin, 261 Mont. 478, 863 P.2d 395 (1993).

15-8-201. General assessment day.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (5)(e) after "property defined" deleted "in 61-1-104" and after "equipment" inserted "in 61-1-101". Amendment effective January 1, 2006.

Chapter 596 in (5)(c) at end inserted "snowmobiles, and off-highway vehicles"; in (5)(e) at end substituted "decal" for "plate"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 34 in (1) near beginning after "January 1 and the" substituted "first Monday of August" for "second Monday of July". Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(1), Ch. 34, L. 2003, provided: "[Section 2] [15-8-201] applies retroactively, within the meaning of 1-2-109, to the general assessment day for calendar year 2003".

Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

1999 Amendment: Chapter 583 deleted former (6) that read: "(6) Credits must be assessed as provided in 15-1-101(1)(f)." Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendments: Chapter 200 in (5)(f), after "mobile homes", inserted "and manufactured homes" and after "dealer" deleted "of mobile homes". Amendment effective January 1, 1998.

Chapter 414 inserted (2)(b) requiring the new owner to be assessed, except in the case of land splits, if provisions of 15-7-304 are met and transfer certificate is received and processed; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 in (5)(a), at end, deleted "that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date"; and made minor changes in style. Amendment effective January 1, 1998.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1993 Special Session Amendment: Chapter 27 in (1), in two places after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Inserted (2)(g) providing that assessment procedure does not apply to property subject to the provisions of 15-16-203; and made minor change in style.

Applicability: Section 4, Ch. 570, L. 1991, provided: "[This act] applies after December 31, 1991."

1987 Amendments: Chapter 370 in (3), describing how credits must be assessed, changed "15-1-101(1)(d)" to "15-1-101(1)(f)".

Chapter 611 in (2)(b) substituted "motor homes, travel trailers, and campers" for former (2)(c) that read: "(c) motor homes and travel trailers subject to a fee in lieu of property tax" and deleted former (2)(b) and (2)(d) that read: "(b) automobiles and trucks having a rated capacity of three-quarters of a ton or less" and "(d) motorcycles and quadricycles".

Chapter 649 inserted (2)(c) relating to watercraft. Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

1985 Amendments: Chapter 20 in (2)(f) substituted "61-1-104" for "61-1-104(2)".

Chapter 516 inserted (2)(d) relating to motorcycles and quadricycles. Amendment effective January 1, 1986.

1981 Amendment: Added subsection (2)(b) relating to light vehicles.

Administrative Rules

ARM 42.21.162 Personal property taxation dates.

Case Notes

Tax Assessment to Someone Other Than Owner When Records Disclosed Owner — Tax Assessment Invalid — Subsequent Tax Lien Sale and Issuance of Tax Deed Void — Quiet Title Action Failed: The Supreme Court reversed the District Court and determined that a defective property tax assessment voided a lien sale. It was undisputed that the defendant properly recorded its deed to a lot and that the Department of Revenue received the realty transfer certificate, which showed correctly the conveyance of the lot from the seller to the defendant. It was also undisputed that the Department continued to assess the lot to the seller, rather than to the defendant; that the defendant did not receive any notices of taxes due on the lot; and that the defendant paid all taxes due on the notices it did receive for other property that was purchased from the seller. The defendant argued that, under these facts, the Department's tax assessments on the lot were invalid and therefore rendered void the tax deed to the plaintiff. The District Court disagreed and held that, even though the wrong party was assessed, the tax assessment was valid under 15-8-201. On appeal, the Supreme Court reversed the District Court through the statutory interpretation of 15-8-201. The Supreme Court reasoned that because the provisions requiring the owner to be named are mandatory, and 15-8-201 provides no cure for a defect in the identity of the owner, a tax assessment to a person or entity other than the owner, where the owner is known to the Department through properly recorded transfer records, is not a valid assessment. Because the tax assessment was void, the subsequent tax lien sale and issuance of a tax deed was also voided. The county lacked jurisdiction to hold the tax lien sale on the property because there was no valid assessment. The subsequent tax deed issued to the plaintiff was void, and its quiet title action failed. Zinvest, LLC v. Gunnersfield Enterprises, 2017 MT 284, 389 Mont. 334, 405 P.3d 1270. See also Moran v. Robbin, 261 Mont. 478, 863 P.2d 395 (1993).

Assessment Notices Sent After Second Monday in July Not Invalid: Reversing its contrary decision in Butte Country Club v. St., 186 M 424, 608 P2d 111 (1980), the Supreme Court held that this section does not render assessments for which notices and levies were sent out on or after the second Monday in July (see 2003 amendment changing date to first Monday of August) invalid to the extent that taxes were increased by those assessments. Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997), distinguishing Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855 (1996).

Delinquent Tax Sale: The assessment and sale of property for delinquent taxes is a proceeding in invitum; the purchaser at such sale buys at his peril, and the rule of caveat emptor applies. Quirin v. Weinberg, 252 M 386, 830 P2d 537, 49 St. Rep. 331 (1992); Larson v. Peppard, 38 M 128, 99 P 136 (1909); Birney v. Warren, 28 M 64, 72 P 293 (1903).

Late Assessment:

Although the Department of Revenue made an assessment shortly after the 2009 statutory deadline, the District Court did not err in granting summary judgment because 15-8-308 provides assessments are not illegal if they occur after deadlines, the Legislature included a provision for 2009 assessments allowing deadlines to be extended as necessary and reasonable, and the plaintiff failed to establish any facts showing it suffered prejudice as a result of the late notice. CHS, Inc. v. Dept. of Revenue, 2013 MT 100, 369 Mont. 505, 299 P.3d 813.

Under 15-8-601, the Department of Revenue may assess in a later year property which it failed to assess or which had been omitted from taxation in previous years, despite the requirement of 15-8-201 that all property must be assessed by the second Monday in July (see 2003 amendment changing date to first Monday of August) of each year. The court distinguished Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), in which it held invalid a revised assessment for the year in question, when the revised assessment was issued after the second Monday in July (see 2003 amendment changing date to first Monday of August). OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

Assessments made after the second Monday in July (see 2003 amendment changing date to first Monday of August) are invalid. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board (now Montana Tax Appeal Board) review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), followed in Boehm v. Nelson, 229 M 452, 747 P2d 213, 44 St. Rep. 2127 (1987), and overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Deadline for Assessment: The County Commissioners have a clear legal duty under 7-4-2504 to compute the taxable valuation of a county prior to the first day of July, even though the second Monday in July (see 2003 amendment changing date to first Monday of August) is the deadline for reporting their computations to the Department of Revenue. Brown v. Bd. of County Comm'rs, 165 M 391, 529 P2d 358 (1974).

Time of Assessment: The "assessing" of property is done after situs is acquired. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Situs of Property:

Prior to the amendment of this section, the first Monday in March was significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Prior to the amendment of this section, in order for personal property to acquire a situs for the purpose of taxation, it must have been within the state and subject to its jurisdiction at noon on the first Monday of March. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Limitation of Action: Irrigation district's purported special assessments for 1921 through 1926 and the collection of water district charges due thereunder in 1949 was barred by the provisions of 85-7-2106. Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Individual Assessment:

Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P2d 998 (1957).

When irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under 15-18-202 (now repealed). Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Federal Government Immune When Holding Equitable Title — Right to Recover Taxes Paid: When the United States entered into an enforceable option contract for the purchase of land in April, 1938, and in June it exercised the option, took possession, and made extensive improvements, the formal deed not being delivered until November, 1939, it paid the taxes for the year 1939 under protest, under a clause that it might do so, deducted them from the purchase price, and assigned its claim to recover them back to the vendor. In vendor's action to recover the taxes, the government, being holder of the equitable title, was owner for purposes of taxation, immune for the year in question, and plaintiff assignee was entitled to recover taxes paid. Calvin v. Custer County, 111 M 162, 107 P2d 134 (1940).

Meaning of "Assess": When the Legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the Supreme Court will follow the definition as found in the statute. Under this rule the word "assess" as used in this section had the same meaning as in section 2002.1, R.C.M. 1935, now repealed. State ex rel. St. Bd. of Equalization v. Jacobson, 107 M 461, 86 P2d 9 (1938).

Tax Not Escapable by End-of-Year Trade-in: Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. (Decided prior to implementation of light vehicle fee system; see Title 61, ch. 3, part 5.) Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Property in Interstate Commerce Not Taxable: Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Misnomer:

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire 10-year period, did not affect the right of the latter in view of this section, declaring that a mistake in the name of the owner does not render the assessment invalid, and 15-8-308, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 45 P2d 771 (1935).

The provisions of this section and 15-8-501 are mandatory, and with the qualifications in the sections require personal property to be assessed in the name of the real owner, if known; if not known, then to "unknown owners". A misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment and renders a sale thereunder void. Birney v. Warren, 28 M 64, 72 P 293 (1903). See also Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

The listing of land in the name of a person other than the owner is not an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized, and affords no ground for restraining the collection by sale of the property itself of the taxes due thereon. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

Mining Rights: Where an assessor listed for taxation lands with the reservation of minerals, mining rights, etc., to the grantee for the full cash value, and at the same time assessed the grantor's reservations at a certain amount per acre, it was deemed to be a case of double taxation.

The grantor was in no position to complain of the double assessment, however, as the only person who could do so was the one who was made to bear more than his proportion of the burden of taxation. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

Capital Stock of Corporation: The authorized capital stock of a corporation engaged solely in a general real estate business, and which does not own any of its capital stock, was not taxable as such, against the corporation. Butte Land & Inv. Co. v. Sheehan, 44 M 371, 120 P 241 (1911).

Attorney General's Opinions

Computing Salaries of County Officers: The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-78 fiscal year is the taxable value determined under assessment procedures in 15-8-201, 15-8-202, and 15-8-203 (repealed, 1979) for the current 1977-78 fiscal year. In the event a county is unable to fix the salary on or before July 1, county officials are entitled to salary increases retroactive to that date. 37 A.G. Op. 101 (1977).

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-8-202. Motor vehicle assessment by department of justice.

Compiler's Comments

2021 Amendment: Chapter 142 in (2)(a) in one place and in (2)(b) in two places substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2005 Amendments — Composite Section: Chapter 542 in (1)(a) near end substituted "61-3-321 and" for "61-3-560 through"; in (1)(b) before "vehicle" inserted "motor"; in (1)(c) near middle substituted "registration fee" for "fee in lieu of tax" and substituted "61-3-321" for "61-3-528"; in (1)(d) near beginning after "fees" deleted "or fees in lieu of tax"; in (2) in first sentence in two places after "fee" deleted "in lieu of tax" (amendment rendered void by Ch. 596 amendment); and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(b) near end after "vehicles" deleted "subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation"; in (1)(d) at end substituted "to whom the vehicle is registered" for "who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date"; deleted former (2) through (4) that read: "(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (1)(a) concerning registration fee for light vehicles; at beginning of (1)(b) inserted clause concerning local option vehicle tax; in (1)(d) near beginning inserted "registration fees"; in definition of purchasers at end deleted "except as otherwise provided by 61-3-502"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 85 inserted (5) concerning motor vehicle tax appeals; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 496 in (1) substituted current text regarding assessment and the fee in lieu of tax for former provision that read: "The department shall, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501. The assessment for all motor vehicles must be made in accordance with 61-3-503. The motor vehicles must be assessed in each year to the persons by whom owned or claimed or in whose possession or control they were at midnight of January 1 or the anniversary registration date, whichever is applicable"; in (2), in three places, inserted reference to fee in lieu of tax and in first sentence inserted "or imposed"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1), after "vehicles", substituted "other than motor homes, travel trailers, and campers" for "other than automobiles, trucks having a rated capacity of three-quarters of a ton or less, motorcycles, quadricycles, motor homes, travel trailers", near end of first sentence, after "those vehicles", inserted "as provided by law", and in second sentence, after "vehicle", substituted "must be made in accordance with 61-3-503" for "will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide".

1985 Amendments: Chapter 433 at end deleted former (2) that read: "In all cases where taxes or a fee in lieu of tax were required to be paid, the applicant for registration or reregistration of a motor vehicle, other than a mobile home, is not relieved of the duty of paying taxes or the fee in lieu of tax if the taxes or fees have not been paid by a prior applicant or owner"; and renumbered (1)(a) through (1)(d) as (1) through (4). Amendment effective April 11, 1985, and applicable to vehicles registered or reregistered after December 31, 1984.

Chapter 516 in (1)(a) near middle of first sentence after "ton or less", inserted "motorcycles, quadricycles". Amendment effective January 1, 1986.

1981 Amendments: Chapter 262 in (1) inserted "The assessment for all motor vehicles will be made using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automotive Dealers Association Official Used Car Guide."

Chapter 614 inserted "automobiles, trucks having a rated capacity of three-quarters of a ton or less," after "ascertain and assess all motor vehicles other than" near the beginning of (1); and inserted "subject to taxation" after "motor vehicles" twice in (1)(b).

Effect of Recodification on Case Notes: In recodification, section 84-406, R.C.M. 1947, was split into three sections: 15-8-201, 15-8-202, and 15-8-203 (since repealed). For more case notes that may have application to this section, refer to case notes under 15-8-201.

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Time of Assessment: The "assessing" of property is done after situs is acquired. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Situs of Property:

Prior to the amendment of this section, the first Monday in March was significant to determine and fix the situs and ownership of property for tax purposes. Yellowstone Bank v. St. Bd. of Equalization, 137 M 198, 351 P2d 904 (1960).

Prior to the amendment of this section, in order for personal property to acquire a situs for the purpose of taxation, it must have been within the state and subject to its jurisdiction at noon on the first Monday of March. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Individual Assessment: Only individual assessment by individual ownership will satisfy this section. Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Meaning of "Assess": When the Legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the Supreme Court will follow the definition as found in the statute. Under this rule the word "assess" as used in this section had the same meaning as in section 2002.1, R.C.M. 1935, now repealed. State ex rel. St. Bd. of Equalization v. Jacobson, 107 M 461, 86 P2d 9 (1938).

Application to Cars Held in Stock by Dealer on Tax Day: Chapter 72, L. 1937, amending this section, cannot be construed that a dealer must pay taxes on all cars held in stock on January 1 before he can sell any of them, or that a purchaser of such car must pay all taxes assessed to the dealer and covering other cars before he may obtain license plates. He must pay the tax applicable to his own car, based, under former law, on 33⅓% of the valuation at which the car was assessed against the dealer. State ex rel. Sadler v. Evans, 106 M 286, 77 P2d 394 (1938).

Payment of Delinquent Taxes Not Prerequisite to Registration of Motor Vehicle: Under this section, as amended by section 9, Ch. 72, L. 1937, the owner of a motor vehicle was not required to pay delinquent taxes previously assessed as a condition precedent to securing license plates, when such taxes were not a lien upon realty. State ex rel. Kleve v. Fischl, 106 M 282, 77 P2d 392 (1938).

Constitutionality: Assertion that Legislature, in amending this section by enacting Ch. 72, L. 1937, and making special provision for taxing automobiles included in class two of section 84-301, R.C.M. 1947 (now repealed), among other property without first amending such section, unlawfully discriminated against motor vehicles, was not well made since the Legislature may properly go even to the extent of placing identical articles in the hands of different owners, different uses resulting in different productivity. Chapter 72, L. 1937, did not violate Art. XII, sec. 11, or Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, 1972 Mont. Const.). Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Tax Not Escapable by End-of-Year Trade-in: Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Property in Interstate Commerce Not Taxable: Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

Motor Vehicle Taxation Situs: The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of registration. 37 A.G. Op. 139 (1978), overruling 32 A.G. Op. 15 (1968) and 37 A.G. Op. 108 (1978).

Computing Salaries of County Officers: The "taxable value" of property within a county to be used in computing county officers' salaries for the 1977-78 fiscal year is the taxable value determined under assessment procedures in 15-8-201, 15-8-202, and 15-8-203 (repealed, 1979) for the current 1977-78 fiscal year. In the event a county is unable to fix the salary on or before July 1, county officials are entitled to salary increases retroactive to that date. 37 A.G. Op. 101 (1977).

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. (1963).

Collateral References

Motor Vehicle Fee System, 1977-78 Interim Report, Montana Legislative Council.

Uniform Fee Taxation and Anniversary Date Registration of Motor Vehicles, 1974 Interim Report, Montana Legislative Council.

15-8-204. Supplemental assessment.

Compiler's Comments

2003 Amendment: Chapter 34 near beginning after "after the" substituted "first Monday of August" for "second Monday of July"; and made minor changes in style. Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

Case Notes

Application: This section applies to property that was not, but should have been, assessed as of the first Monday of March of the current year, not to property that was not in the state on that date. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

15-8-205. Initial assessment of class four trailer, manufactured home, and mobile home property — when.

Compiler's Comments

2009 Amendment: Chapter 2 near beginning after "assess" deleted "all class four" and near middle after "property" inserted "as class four property under 15-6-134". Amendment effective October 1, 2009.

1997 Amendment: Chapter 200 after "trailer" inserted "manufactured home". Amendment effective January 1, 1998.

1993 Special Session Amendment: Chapter 27 at beginning substituted "department" for "county assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Substituted reference to class four trailer and mobile home property for reference to class twelve property. Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

Part 3

How Property Is Assessed

Part Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-8-301. Statement — what to contain.

Compiler's Comments

2009 Amendment: Chapter 2 in (2) near end of second sentence after "property" inserted "as defined in 15-6-138"; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 285 in (2) inserted second and third sentences providing limited reporting requirements for exempt business equipment and requiring department to adopt related rules. Amendment effective April 11, 1999.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 347 inserted (2) regarding a statement for reporting business equipment and personal business property.

1993 Special Session Amendment: Chapter 27 in introductory clause of (1), after "department", substituted "may" for "or its agent must"; in (1)(e) substituted "improvements, and personal property" for "in parcels or subdivisions not exceeding 640 acres each and the sections and fractional sections of all tracts of land containing more than 640 acres which have been sectionized by the United States government; improvements and personal property; all taxable state, county, city, or other municipal or public bonds and the taxable bonds of any person, firm, or corporation and deposits of money, gold dust, or other valuables and the names of the persons with whom such deposits are made and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured and the property in the county affected thereby"; deleted former (1)(f) that read: "(f) all solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member or due or owing to any corporation of which he is president, secretary, cashier, or managing agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: Near middle of (1)(e), requiring exact land descriptions, after "improvements and personal property" deleted "including all vessels, steamers, and other watercraft". Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Administrative Rules

ARM 42.21.158 Property reporting requirements.

Case Notes

Control Sufficient for Taxation of Personal Property (Cattle): When a feedlot owner exercised control but not ownership over cattle, taxes on the cattle assessed against the feedlot owner were valid. Possessory control of property was held sufficient to authorize its assessment to the possessor or keeper of it. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Taxes on Cattle as Personal Property: Unpaid taxes previously and properly assessed on cattle under the control of a cattle feedlot owner could not be assessed against a new owner of the feedlot. Such taxes are taxes on personal property. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish & Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Deduction of Debts: This section, prior to amendment, authorized any taxpayer to deduct or have deducted from his credits all debts then owing by him; but it did not authorize the deduction of debts from money on hand, and if it attempted to do so would clearly violate the provisions of the Constitution. Clark v. Maher, 34 M 391, 87 P 272 (1906).

Section Applicable to Corporations and Natural Persons: The provisions of this section are general and applicable alike to all taxpayers, whether natural persons or corporations. Clark v. Maher, 34 M 391, 87 P 272 (1906); Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

Constitutionality: The purpose of this section being merely to ascertain the just amount and value of property subject to taxation, in conformity with Art. XII, sec. 1, 1889 Mont. Const. (see Art. VIII, sec. 1 and 3, 1972 Mont. Const.), does not have the effect of exempting from taxation property other than that enumerated in Art. XII, sec. 2, 1889 Mont. Const., and it is therefore constitutional. Daly Bank & Trust Co. v. Bd. of County Comm'rs, 33 M 101, 81 P 950 (1905).

Agent of a Company: It was the duty of a County Assessor (see 1993 special session amendment) to require from the agent of a company to be assessed a verified list of its property in his county on the first Monday of March, which list, among other things, must have shown the particular property belonging to the company, and the county in which it was situated, or in which it was liable to taxation. Flowerree Cattle Co. v. Lewis & Clark County, 33 M 32, 81 P 398 (1905).

Increase in Assessment: An increase in an assessment in obedience to a void order of the Board of Equalization (duty now performed by Department of Revenue) could not be sustained under this section or 15-8-308. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

15-8-303. Statement to be completed and returned to department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 at beginning of first sentence deleted "agent of the" and substituted "may deliver the statement specified in 15-8-301 to the person owning taxable property" for "may fill out the statement at the time he presents it or he may deliver it to the person"; in second sentence substituted "department shall notify" for "agent must either in person or by mail deliver to" and at end substituted "department" for "agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.21.158 Property reporting time frames.

15-8-304. Enforcement powers of department.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 deleted (3) that read: "(3) In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Providing Incorrect Statement: When plaintiff had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment provided for in 15-8-305 (now repealed), but the assessor should have proceeded to ascertain the facts under the powers granted him by this section, by citing plaintiff to appear before him and answer as to his property. Story v. Dixson, 64 M 206, 208 P 592 (1922).

15-8-307. Land assessment.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), at beginning, inserted exception clause; inserted (2) relating to assessment of multiple parcels; in (3), throughout subsection, deleted references to columns and lines, at beginning, after "department", deleted "or its agent" and substituted "itemize in the property tax record" for "set aside one line in the assessment book for", and near middle substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to 15-18-212. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under this section, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

15-8-308. Assessment not illegal for informality or delay.

Case Notes

Late Assessment Invalid: An assessment made after the second Monday in July violates 15-8-201 and is therefore invalid. This section does not allow late assessments. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Misnomer:

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire 10-year period, did not affect the right of the latter in view of 15-8-201, declaring that a mistake in the name of the owner does not render the assessment invalid, and this section, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace, 99 M 421, 45 P2d 771 (1935).

The listing of land in the name of a person other than the owner is but an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized. Cobban v. Hinds, 23 M 338, 59 P 1 (1899).

Sale of Personal Property — Omission of Notice: When no legal notice of tax sale of personal property was given, the sale was void. True, this section says "No assessment or act relating to assessment or collection of taxes is illegal on account of informality"; however, this departure from legal requirement is not an informality. It is a matter of substance and is vital. Perham v. Putnam, 82 M 349, 267 P 305 (1928).

Increase in Assessment Under Void Order: An increase in an assessment in obedience to a void order of the Board of Equalization (duty now performed by Department of Revenue) could not be sustained under this section or 15-8-301. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

15-8-309. Violation and penalty.

Compiler's Comments

1999 Amendment: Chapter 427 substituted "A person who fails for any reason to file or return the statement required by 15-8-301 must be assessed a $25 penalty. The department shall deposit the penalty to the credit of the state general fund" for "Every person who refuses to furnish the statement hereinbefore required or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of $100 to be recovered by action brought in the name of the state in any city or justice's court"; deleted former (2) that read: "(2) All moneys recovered under the provisions of this section, except moneys paid to a justice's court, must be paid into the treasury of the county in which the property is located"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1987 Amendment: Near beginning of (2), after "section", inserted "except moneys paid to a justice's court".

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

Part 4

Where Property Is Assessed

15-8-402. Property of person.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in two places substituted "person" for "firm and corporation"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Case Notes

Intangible Personal Property: Personal property, particularly that of an intangible character such as credits represented by notes and mortgages, has its situs only at the domicile of the owner for purposes of taxation. Monidah Trust v. Sheehan, 45 M 424, 123 P 692 (1912); Holland v. Bd. of Comm'rs, 15 M 460, 39 P 575 (1895); Gallatin County v. Beattie, 3 M 173 (1878).

Application of Section: The provisions of this section apply equally to all kinds of property. Coburn Cattle Co. v. Small, 35 M 288, 88 P 953 (1907); Flowerree Cattle Co. v. Lewis & Clark County, 33 M 32, 81 P 398 (1905).

Attorney General's Opinions

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

15-8-404. Property of particular types of firms.

Compiler's Comments

1999 Amendment: Chapter 583 in first sentence in (3) after "property" deleted "and franchises"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1987 Amendment: In (2), after "stage companies", deleted "steamboats, vessels, and other watercraft". Amendment applicable to motorboats and sailboats registered on or after January 1, 1988.

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Case Notes

Property of Express Company: All of the tangible property of an express company is liable to taxation. Wells Fargo & Co. v. Harrington, 54 M 235, 169 P 463 (1917).

Water Right: A water right (which was taxable under former law) owned by a water company was properly assessed in a school district where its place of business and principal works were located, and into the limits of which water was conveyed by pipelines for distribution to the inhabitants. Helena Water Works Co. v. Settles, 37 M 237, 95 P 838 (1908).

Attorney General's Opinions

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

15-8-405. Street railroads, bridges, and ferries.

Compiler's Comments

1999 Amendment: Chapter 583 after "ferries" deleted "and their franchises"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Assessable Property — Prior Classification: Under this section, the constituent parts of a street railway track are personal property and taxable as such under sections 84-301 and 84-302, R.C.M. 1947 (now repealed), falling within class seven at 40% of its true and full value as property not included in the preceding six classes. Butte Elec. Ry. v. Brett, 80 M 12, 257 P 478 (1927).

Distinction Between "Street Railroad" and "Railroad": The frequent use of the prefix "street" in statutes similar to this section and 15-8-406 indicates the intention of the Legislature to maintain the distinction between "railroads" and "street railroads", and suggests that in construing enactments touching railroads they should not be held to apply to street railroads unless the intention that they shall so apply is apparent. Helena Light & Ry. v. Helena, 47 M 18, 130 P 446 (1913).

15-8-406. Assessment of public utilities in one county.

Compiler's Comments

1999 Amendment: Chapter 583 in two places in first sentence after "county" deleted references to their franchises; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through

13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Telegraph Line Used by Railroad: So much of a telegraph line used exclusively for railroad purposes, extending along a right-of-way across the state, as is within any given county, is assessable by the Assessor of that county, and not by the State Board of Equalization (duty now performed by Department of Revenue) as part of the "roadway". N. Pac. Ry. v. Brogan, 52 M 461, 158 P 820 (1916), distinguished in Chicago, Milwaukee, & St. Paul Ry. v. Murray, 55 M 162, 174 P 704 (1918) and St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

15-8-407. Railroads.

Compiler's Comments

1999 Amendment: Chapter 583 at beginning after "The" deleted "franchise" and at end inserted reference to Title 15, chapter 23, part 2; deleted former (2) that read: "(2) Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Case Notes

Equipment of Cars: Cooking utensils forming a necessary and usual equipment of cars used for boarding railway construction crews are part of its rolling stock and as such subject to assessment for taxation. Great N. Ry. v. Flathead County, 61 M 263, 202 P 198 (1921).

Snowsheds Part of Roadbed: Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountainside of the track were embedded in the ground 4 feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to 12 feet deep, were part of defendant railway company's roadbed, and as such assessable, under Art. XII, sec. 16, 1889 Mont. Const., by the State Board of Equalization (duty now performed by Department of Revenue) and not by the County Assessor. Great N. Ry. v. Flathead County, 61 M 263, 202 P 198 (1921).

Telegraph Line: So much of a telegraph line used exclusively for railroad purposes, and extending along the right-of-way across the state, as is within any given county, is assessable by its Assessor, and not by the State Board of Equalization (duty now performed by Department of Revenue) as part of the "roadway". N. Pac. Ry. v. Brogan, 52 M 461, 158 P 820 (1916), distinguished in Chicago, Milwaukee, & St. Paul Ry. v. Murray, 55 M 162, 174 P 704 (1918), and St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Collateral References

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-8-408. Personal property.

Compiler's Comments

1989 Amendment: Substituted language (see 1989 Session Law for text) for former section that read: "Personal property which was in the state and subject to taxation on January 1 of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming, or possessing it on January 1 or not; provided that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Attorney General's Opinions

Personal Property of Individual — Tax Situs: Absent specific statutory direction, personal property owned by an individual acquires its tax situs by reference to the residence of its owner. 41 A.G. Op. 46 (1986). (See 1989 amendment.)

Personal Property of Partnership or Corporation — Tax Situs: Personal property of a partnership or corporation acquires its tax situs primarily by the location of the property. If the current location is temporary or transitory, the tax situs becomes the principal place of business of the organization. 41 A.G. Op. 46 (1986).

15-8-409. Property not otherwise specified.

Administrative Rules

ARM 42.21.161 Personal property taxable situs.

Part 5
To Whom Property Is Assessed

15-8-501. Assessment of unknown or absent owners.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Tax Assessment to Someone Other Than Owner When Records Disclosed Owner — Tax Assessment Invalid — Subsequent Tax Lien Sale and Issuance of Tax Deed Void — Quiet Title Action Failed: The Supreme Court reversed the District Court and determined that a defective property tax assessment voided a lien sale. It was undisputed that the defendant properly recorded its deed to a lot and that the Department of Revenue received the realty transfer certificate, which showed correctly the conveyance of the lot from the seller to the defendant. It was also undisputed that the Department continued to assess the lot to the seller, rather than to the defendant; that the defendant did not receive any notices of taxes due on the lot; and that the defendant paid all taxes due on the notices it did receive for other property that was purchased from the seller. The defendant argued that, under these facts, the Department's tax assessments on the lot were invalid and therefore rendered void the tax deed to the plaintiff. The District Court disagreed and held that, even though the wrong party was assessed, the tax assessment was valid under 15-8-201. On appeal, the Supreme Court reversed the District Court through the statutory interpretation of 15-8-201. The Supreme Court reasoned that because the provisions requiring the owner to be named are mandatory, and 15-8-201 provides no cure for a defect in the identity of the owner, a tax assessment to a person or entity other than the owner, where the owner is known to the Department through properly recorded transfer records, is not a valid assessment. Because the tax assessment was void, the subsequent tax lien sale and issuance of a tax deed was also voided. The county lacked jurisdiction to hold the tax lien sale on the property because there was no valid assessment. The subsequent tax deed issued to the plaintiff was void, and its quiet title action failed. Zinvest, LLC v. Gunnersfield Enterprises, 2017 MT 284, 389 Mont. 334, 405 P.3d 1270. See also Moran v. Robbin, 261 Mont. 478, 863 P.2d 395 (1993).

Abandoned Property: The owner of personal property (a traction engine), which had been left standing on open ground near a town for more than a year, apparently not in the care or custody of anyone, and bearing the impress of abandoned property, was in no position to complain that it had been assessed to "unknown owners" and sold for delinquent taxes, when he had done nothing in the way of notifying the Assessor that it was his property nor made an effort to pay or offer to pay the taxes. Averill Mach. Co. v. Freebury Bros., 59 M 594, 198 P 130 (1921).

15-8-502. Representative status to be designated.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

15-8-503. Undistributed property of deceased persons.

Case Notes

Purpose: An assessment to the estate of a deceased person is tantamount to an assessment to his heirs, guardians of his heirs, executors of his will, or administrators of his estate, as the case may be, if they have actual notice of it, since the purpose of this section is to assure that notice to some interested person shall be given and to provide that payment, when made, shall bind all parties in interest. Hill v. Lewis & Clark County, 54 M 479, 171 P 929 (1918).

15-8-511. Undivided interest in common elements of condominium project — definition.

Compiler's Comments

2005 Amendment: Chapter 379 in (2) substituted definition of common elements for former language that read: "Unless otherwise agreed by all the unit owners, for purposes of assessment common elements include:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety and normally in common use." Amendment effective April 25, 2005.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Applicability: Section 7, Ch. 452, L. 1985, provided for applicability to tax years beginning after December 31, 1985.

Administrative Rules

ARM 42.20.105 Condominiums.

15-8-512. Common elements serving residential or commercial development.

Compiler's Comments

2005 Amendment: Chapter 379 in (1) in second sentence substituted "The value of common elements must be allocated to each lot owner pursuant to 15-8-111" for former language that read: "Each lot owner is assessed on a pro rata basis for elements of the development serving the lots in common, such as recreational areas, pathways, sidewalks, private roads, street lights, main communication cables, main gas or electric lines, community water and sewer systems, or any other common element enumerated in 15-8-511, but not for park areas that serve the lots." Amendment effective April 25, 2005.

Retroactive Applicability: Section 5, Ch. 379, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2004."

Applicability: Section 7, Ch. 452, L. 1985, provided for applicability to tax years beginning after December 31, 1985.

Part 6
Assessment Revision

15-8-601. Assessment revision — conference for review.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 755, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 4, Ch. 755, L. 2023, provided: "[This act] applies to requests for refunds received on or after [the effective date of this act]." Effective July 1, 2023.

2013 Amendment: Chapter 419 in (2) in second sentence after "property" inserted "and industrial property that is assessed annually by the department" and after "subject to" substituted "mediation pursuant to 15-1-212" for "review pursuant to 15-1-211". Amendment effective May 6, 2013.

2011 Amendment: Chapter 399 inserted (1)(c) relating to revision of erroneous assessments. Amendment effective July 1, 2012.

1997 Amendment: Chapter 36 in (3)(a), near end of second sentence after "within", substituted "30 days" for "15 days"; in (3)(c), near middle of second sentence after "department", inserted "or a taxpayer who does not request a conference" and at end substituted "within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference" for "at its next meeting"; and made minor changes in style. Amendment effective February 24, 1997.

Retroactive Applicability: Section 3, Ch. 36, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1997."

1993 Special Session Amendment: Chapter 27 in (2) substituted "department proposes to revise the statement" for "department or its agent proposes to increase the valuation of locally assessed property above the value"; in (3)(a), after "department", deleted "or its agent" and at end substituted "within 15 days" for "not less than 15 or more than 30 days"; in (3)(b) and (3)(c), before "review", inserted "revision"; in (4) substituted "shall" for "must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to" and substituted "in the property tax record" for "upon the assessment book"; deleted (5) that read: "(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 37 at beginning of (1)(a) inserted exception clause; and inserted (1)(b) regarding issuance of revised assessment of property subject to assessment under Title 15, ch. 23. Amendment effective February 19, 1991.

Chapter 811 in (2) inserted last sentence relating to review under 15-1-211; in (3)(a), at beginning of second sentence, inserted "If the property is locally assessed"; and in (3)(c), in second sentence after "department", deleted "may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed".

Effective Date — Retroactive Applicability: Section 2, Ch. 37, L. 1991, provided: "[This act] is effective on passage and approval [approved February 19, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Case Notes

Revised Retroactive Assessments on Audit — Permissible to Capture Value of Property: The Department of Revenue conducted an audit on a cable company in December 2008 for property tax years 2007 and 2008. After conducting the audit, the Department issued revised assessments for 2007, 2008, and 2009. The revised assessments centrally assessed all of the cable company's property as class thirteen property under 15-6-156, instead of class eight property under 15-6-138. The District Court determined the Department lacked the authority under 15-8-601 to issue revised assessments, as there was no clerical error or ministerial mistake. On appeal, the Supreme Court upheld the Department's decision and reversed the District Court on the grounds that the cable company self-reported its assets into different assessment classes and that it took an audit to reveal the past improper classification of the property by the cable company. The court reasoned that 15-8-601 grants the Department the authority to issue a revised assessment in order to capture the value of property that has not been taxed fully according to appropriate tax procedures. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

Specific Provisions Concerning Mine Net Proceeds Taxes Supersedes General Ownership Provision of Tax Law: The respondent owned a limestone quarry and for 3 years filed returns showing a negative value for its mine net proceeds tax. The Department of Revenue subsequently audited the respondent's books and revised its assessment based on arriving at a higher figure than the respondent had reported. The respondent argued that under the provisions of this section, it was not liable for the revised assessment because it no longer owned the quarry. The Supreme Court stated that the respondent's argument would lead to an absurd result in that a mine owner could report a zero value for its mine net proceeds, sell its property, and be exempt from taxation following an audit of the true result. The court held that the specific provisions of the statutes relating to mine net proceeds taxes must supersede any repugnancy in the ownership provisions of this section. Dept. of Revenue v. Kaiser Cement Corp., 245 M 502, 803 P2d 1061, 47 St. Rep. 2221 (1990).

Erroneous Assessment of Unimproved Property: The plaintiffs argued that the additional taxes they had been required to pay constituted an illegal retroactive application of taxes. The Supreme Court affirmed the lower court's finding that the evidence showed that no new tax had been levied. The additional amount charged the plaintiffs was the result of an erroneous assessment. Kruse v. Cascade County, 244 M 126, 796 P2d 568, 47 St. Rep. 1445 (1990).

Applicability of Ten-Year Statute of Limitations to Pre-1983 Mines Net Proceeds Tax: Prior to 1983, the limitations period for assessment revisions of property taxes, including the mines net proceeds tax, was 10 years as set in this section. Because this specific statute of limitations was governing, the general 2-year limitations period prescribed in 27-2-211 did not apply to these particular taxes. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989), distinguishing Caterpillar Tractor Co. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Late Assessment: Under 15-8-601, the Department of Revenue may assess in a later year property which it failed to assess or which had been omitted from taxation in previous years, despite the requirement of 15-8-201 that all property must be assessed by the second Monday in July of each year. The court distinguished Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), in which it held invalid a revised assessment for the year in question, when the revised assessment was issued after the second Monday in July. OEA Research, Inc. v. McGee, 217 M 321, 704 P2d 1042, 42 St. Rep. 1219 (1985).

No Authority for Department of Revenue to Refund Taxes: This section neither confers a power nor imposes a duty on the Department of Revenue to provide for the refund of taxes. The Supreme Court held it is erroneous to infer that because this section allows the Department to increase assessments and collect additional taxes that it must also allow the Department to decrease an assessment and refund taxes. Section 15-1-402, providing for payment of taxes under protest and subsequent refund by the County Treasurer if the taxpayer prevails in a suit, is the express remedy provided the taxpayer. Eagle Communications, Inc. v. County Treasurer, 211 M 195, 685 P2d 912, 41 St. Rep. 1303 (1984).

"Erroneous Assessment" Construed: Missoula County miscalculated the market value on plaintiff's property for property tax purposes during a reappraisal in 1978. The error was discovered in 1980, and the county and the Department of Revenue sent plaintiff a supplemental tax bill. Plaintiff paid the taxes under protest. The erroneous assessment was caused by a clerical error. The District Court granted plaintiff summary judgment because the procedures of 15-8-601 were not followed. On appeal, defendants admitted that the taxes should be refunded at the time, but they argued that they were not precluded from further action because of the 10-year time period allowed under this section. Plaintiff contended that the error was an "erroneous appraisal" rather than an "erroneous assessment" and therefore 15-8-601 did not apply. The Supreme Court held that a clerical error falls under the plain language of "erroneous assessment". The court further held that regardless of the term used, because the error was a clerical error made while assessing the taxable value of the property, it was an "erroneous assessment" under 15-8-601. The Department is not precluded from following the proper procedures of 15-8-601 at this time. Evans Prod. Co. v. Missoula County, 201 M 337, 654 P2d 523, 39 St. Rep. 2149 (1982).

Failure to Assess Not Deannexation: The town of Melstone was incorporated in 1913. Prior to 1976, the County Assessor included only the area marked off in lots and blocks as being in the city. In 1976 the mistake was discovered and the County Commissioners rectified the situation by raising the rates of the area inside the original town plat but not previously taxed at city rates. The Balock's paid this increased tax under protest and initiated a suit in District Court for a refund. The Supreme Court found that Montana's annexation and deannexation statutes provide the method for including or excluding property into or from cities and towns. This method is exclusive, and the common-law doctrine of acquiescence will not allow the exclusion of property since the boundaries of Melstone are clear. Balock v. Melstone, 186 M 303, 607 P2d 545 (1980).

Constitutionality of Amendment: Chapter 3, L. 1923, which empowered the State Board of Equalization (duty now performed by Department of Revenue) by this section to assess property that theretofore escaped taxation, provided the assessment be made within 3 years after the end of the calendar year in which the same should have been assessed, was not open to the objection that it was retroactive in its operation. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924).

Undistributed Estate of Decedent: Under the similar provisions of 84-440, R.C.M. 1947 (now repealed), when after the assessment roll had passed out of the Assessor's hands and the County Board of Equalization (duty now performed by Department of Revenue) had adjourned, that officer discovered, listed for assessment, and assessed under the authority of this section, personal property belonging to the undistributed estate of a deceased person, the fact that the executors in charge of it were thus deprived of a right to appeal to the Board of Equalization (duty now performed by Department of Revenue) did not invalidate the additional assessment, since the property was taxable, and appeal to the Board is available, not to him who has concealed property, but who has delivered to the Assessor a sworn statement of all his taxable property. Hill v. Lewis & Clark County, 54 M 479, 171 P 929 (1918).

Changes in Assessments: Changes in assessments by the Board of County Commissioners, sitting as a Board of Equalization, must be noted by the Clerk and entered on the book in the proper places. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

Relief From Illegal Taxes: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make corrections and additions to assessments, the right of the owner of property to obtain relief from illegal taxes by injunction was not in anywise affected by his failure, after notice from the Board, to make timely objection. Barnard Realty Co. v. Butte, 50 M 159, 145 P 946 (1915).

Ten-Day Notice Jurisdictional: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make corrections and additions to assessments, the notice of 10 days, required to be given a taxpayer, was jurisdictional. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905). See also Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332 (1919); W. Ranches v. Custer County, 89 F 577 (9th Cir. 1898).

Failure to Give Notice Not Waived by Appearance: Under section 84-609, R.C.M. 1947 (now repealed), which empowered a Board of County Commissioners to direct the Assessor to make corrections and additions to assessments, failure by the County Board of Equalization (duty now performed by Department of Revenue) to give a taxpayer the 10-days' notice of an increase in his assessment, was not waived by his voluntary appearance before the Board, after the raise had been made, for the purpose of seeking a reduction of the assessment. W. Ranches v. Custer County, 28 M 278, 72 P 659 (1903), distinguished in Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903); Mont. Ore Purchasing Co. v. Maher, 32 M 480, 81 P 13 (1905). See Anaconda Copper Min. Co. v. Ravalli County, 56 M 530, 186 P 332 (1919).

Attorney General's Opinions

Procedure for Revision of Erroneous Tax Assessments: This section sets forth the procedure for revising erroneous tax assessments. 42 A.G. Op. 27 (1987).

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

Part 7

Assessment and Map Books

15-8-701. Property tax record — definition — listing property in.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2) substituted "department proposes to revise the statement" for "department or its agent proposes to increase the valuation of locally assessed property above the value"; in (3)(a), after "department", deleted "or its agent" and at end substituted "within 15 days" for "not less than 15 or more than 30 days"; in (3)(b) and (3)(c), before "review", inserted "revision"; in (4) substituted "shall" for "must record in a book to be kept for that purpose all changes, corrections, and orders made by it and must direct its agent to" and substituted "in the property tax record" for "upon the assessment book"; deleted (5) that read: "(5) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: Inserted definition of assessment book.

Case Notes

Appropriate Headings: Under this section prior to amendment, a County Assessor was required to list all property in his county in an assessment book under appropriate headings. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

Assessment Book to Show Location of Property: Under section 84-502, R.C.M. 1947 (now repealed), the assessment book must have been kept so that it would appear therefrom what property was within the limits of cities or towns and what was elsewhere. State ex rel. Butte v. Weston, 29 M 125, 74 P 415 (1903).

15-8-702. Persons desiring to be listed.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 366 deleted (2) that provided: "(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists"; and made minor changes in style.

Case Notes

Burden to Advise of Current Address: The burden is on the taxpayer to keep the taxing authorities informed of his interest in land and current address, and the applicant for a tax deed was not required to search beyond tax records in giving notice of his application therefor. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Request to Have Name Added in Assessment Book: When property is assessed in the name of a certain person and another, claiming it, desires to be assessed therefor, he may under this section have his name inserted in the assessment book with that of the former, and his request in that behalf should be sent to the County Assessor and not to the County Treasurer. (See 1993 special session amendment.) Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Reservation of Mining Rights: When lands were sold with reservations in the grantor of minerals, mining rights, etc., the grantor was entitled as of right under this section to have its name inserted upon the assessment roll with each of its grantees, and to have the reservation in every instance assessed to it and not to its grantee upon proper request. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

15-8-704. Map book.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted "maps showing public and private land for each county and shall designate" for "a plat of the various blocks within any incorporated city or town in a map book and mark thereon in each subdivision the name of"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-8-707. Correction of defects in property tax record.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1) substituted "the property tax record may only be corrected by the department" for "form in the assessment book may be corrected by the:

(a) department of revenue or its agent; or

(b) county assessor or county treasurer with verification from the department"; in (2) substituted "with a taxing jurisdiction within the county, the county attorney must be notified of the correction" for "the consent of the county attorney must be obtained before any correction may be made"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: In (1) substituted "the assessment book" for "any original or duplicate assessment book".

15-8-709. Statement of changes to be sent to county clerk and recorder.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 before "of the county" substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

15-8-710. Property tax record prima facie evidence.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning substituted "property tax record" for "assessment book" and after "certified by" substituted "county treasurer" for "county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1985 Amendment: At beginning of section after "The assessment book", deleted "duplicate assessment book".

15-8-711. List of owners of multiple, undivided interests in parcel of land to county treasurer.

Compiler's Comments

Effective Date: Section 6, Ch. 444, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

CHAPTER 9
EQUALIZATION

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board. In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board.

Chapter Case Notes

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Part 1
General Provisions

15-9-101. Department to equalize valuations — hearing.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1), after "taxpayers", deleted "supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents"; in (3), near beginning after "hearing", deleted "of the application" and after "evidence" deleted "in relation to the subject pending"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

Title 42, chapter 18, ARM Montana appraisal plan.

ARM 42.21.158 Property reporting requirements.

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Failure to Consider Effect of Zoning Ordinance on Market Value: The State Tax Appeal Board (now Montana Tax Appeal Board) erred in failing to consider the effect, if any, of a zoning ordinance on market value and in failing to make findings on this issue. Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988).

Power to Uniformly Lower Appraisals of a Type of Property to Equalize Appraisals — "34% Cases": Due to the use of different appraisal manuals for residential property and commercial improvements to real property, the two types of property being in the same tax class, equivalent values were not always placed upon similar properties. The Department of Revenue determined that the commercial valuations averaged 12% higher than the residential valuations and ordered each county assessor to reduce all commercial valuations by 12%. The Department properly assumed the responsibility of solving the problem and in equalizing the valuations in the manner it did was acting under its constitutional mandate and authority to equalize values of taxable property. The 12% reduction did not constitute a reappraisal. The power and duty to equalize included the power to alter appraised values set at the beginning of an appraisal cycle. Hanley v. Dept. of Revenue, 207 M 302, 673 P2d 1257, 40 St. Rep. 2054 (1983).

Taxation Standards — Uniformity Versus True Value: Where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. Therefore, unequal appraisals may be reduced even though they result in an assessment at true market value or 100% of market value as required by 15-8-111. Reduction is required where it is satisfactorily shown that under the system as applied, it is impossible to meet both the true value and equality standards. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980).

Determination of Accounting Method: This section taken together with Art. VIII, sec. 3, Mont. Const., allows the Department of Revenue to determine the method of valuation that shall be used for tax assessment purposes. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975).

Hearing Procedure: When the State Board of Equalization (duty now performed by Department of Revenue) held "show cause hearings" to afford opportunity to protest Board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses or hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. State ex rel. St. Bd. of Equalization v. Kovich, 142 M 201, 383 P2d 818 (1963).

Intervention of Court: Court may not intervene when action of Board is not arbitrary, fraudulent, or contrary to law. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

Writ of Prohibition: Action of District Court in issuing Writ of Prohibition against State Board of Equalization (duty now performed by Department of Revenue) was premature where it prohibited the Board from proceeding further under this section and prevented the Board from discharging its constitutional duties. State ex rel. Reid v. District Court, 134 M 128, 328 P2d 634 (1958).

15-9-103. Department to use records in equalizing.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 after "clerk" inserted "and recorder", after "county and" substituted "shall enter in the property tax record" for "may require entry upon the assessment book of", and deleted second sentence that read: "Any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

CHAPTER 10
PROPERTY TAX LEVIES

Part 1
Statewide Levies

Part Case Notes

Basis for Tax: The sum of the corrected assessments of the several counties, with the additions made by the State Board of Equalization (now Department of Revenue), is the basis for taxation for state purposes at the rate fixed biennially by the Legislature. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

15-10-109. Tax levy for university system.

Compiler's Comments

Effective Date: Section 3, Ch. 73, L. 2017, provided that if approved by the electorate, this section is effective January 1, 2019. Approved November 6, 2018.

Termination: Section 4, Ch. 73, L. 2017, provided that this section terminates December 31, 2028.

Case Notes

Former Statute Not Self-Executing: Under former law, when the Legislature failed to make tax levy for support of university system in 1975 and 1976 as authorized by a former statute and the referendum held under the former statute, there was no levy and appropriation of money from fund was invalid. Connick v. Judge, 167 M 357, 538 P2d 1024 (1975).

Part 2
Statement of Levies

Part Compiler's Comments

Section Not Codified: Section 84-7201, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 286, L. 1974.

15-10-202. Certification of taxable values.

Compiler's Comments

2003 Amendment: Chapter 34 in (1) near beginning of first sentence after "by the" substituted "first Monday in August" for "second Monday in July" and inserted third sentence requiring the department to provide, upon request, an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July. Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

2001 Amendments — Composite Section: Chapter 26 in first sentence before "taxable" inserted "total" and at end of second sentence after "total" substituted "taxable value of newly taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record. Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record". Amendment effective July 1, 2001.

Chapter 419 at beginning of first sentence of (1) inserted "Subject to subsections (2) and (3)", at end of second sentence substituted "taxable value of newly taxable property, as described in 15-10-420(3)" for "assessed value of all new construction and improvements not included on the previous property tax record and the value of deletions from the previous property tax record", and deleted former third and fourth sentences that read: "Exclusive of new construction, improvements, and deletions, the department shall certify to each taxing authority a millage rate that will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use 95% of the taxable value appearing on the property tax record, exclusive of properties appearing for the first time in the property tax record"; inserted (2) concerning centrally assessed property; inserted (3) concerning class thirteen property; and made minor changes in style. Amendment effective April 28, 2001. Subsection (3) terminates January 1, 2002.

Recalculation of Mill Levies: Section 5, Ch. 419, L. 2001, provided: "Certain governmental entities to recalculate mill levy. (1) (a) If the taxable value of all property, exclusive of the recertified value of newly taxable property as determined under 15-10-202(3), is more than 101% of the total taxable value of all property originally certified, exclusive of newly taxable property, by the department in tax year 2000 to the governmental entity authorized to impose mills, the governmental entity shall recalculate the mill levy under 15-10-420(1) for tax year 2000. The governmental entity shall not recalculate taxes for tax year 2000.

(b) The governmental entity shall then multiply the total taxable value in tax year 2000 by the mill levy determined under subsection (1)(a). The governmental entity shall use that amount as the amount of property tax that was actually generated in tax year 2000.

(2) For the purpose of 15-10-420(1), the amount of property tax actually generated in tax year 2000 as determined in subsection (1)(b) is the amount that must be used by the governmental entity for imposing mills in tax year 2001." Effective April 28, 2001, and terminates January 1, 2002.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 at beginning substituted "By the second Monday in July" for "At the time that the assessment roll is prepared and published", in four places, after "department", deleted "or its agent", and in four places substituted references to property tax record for references to assessment roll; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: Throughout section inserted reference to Department's agent. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

1986 Amendment: In third sentence after "deletions", deleted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners"; and deleted former (2) that read: "The county commissioners shall inform the department of revenue in writing by July 15 as to whether the county wishes to exclude protested values from the tax base for the purpose of calculating certified mill levies. The decision of the county commissioners shall apply to all taxing jurisdictions within the county."

Interim Committee Bill: Chapter 26, Sp. L. July 1986, was introduced by request of the Revenue Oversight Committee. See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds", Montana Legislative Council, December 1986.

1985 Amendment: In third sentence, after "deletions", inserted "and the taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year if the taxable value of such property remaining under protest exceeds 5% of that taxing jurisdiction's taxable valuation, and if requested to do so by the county commissioners"; and inserted (2) (for text, see 1986 amendment note).

15-10-206. Notification of decisions of tax appeal boards.

Compiler's Comments

2001 Amendments — Composite Section: Chapters 26 and 419 deleted former second sentence that read: "An increase in the taxing authority's millage above the millage certified by the department or adopted by resolution or ordinance of the governing body of the taxing authority that is required solely by a reduction of the property tax record by the state or county tax appeal board may be adopted without further notice." Amendments effective July 1, 2001, and April 28, 2001, respectively.

Retroactive Applicability: Section 8, Ch. 419, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 in two places, after "department", deleted "or its agent" and in two places substituted "property tax record" for "assessment roll"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: In two places inserted reference to Department's agent. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Part 3
Entry of Taxes

15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes.

Compiler's Comments

2011 Amendment: Chapter 152 in (1)(a) near middle of first sentence substituted "second Monday in September or within 30 calendar days after receiving certified taxable values" for "third Monday in August"; in (2) inserted second sentence regarding additional time for department to meet notification requirement when county clerk and recorder fails timely notification. Amendment effective April 10, 2011.

1997 Amendment: Chapter 414 in (1)(a), in second sentence at beginning, inserted exception clause; inserted (1)(b) concerning taxation resulting from land split; and made minor changes in style. Amendment effective January 1, 1998.

Applicability: Section 6, Ch. 414, L. 1997, provided: "[This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997."

Effective Date — Rulemaking: Section 7, Ch. 414, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998."

1993 Special Session Amendment: Chapter 27 substituted present text concerning notification of mill levy for each taxing jurisdiction, computation of taxes, and notification of taxes, fees, and assessments to be levied for former text that read: "The department of revenue or its agent must then compute and enter in a separate money column in the assessment book the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated and foot up the columns showing the total amount of such taxes and the columns of total value of property in the county and shall attach thereto his affidavit, by him subscribed as follows and shall on or before the second Monday of October deliver the completed assessment book to the county clerk and recorder:

"I, ..., an agent of the department of revenue, do swear that I have reckoned the respective sums due as taxes and have added up the columns of valuations, taxes, and acreage as required by law, and the assessment book to which this affidavit is affixed is full, true, and correct and made in the manner prescribed by law."" Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Payment of Taxes Not Yet Due Not Required to Sustain Adverse Possession Claim: Pursuant to 70-19-411, a party claiming adverse possession must occupy the property continuously for 5 years and must have paid all legally levied and assessed taxes on the property. Parker received notice for property taxes due on October 31, 1997, but the taxes were not paid. The 5-year period of adverse possession commenced when Parker received the defective tax deeds on November 24, 1992, so the 5-year adverse possession period would have expired on November 24, 1997. The District Court held that because the 1997 taxes were assessed prior to November 24, 1997, and were unpaid, Parker's claim for adverse possession failed. Parker maintained that the adverse possession language in 70-19-411 should be interpreted in combination with the statutory provisions for levy, notice, and payment of taxes in the tax code in Title 15. The Supreme Court agreed. Pursuant to this section, real estate taxes are levied and assessed on the second Monday in October, while 15-16-102 provides that one-half of each year's property taxes is payable on or before November 30 and the other one-half is payable on or before May 31 of the following year. Therefore, although the 1997 taxes were levied prior to the expiration of the 5-year adverse possession period on November 25, 1997, the taxes were not delinquent until November 30, 1997, 1 week after the adverse possession period ended. The Supreme Court concluded that 70-19-411 does not require the payment of taxes that are not yet due in order to sustain a claim of adverse possession. Thus, the District Court erred in concluding that Parker did not meet the requirements of 70-19-411, and the decision was reversed. Tungsten Holdings, Inc. v. Parker, 2001 MT 117, 305 M 329, 27 P3d 429 (2001).

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under 15-1-406, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to 15-16-101 rather than the date the taxes are entered on the assessment book pursuant to this section. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Completion of Assessment Book:

After the necessary changes have been made and the assessments equalized, it is the duty of the Clerk to calculate and extend to the proper column the amount due from each taxpayer for the year, at the combined rates fixed by the County Board and the Legislature. State ex rel. Fadness v. Eie, 53 M 138, 162 P 164 (1916).

When the necessary corrections and additions have been made to it under the direction of the State and County Board of Equalization (now Department of Revenue), the Clerk must complete the assessment book (see 1993 special session amendment) by extending the tax so that the amount to be paid by each taxpayer for the year will be made to appear. State ex rel. Butte v. Weston, 29 M 125, 74 P 415 (1903).

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions.

Compiler's Comments

1981 Amendment: Inserted "or for any change in an existing jurisdiction".

Part 4

Limitation on Property Taxes

Part Compiler's Comments

Initiative 105: On November 4, 1986, the voters approved Initiative 105 to limit certain property taxes to 1986 levels. The text of the initiative reads as follows:

"Section 1. Declaration of policy.

(1) The State of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of classes three, four, six, nine, twelve, and fourteen property, as those classes are defined in Title 15, ch. 6, part 1.

(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government, to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.

(5) The people of the State of Montana declare it is the policy of the State of Montana that no further property tax increases be imposed on property classes three, four, six, nine, twelve, and fourteen.

Section 2. Property tax limited to 1986 levels.

(1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed] may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) the limitation contained in subsection (1) does not apply to levies for rural improvement districts. Title 7, ch. 12, part 21; special improvement districts, Title 7, ch. 12, part 41; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) is subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.

Section 3. Contingent effective date.

(1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed]; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes."

Part Attorney General's Opinions

Formation of Multijurisdictional Library Service Districts — Statutory Requirements — Equalization of Tax Burden Among Users: A city and a county may form a multijurisdictional library service district if they meet the statutory requirements of Title 7, ch. 11, part 11, and this part and if any existing contract for providing library services involving residents of one or more of the participating jurisdictions has expired. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service; however, one increased service of the district may be to equalize the tax burden among users as long as the district provides services in the manner required by 7-11-1101 (now repealed). 46 A.G. Op. 23 (1996), distinguishing 44 A.G. Op. 11 (1991).

Tax Freeze Limitations Applicable to Pre-1986 Library Services: A county that offered library services prior to 1986 may not form a new taxing unit to avoid the limitations on property taxes imposed under Initiative Measure No. 105 by establishing a public library pursuant to 22-1-303 or by forming a multijurisdictional service district to provide library services pursuant to 7-11-1105 (now repealed). 46 A.G. Op. 19 (1996).

Approval of Informed Voters Sufficient to Allow Levy of Taxes in Excess of Statutory Limit: The two conditions for overriding Initiative Measure No. 105 pursuant to 15-10-412 (now repealed) are: (1) that the governing body of the taxing unit passes a resolution containing seven specified findings, estimates, summaries, and statements; and (2) that following the resolution, the voters in the taxing unit approve the increase in tax liability. A particular type or level of financial emergency is not a condition of the statute. It is up to the voters to decide if the taxing unit's financial emergency is severe enough to warrant the remedy of suspending property tax limitations. Therefore, the approval of voters in a rural fire district, following a resolution of its board of directors, is sufficient to allow the Board of County Commissioners to continue to levy taxes in excess of the limitations of Initiative Measure No. 105 in following years, without subsequent voter approval each year thereafter, if the voters have been informed of the amount and duration of the increase in tax liability. 45 A.G. Op. 29 (1994).

Consolidation of Rural Fire Districts — Mill Levy Limitations Inapplicable to New Trustee-Operated District: Consolidation of two existing rural fire districts creates a new rural fire district for purposes of determining mill levy limitations. Consistent with 42 A.G. Op. 109 (1988), a new rural fire district established after tax year 1986 and managed by a board of trustees rather than a Board of County Commissioners is not subject to the property tax limitations in Title 15, ch. 10, part 4. 44 A.G. Op. 16 (1991).

Water and Sewer District Levies for Repayment of Loan Obligation as Property Taxes: Assessments levied by a water and sewer district pursuant to 7-13-2302 for the purpose of repaying a general loan obligation are considered property taxes under this part. Therefore, the property tax limitations of part 4 apply, even if the district has never previously exercised its levy authority under 7-13-2302. 43 A.G. Op. 46 (1989).

Conservation Assessments Subject to Property Tax Limitations: Regular and special assessments by conservation districts are subject to the property tax limitations in this part. 42 A.G. Op. 73 (1988).

Property Tax Freeze and Additional Local Funds for Workers' Compensation — Both Applicable to Local Governments: Local governments must meet the requirements of both Ch. 664, L. 1987, requiring additional local funding for the workers' compensation fund, and Ch. 654, L. 1987, implementing the property tax freeze. The additional funding requirement did not constitute an implied repeal of the property tax freeze. 42 A.G. Op. 30 (1987).

Limitation of Local Government Power to Modify Property Tax Freeze — No Voter-Sanctioned Increases: Neither local governments with self-government powers nor local governments with general government powers have the power to act so as to modify Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987). When a taxing unit purports to increase the amount of an individual taxpayer's property tax for tax years commencing after December 31, 1986, other than as specifically allowed under Senate Bill No. 71, such action is void even if the increase was sanctioned by voter approval. 42 A.G. Op. 21 (1987).

Local Government Budget and Election Procedure Laws Not Altered: Nothing in the language or legislative history of Initiative No. 105 or Senate Bill No. 71 (Ch. 654, L. 1987) indicates any intent to alter the existing legal authority and duties of taxing jurisdiction officials to administer the finances of those jurisdictions. Further, nothing in 15-10-412 (now repealed) reflects an intent to establish any standards for the special elections described therein other than those established by existing state law. 42 A.G. Op. 21 (1987).

15-10-401. Declaration of policy.

Compiler's Comments

1999 Amendment: Chapter 584 in (2) substituted "15-10-420" for "15-10-412". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in (1) substituted "all classes of property described" for "classes three, four, six, nine, twelve, and fourteen property, as those classes are defined"; deleted former (2) through (4) that read: "(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.

(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:

(a) a tax system that is fair to property taxpayers; and

(b) a method of providing adequate funding for local government and education.

(4) The legislature has failed in its responsibility to taxpayers, education, and local government to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen"; in (2), at beginning of first sentence, inserted exception clause and at end deleted "classes three, four, six, nine, twelve, and fourteen" and inserted second sentence concerning alternatives to market value; and made minor changes in style. Amendment effective April 30, 1997.

Effective Date — Retroactive Applicability Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

Case Notes

Phasein of Real Property Value Modifications Violative of Equal Protection Rights: Roosevelt and the Department of Revenue filed a joint interlocutory petition to adjudicate issues raised before the State Tax Appeal Board (now Montana Tax Appeal Board), asking the District Court to determine whether the 2% phasein of changes in real property value in 15-7-111 violated the state constitution or statutes. The Supreme Court held that creating a class of property owners whose taxes are assessed on a basis greater than the market values of their property, while other property owners are assessed on the actual or less than the actual market values of their property, causes the property owners in the first class to pay a disproportionate share of state taxes, in violation of the equal protection guarantee in Art. II, sec. 4, Mont. Const. General adjustments over a short time to equalize the treatment of similarly situated property holders is permissible, but seasonable attainment of the equality is required. The 2% phasein accomplished neither. In this case, Roosevelt and similarly situated taxpayers were entitled to be assessed at the actual 1997 market value of their property for purposes of calculating 1997 property taxes. (See changes to phase-in system in Ch. 584, L. 1999.) Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295, 56 St. Rep. 125 (1999), following Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336, 102 L Ed 2d 688, 109 S Ct 633 (1989), and distinguishing Nordlinger v. Hahn, 505 US 1, 120 L Ed 2d 1, 112 S Ct 2326 (1992).

Attorney General's Opinions

Procedures Required in Imposing Additional Levies to Meet Poor Fund Shortfall: Although 15-10-401, 15-10-402, 15-10-411 (now repealed), and 15-10-412 (now repealed) substantially limit the authority of taxing units to increase a property taxpayer's liability over his 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county or the County Commissioners have passed a resolution pursuant to 15-10-412 (now repealed). Passage of such a resolution must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization. 42 A.G. Op. 113 (1988). See also 42 A.G. Op. 118 (1988).

15-10-402. Property tax limited to 1996 levels.

Compiler's Comments

1999 Amendment: Chapter 584 substituted "15-10-420" for "15-10-412". Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 463 in exception clause substituted "15-10-412" for "subsections (2) and (3)"; near middle substituted "Title 15, chapter 6, part 1" for "15-6-133, 15-6-134, and 15-6-136" and at end substituted "tax year 1996" for "taxable year 1986"; and deleted (2) through (4) that read: "(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; juvenile detention programs authorized under 7-6-502; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill." Amendment effective April 30, 1997.

Effective Date — Retroactive Applicability: Section 15, Ch. 463, L. 1997, provided: "[This act] is effective on passage and approval, and [sections 1 through 9] [7-6-2514 (now repealed), 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412 (now repealed), 15-36-323 (now repealed), and 77-1-208] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996."

1993 Amendment: Chapter 267 in (1) deleted reference to 15-6-144; and made minor changes in style. Amendment effective April 2, 1993.

Severability: Section 11, Ch. 267, L. 1993, was a severability clause.

Effective Date — Applicability: Section 13, Ch. 267, L. 1993, provided: "[This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994." Approved April 2, 1993.

1991 Amendments: Chapter 745 in (2) inserted exception for levies for juvenile detention programs. Amendment effective July 1, 1991.

Chapter 773 in (1), after "15-6-136", deleted "15-6-142". Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773, L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1989 Special Session Amendments: Chapter 10 in (1) deleted reference to 15-6-139. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

Chapter 11 in (2) inserted "elementary and high school districts, Title 20". Amendment effective July 1, 1990.

Contingent Effective Date of Initiative: Section 3, Initiative No. 105, approved November 4, 1986, provided: "(1) Except as provided in subsection (2), this act is effective July 1, 1987, and applies to taxable year 1987.

(2) This act will not become effective if, prior to July 1, 1987, an act is passed and approved that:

(a) states that it is being enacted in response to this initiative;

(b) reduces property tax on a statewide basis on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139 [now repealed], 15-6-142 [now repealed], and 15-6-144 [now repealed]; and

(c) establishes alternative revenue sources to replace revenue lost to local governments, school districts, the university system, and other property taxing jurisdictions as a result of the reduced property taxes."

Attorney General's Opinions

Mill Increase for County Roads and Bridges Not Exception to I.M. No. 105 Tax Freeze: The 1989 increase in allowable mills for county road construction, maintenance, or improvement, as set out in 7-14-2501, and for county bridge construction, maintenance, and repair, as set out in 7-14-2502, was not an exception to the I.M. No. 105 property tax freeze established in this section, but rather was intended to be implemented by a reduction of millage in other areas of the county budget. 43 A.G. Op. 74 (1990).

Poor Fund Increase, General Fund Decrease Allowable — Total Tax Liability Not to Be Increased: A county, when budgeting for the next fiscal year, may decrease the levy for the county general fund and increase the levy for the county poor fund as long as the resultant total tax liability for individual property in the county is not increased above 1986 levels. 42 A.G. Op. 118 (1988).

Procedures Required in Imposing Additional Levies to Meet Poor Fund Shortfall: Although 15-10-401, 15-10-402, 15-10-411 (now repealed), and 15-10-412 (now repealed) substantially limit the authority of taxing units to increase a property taxpayer's liability over his 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county or the County Commissioners have passed a resolution pursuant to 15-10-412 (now repealed). Passage of such a resolution must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization. 42 A.G. Op. 113 (1988). See also 42 A.G. Op. 118 (1988).

Property in More Than One Taxing Jurisdiction: Provisions of Title 15, ch. 10, part 4, limit the amount of taxes that may be assessed on property in each taxing unit or jurisdiction. A property may be included in several taxing units or jurisdictions, and the amount taxed by one taxing unit or jurisdiction has no legal effect on the amount taxed by another. 42 A.G. Op. 80 (1988).

Property Tax Freeze Inapplicable to Certain Special Districts: Because the overall structure of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) manifests a general intent to regulate only increases in the amount of an individual's property tax derived from application of mill levy and assessed valuation factors, special districts whose assessments and tax levies are based on the value of services actually rendered to a particular piece of property are taxing units excluded from coverage under the property tax freeze. 42 A.G. Op. 21 (1987).

Taxes Levied for 1986 Less Than Permissible — No Increase Allowed: Without compliance with the procedure provided in 15-10-412 (now repealed), the property tax amount, even though abnormally low in 1986, may not be increased. A taxing unit may not increase a taxpayer's property tax liability even though the taxes actually levied for the 1986 tax year were less than permissible under voter-approved mill levy amounts. (See 2001 amendment to 15-10-420.) 42 A.G. Op. 21 (1987).

Taxing Unit Duties Not Impliedly Repealed: Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) do not impliedly repeal statutes that mandate performance of certain duties by a taxing unit; therefore, local officials may necessarily have to reduce discretionary projects in order to fund statutorily required duties. 42 A.G. Op. 21 (1987).

15-10-406. Limitation of applicability.

Compiler's Comments

Applicability: Section 4, Ch. 474, L. 1991, provided: "[This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter."

15-10-420. Procedure for calculating levy.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 45, L. 2023, deleted former (3)(b)(ii) that read: "(ii) caused by the termination of an exemption that occurs due to the American Rescue Plan Act, Public Law 117-2, and section 14, Chapter 506, Laws of 2021"; and made minor changes in style. Amendment effective October 1, 2023.

Section 4, Ch. 729, L. 2023, in (9)(a)(viii) substituted "19-7-404(3)(b)" for "19-7-404(2)(b)". Amendment effective July 1, 2023.

Termination Provision Ineffective and Removed: Section 3, Ch. 45, L. 2023, amended this section to remove the 2021 amendments, rendering ineffective the December 31, 2025, termination of those amendments. Section 6, Ch. 45, L. 2023, amended sec. 13, Ch. 506, L. 2021, to remove the ineffective termination date.

Applicability: Section 9, Ch. 45, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2021 Amendment: Chapter 506 inserted (3)(b)(ii) concerning termination of an exemption due to the American Rescue Plan Act; and made minor changes in style. Amendment effective July 1, 2021, and terminates December 31, 2025.

Severability: Section 11, Ch. 506, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 3 in (8) substituted "15-10-109" for "15-10-108". Amendment effective October 1, 2019.

Chapter 332 inserted (9)(a)(ix) concerning mills for support of airport authorities; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 3, Ch. 332, L. 2019, provided: "[This act] applies to property tax years beginning after December 31, 2019."

2017 Amendment: Chapter 328 inserted (9)(a)(viii) regarding levy used to fund sheriffs' retirement system; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 361 in (11) near end substituted "newly taxable value" for "newly taxable property"; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2011 Amendments — Composite Section: Chapter 347 inserted (9)(a)(vii) concerning costs incurred in transferring property records; and made minor changes in style. Amendment effective October 1, 2011.

Chapters 393 and 411 inserted (7)(b) regarding loss of tax base; and made minor changes in style. Amendments effective July 1, 2011.

Saving Clause: Section 3, Ch. 393, L. 2011, was a saving clause.

Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 5, Ch. 393, L. 2011, provided: "[This act] applies to fiscal years beginning after June 30, 2011."

Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendments — Composite Section: Chapter 2 in (4)(d) near middle after "class four property" inserted "under 15-6-134". Amendment effective October 1, 2009.

Chapter 57 in (8) in first sentence substituted "15-10-108" for "15-10-107" and after "20-9-360" deleted "20-25-423"; and made minor changes in style. Amendment effective March 25, 2009.

Chapter 351 inserted (5)(b) and (9)(a)(v) concerning levy for newly created regional resource authority; and made minor changes in style. Amendment effective April 24, 2009.

Chapter 412 deleted former (5)(b) that read: "(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703"; inserted (9)(a)(vi) concerning amount in excess of base contribution for group benefits; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 483 inserted (4)(c) relating to the newly taxable class four property; in (8) in third sentence substituted "tenths of mills" for "whole mills" and in last sentence substituted "an even tenth of a mill" for "a whole number of mills" and "tenth of a mill" for "whole mill"; and made minor changes in style. Amendment effective May 10, 2009.

Extension of Deadlines Relating to 2009 Property Taxes: Section 12, Ch. 483, L. 2009 provided: "As a result of the changes in the mitigation strategy of reappraisal for class three, four, and ten property enacted by the 61st legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards, school districts, and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2009, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Saving Clauses: Section 30, Ch. 351, L. 2009, was a saving clause.

Section 5, Ch. 412, L. 2009, was a saving clause.

Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2007 Amendment: Chapter 521 inserted (9)(a)(iv) concerning levy to support study commission; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 376 in (4)(c) near end before "land" substituted "nonqualified agricultural" for "nonagricultural". Amendment effective October 1, 2005.

Chapter 545 inserted (3)(b) regarding newly taxable property; inserted (4)(b) regarding reporting of increment value as newly taxable property; deleted former (4)(c) that read: "(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001"; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 5, Ch. 376, L. 2005, provided: "[This act] applies to property tax years beginning after December 31, 2005."

2003 Amendments — Composite Section: Chapter 115 in (9)(a)(i) inserted reference to 7-6-4015. Amendment effective October 1, 2003.

Chapter 476 inserted (10) providing that a governmental entity may levy mills for airport support even though it has not imposed a levy for the airport in either of the previous 2 years; and made minor changes in style. Amendment effective April 24, 2003.

2001 Amendments — Composite Section: Chapter 191 in (5)(a) near middle after "collected on light vehicles" substituted "61-3-560 through 61-3-562" for "61-3-561" and at end after "and distributed under" substituted "61-3-509(1)(b)" for "61-3-509(2)"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 220 at beginning of (5) inserted "Subject to subsection (8)" and at end substituted "school district levies established in Title 20" for "school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5)"; and made minor changes in style. Amendment effective April 11, 2001.

Chapter 361 inserted (1)(b) concerning imposing less than maximum levy and carryforward of levy authority; in (2), (5), (6), and (7) substituted reference to subsection (1)(a) for reference to subsection (1); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 511 inserted (5)(b) exempting increases in local government's property tax levy for the employer's premium contributions for group health insurance benefits from the mill levy calculation limitation; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 571 in (8) in first sentence at end substituted "53-2-322" (now repealed) for "53-2-813". Amendment effective July 1, 2001.

Chapter 574 in (1)(a) at beginning of first sentence inserted "Subject to the provisions of this section" and at end substituted "plus one-half of the average rate of inflation for the prior 3 years" for "even if that levy is greater than the levy established by law" and near end of second sentence after "less the" inserted "current year's" and at end inserted "plus one-half of the average rate of inflation for the prior 3 years"; inserted (1)(b) concerning carryforward of levy authority; inserted (1)(c) concerning inflation calculation; in (2) after "voters" inserted "as provided in 15-10-425"; deleted former (3)(e) that read: "(e) reclassification of property"; deleted former (3)(g) that read: "(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements"; inserted (4) concerning newly taxable property; at end of (5)(a) inserted "or 20-6-413" (amendment rendered void by Ch. 220); deleted former (5)(a) that read: "(a) include registration fees imposed on light vehicles under 61-3-561 and distributed under 61-3-509(2)"; deleted former (6) that read: "(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in the amount of statutory reimbursements for changes in the property tax laws. The amount of motor vehicle disposition under 61-3-509(2), as that section read on December 31, 2000, is an increased statutory reimbursement. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements"; inserted (7) concerning increase in mills to offset decrease in reimbursements; in (8) near beginning of first sentence after "calculate" inserted "on a statewide basis" and at end deleted reference to 53-2-813 and inserted third and fourth sentences concerning calculation in whole mills; inserted (9) concerning levies not subject to subsection (1) and not included in amount assessed in a subsequent year; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section in sec. 4, Ch. 419, L. 2001, were rendered void by sec. 255(11), Ch. 574, L. 2001, a coordination section.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

2000 Amendment: Section 16(1), Ch. 11, inserted (5)(a) concerning registration fees on light vehicles; in (6) inserted second sentence concerning motor vehicle disposition as an increased statutory reimbursement; and made minor changes in style. Amendment effective January 1, 2001.

The amendments to this section made by sec. 6, Ch. 11, Sp. L. May 2000, were rendered void by sec. 16(1), Ch. 11, Sp. L. May 2000, a coordination instruction.

2000 Amendment: Chapter 11 inserted second sentence in (6) providing that motor vehicle disposition under 61-3-509(2) is an increased statutory reimbursement. Amendment effective May 25, 2000, and terminates January 1, 2001, if Ch. 515, L. 1999, is approved by the electorate on November 7, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Losses in Revenue: Section 12, Ch. 11, Sp. L. May 2000, amended sec. 167, Ch. 584, L. 1999, as follows: In (4)(a) substituted "the prior year's mill levies" for "current year mill levies"; and made minor changes in style.

Calculating Levy: Section 165, Ch. 584, L. 1999, provided: "Extension of 1999 deadlines relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 56th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1999, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes."

Reimbursement to Counties, Cities, Towns, and Consolidated City-County Governments for Revenue Losses: Section 167, Ch. 584, L. 1999, provided: "Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79] [15-10-107, now terminated], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813 [now repealed]; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 [now repealed] may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1] [15-10-420], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5)." Effective May 10, 1999, and terminates December 31, 2001.

Local Government and Court Funding and Structure Committee: Section 168, Ch. 584, L. 1999, provided: "Local government and court funding and structure committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not later than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business."

Funding—Appropriations: Section 169, Ch. 584, L. 1999, provided: "Funding—appropriations. (1) The committees established in [section 168] [not codified] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] [not codified] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79] [15-10-107, now terminated].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)] [not codified].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)] [not codified].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299 [now repealed].

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Effective Date: Section 174, Ch. 584, L. 1999, provided that this section is effective on passage and approval. Approved May 10, 1999.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Administrative Rules

ARM 42.20.501 Definitions.

ARM 42.20.514 Determination of total taxable value of eliminated property.

ARM 42.20.515 Determination of total taxable value of newly taxable property.

Attorney General's Opinions

Library Board Alone Has Authority to Spend Its Reserve Funds — Library's Proposed Budget Subject to Approval by Local Governing Body — Local Governing Body Has Sole Discretion to Levy Mills in Support of Library: Prior to 2001, a library board had complete control over its budget. While a library board still has the sole discretion to determine how to use the library's unspent funds under 22-1-309, its budget must be approved by the local governing body. Moreover, the local governing body, not the library board, determines the number of mills to levy in support of the library. Finally, the local governing body has no obligation to continue to levy any certain number of mills for the library in perpetuity. 54 A.G. Op. 7 (2012).

Limitation on Amount of County Property Taxes: Under this section, county property taxes are limited by the number of mills required to raise the same amount of tax revenue that was raised in the immediately previous year, increased by one-half of the average rate of inflation for the previous year, and by any mills carried over from the previous year. 53 A.G. Op. 2 (2009).

Newly Created Hospital District — Mill Levy and Funding Procedures: A Board of County Commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes. The governmental entity levying the tax is the county, not the hospital district. Commissioners may provide funding for a hospital district from: (1) the general mill levy; (2) mills levied under 7-34-2133 as long as the total number of mills levied by the county under 7-34-2133 and for all other purposes covered by 15-10-420 stays within the cap provided by 15-10-420; (3) an additional mill levy amount approved by voters under 15-10-425; or (4) bonds sold pursuant to 7-34-2131 to defray the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide adequate working capital for a new hospital. 53 A.G. Op. 2 (2009).

Mill Levy Question Precluded on Study Commission Ballot: A local governing body is required to conduct a decennial election on the question of local government review and establishment of a study commission. Prior to 1999, under 7-3-184, a local government under study was also required to appropriate an amount necessary to conduct the study and local governments were allowed a mill levy to do so. However, the 1999 Legislature eliminated a local government's authority to levy for a study commission in favor of a generic mill levy election procedure. Thus, local governments may now choose whether or not to fund study commissions, but any appropriation for that purpose is subject to the mill levy limitations of this section. The ballot form in 7-3-175 is limited to the single question of establishing a local government study commission, so a local government may not combine a mill levy question with the study commission question. Rather, the mill levy question may be presented pursuant to the general-purpose mill levy election procedure in 15-10-425. 50 A.G. Op. 5 (2004).

County Commission Generally Obligated to Fund Library Budget — County Allowed to Bind Itself to Fund Library Budget Through Interlocal Agreement: The Board of County Commissioners is generally obligated to fund the county library budget, as submitted by the library board pursuant to 22-1-309, within the limits set in this section. The 2001 statutory changes did not delete a library board's authority to determine the amount of financial support required by the library, nor did the changes confer on the Board of County Commissioners the authority to modify a library budget submitted by the library board. Further, nothing in the 2001 tax and budget amendments prevents a county from voluntarily entering an interlocal agreement to provide that the county would accept a library board's budget proposal and levy the necessary mills to fund it. 49 A.G. Op. 16 (2002). See also 41 A.G. Op. 91 (1986), and 48 A.G. Op. 3 (1999). However, see 54 A.G. Op. 7 (2012), which concluded that the local governing body alone has the authority to determine the number of mills to levy in support of the library.

Calculation and Expenditure of "Carryforward" Mills Under 2001 Revision to Local Government Property Tax Levy and Budget Provisions: The 2001 revisions to local government property tax levy and budget laws instituted a general approach of deleting numeric limits on the number of mills that a local government could levy for any specific purpose and placed a cap on the number of mills that a local government is allowed to levy through property taxation. The combined effect was to free a local government to dedicate as much of its annual mill levy as it chooses for any lawful governmental purpose, as long as the total millage covered by the cap does not exceed the cap measured by the prior year's property tax assessments. Likewise, the "carryforward" provision in this section does not depend on how many mills, if any, that a city chooses to devote to a particular purpose in any year. Instead, the provision allows a city, if it finds itself able to fund its operations without levying the full number of mills allowed, to hold in reserve for future years the authority to levy the difference between the number of mills allowed and the number actually levied. That authority is not calculated on the basis of the amount budgeted or the number of mills needed to fund a particular government function, but rather is calculated with reference to the whole amount raised by property taxes, subject to the statutory exceptions, without reference to how the money might have been spent in the prior year. However, the "carryforward" authority is prospective only and may not be applied to calculations for the 2001 budget year because the authority did not exist prior to July 1, 2001. Thus, "carryforward" mills may be levied in any future year after budget year 2001 and expended by a local government for any lawful purposes that the local government chooses. 49 A.G. Op. 5 (2001).

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting 15-1-121, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under this section, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under 15-1-121 and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

Law Review Articles

Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place, Pruitt, 71 Mont. L. Rev. 1 (2010).

Collateral References

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of Tax Increment Financing, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

15-10-425. Mill levy election.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 388, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 6, Ch. 388, L. 2023, provided: "[This act] applies to mill levy elections and bond elections held on or after [the effective date of this act]." Effective July 1, 2023.

2015 Amendment: Chapter 49 in (2) after "An election" deleted "conducted" and substituted "must be held in accordance with Title 13, chapter 1, part 4 or 5, or Title 20 for school elections, whichever is appropriate to the taxing entity" for "may be held in conjunction with a regular or primary election or may be a special election"; and in (3) at end of first sentence substituted "in 13-1-108" for "by law". Amendment effective November 4, 2015.

2007 Amendment: Chapter 170 in (2)(b) inserted "either"; in (2)(b)(i) after "raised" inserted "and the approximate number of mills to be imposed"; in (2)(b)(ii) at beginning after "the" substituted "specific" for "approximate" and after "mills" substituted "to be imposed and the approximate amount of money to be raised" for "required"; in (2)(c) at beginning inserted "whether the levy is permanent" and after "limit" deleted "if any"; in (4) near middle after "levy in" inserted "either" and after "amount" inserted "or the number of mills"; inserted (5) allowing a local government to reduce the levy without losing the authority to impose up to the maximum approved; and made minor changes in style. Amendment effective October 1, 2007.

Dual Enactment — Composite Section: This section was enacted by Ch. 495 and 574, L. 2001. As enacted, the sections differed in several respects and were composited by making the following changes to the version enacted by Ch. 495 to conform to the language in the version enacted by Ch. 574: in (1) substituted "entity may impose a new mill levy" for "entity that proposes to impose a mill levy" and substituted "or exceed the mill levy limit provided for in 15-10-420 by conducting an election" for "shall conduct the election"; in (2) in second sentence after "resolution" inserted "amend its self-governing charter" and inserted "or exceed the current statutory mill levy provided for in 15-10-420" and in last sentence after "resolution" inserted "charter amendment"; in (3) in second sentence after "resolution" inserted "or charter amendment"; in (4) at end inserted "or charter amendment"; and made minor changes in style.

Effective Dates: Section 1, Ch. 495, L. 2001, was effective October 1, 2001.

Section 256(1), Ch. 574, L. 2001, provided that this section is effective July 1, 2001.

Attorney General's Opinions

Newly Created Hospital District — Mill Levy and Funding Procedures: A Board of County Commissioners may levy mills to support a county hospital district, even if the district is newly created and no mills have previously been levied for district purposes. The governmental entity levying the tax is the county, not the hospital district. Commissioners may provide funding for a hospital district from: (1) the general mill levy; (2) mills levied under 7-34-2133 as long as the total number of mills levied by the county under 7-34-2133 and for all other purposes covered by 15-10-420 stays within the cap provided by 15-10-420; (3) an additional mill levy amount approved by voters under 15-10-425; or (4) bonds sold pursuant to 7-34-2131 to defray the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide adequate working capital for a new hospital. 53 A.G. Op. 2 (2009).

Mill Levy Question Precluded on Study Commission Ballot: A local governing body is required to conduct a decennial election on the question of local government review and establishment of a study commission. Prior to 1999, under 7-3-184, a local government under study was also required to appropriate an amount necessary to conduct the study and local governments were allowed a mill levy to do so. However, the 1999 Legislature eliminated a local government's authority to levy for a study commission in favor of a generic mill levy election procedure. Thus, local governments may now choose whether or not to fund study commissions, but any appropriation for that purpose is subject to the mill levy limitations of 15-10-420. The ballot form in 7-3-175 is limited to the single question of establishing a local government study commission, so a local government may not combine a mill levy question with the study commission question. Rather, the mill levy question may be presented pursuant to the general-purpose mill levy election procedure in this section. (See 2007 amendment.) 50 A.G. Op. 5 (2004).

CHAPTER 15
PROPERTY TAX APPEALS

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Case Notes

Failure to Exhaust Administrative Remedies: Taxpayer protested the appraisal of two pieces of real property. He contended that by exhausting his administrative remedies in previous years, he had exhausted them for the year in contest because his basis for appeal was the same for all years. Because the complaint was aimed at the amount of valuation and not the method of valuation, it did not come within the exception to the exhaustion of remedies general rule. Therefore, taxpayer must exhaust his administrative remedies before initiating suit in District Court. Devoe v. Missoula County, 226 M 372, 735 P2d 1115, 44 St. Rep. 731 (1987).

Taxpayer Relief for Inequitable Assessment: To obtain relief on the ground that his property is assessed inequitably, it is essential that the taxpayer prove: (1) that there are several other properties within a reasonable area comparable to his; (2) the amount of assessments on these properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by comparison his property is assessed at a higher proportion of its actual value than are the comparable properties, thereby creating discriminations. These criteria are among those to be used in a comparison of true value to assessed value ratios. Where no such criteria were followed and no ratio comparisons made, the State Tax Appeal Board's blanket reduction of 34% on commercial improvement appraisals was set aside. Dept. of Revenue v. St. Tax Appeal Bd., 188 M 244, 613 P2d 691 (1980), followed in Devoe v. Dept. of Revenue, 233 M 190, 759 P2d 991, 45 St. Rep. 1414 (1988). See also Lipetzky v. Dept. of Revenue, 43 St. Rep. 1987 (1986), 66 Bankr. 648.

Chapter Law Review Articles

A Historical Perspective on Montana Property Tax: 25 Years of Statewide Appraisal and Appeal Practice, Powell, 70 Mont. L. Rev. 21 (2009).

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

Part 1
County Tax Appeal Board

Part Case Notes

Appeal to Local Board Exclusive Remedy — Late Assessment Precluding Hearing: The Montana Legislature determined that the County Tax Appeal Board provides the review procedure at the local government unit level mandated by Art. VIII, sec. 7, Mont. Const. An appeal and review before the local Board is a condition precedent to a State Tax Appeal Board (now Montana Tax Appeal Board) review. Except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the local Board is the exclusive remedy granted the taxpayer. If a taxpayer is denied a hearing before the local Board because of a late assessment, the assessment is invalid because it denies the taxpayer a constitutional right to a hearing before the local Board. Butte Country Club v. Dept. of Revenue, 186 M 424, 608 P2d 111 (1980), followed in Boehm v. Nelson, 229 M 452, 747 P2d 213, 44 St. Rep. 2127 (1987), and overruled in Albright v. St., 281 M 196, 933 P2d 815, 54 St. Rep. 132 (1997).

Part Attorney General's Opinions

County Tax Appeal Board Meetings — Notice Required: Adequate notice must be given of any meeting of a county tax appeal board, including the board's deliberations that involve the convening of a quorum to hear, discuss, or act on an appeal. 42 A.G. Op. 61 (1988).

Tax Appeal Board Deliberations Regarding Application for Reduction in Valuation — Open to Public: The deliberations of a county tax appeal board regarding an application for a reduction in property valuation must be open to the public unless the presiding officer determines the discussion relates to a matter of individual privacy and the demands of individual privacy clearly exceed the merits of public disclosure. 42 A.G. Op. 61 (1988).

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

15-15-101. County tax appeal board — meetings and compensation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendment: Chapter 142 in (2)(a) in two places, in (2)(b)(ii) in one place, and in (3) in one place substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 329 in (2)(a) near beginning substituted "as provided in subsection (2)(b)" for "of $45 a day"; inserted (2)(b) concerning daily compensation for a member; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendment: Chapter 197 in (1) in first sentence after "appoint a" deleted "three-member" and after "appeal board, with" inserted "a minimum of three members and with"; in (2) inserted second sentence regarding selection of presiding officer during organizational meeting; inserted (3) regarding limit of three members for each appeal; and made minor changes in style. Amendment effective October 1, 2011.

1999 Amendment: Chapter 56 in third sentence in (1) substituted "meets" for "is in session"; in second sentence in (2) substituted "from July 1 of the current tax year until December 31 of the current tax year" for "from time to time" and at end after "15-2-201" substituted "may meet after December 31" for "not later than 60 days after the department"; deleted former (2)(a) and (2)(b) that read: "(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed"; at beginning of second sentence in (3) inserted "Upon notification by the county tax appeal board" and in middle substituted "board will be in session to hear scheduled protests" for "board will meet to hear protests" and in last sentence after "published" substituted "by May 15 of the current tax year" for "at least 7 days prior to the first meeting of the county tax appeal board"; and made minor changes in style. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 27 in (2), at end of introductory clause, deleted "or its agent"; in (3), near beginning of second sentence after "clerk", inserted "and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 594 at end of (4) substituted "15-1-406" for "15-2-307 through 15-2-310"; and made minor changes in style.

1991 Amendment: In (2) substituted first sentence regarding annual organizational meeting for former first sentence that read: "The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue" and in second sentence, after "time to time", inserted "to hear protests concerning assessments made by the department of revenue"; and made minor change in style. Amendment effective March 29, 1991.

1983 Amendments: Chapter 216, in (1), increased compensation of board members from $25 to $45 a day.

Chapter 526, in (2)(a) and (2)(b), after "property owners" inserted "and purchasers under contracts for deed".

1981 Amendments: Chapter 502 inserted "except as provided in 15-2-201" after "disposed of, but" near the end of (2).

Chapter 526 added subsection (4) limiting applicability of challenge to taxpayer bringing challenge.

Implementation of Staggered Terms: Section 2, Ch. 355, L. 1977, read: "As of December 31, 1980, one member of the county tax appeal board shall be appointed for a 1-year term, one member shall be appointed for a 2-year term, and the third and all succeeding members shall be appointed for 3-year terms."

Administrative Rules

ARM 2.51.307 Orders of County Tax Appeal Board.

Case Notes

Decision of State Board: Boards of County Commissioners, sitting as a County Board of Equalization (duty now performed by County Tax Appeal Board), had no power, authority, or jurisdiction under the Constitution nor statutes to reduce, compromise, remit, release, cancel, diminish, or extinguish any state tax obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined, and fixed by the State Board of Equalization. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

Action Void After Expiration of Statutory Time for Hearing Appeals:

When the Board of County Commissioners, at a meeting held in October, passed a resolution which reduced the assessed valuation of a taxpayer, and thereby reduced, remitted, compromised, canceled, and extinguished the assessed tax, such resolution was void, not only because they did not have the power so to do, but also because their life as a County Board of Equalization for the year had expired. Carlson v. Flathead County, 130 M 36, 293 P2d 279 (1956).

While Boards of Equalization (duty now performed by County Tax Appeal Board) were provided for in the 1889 Constitution, their periods of life were prescribed by the Legislature, and they could not hold for any other or longer period than the Legislature had fixed. So when a County Board adjourned on the second Monday of August, as provided in this section, its term of existence for that year absolutely expired. Matador Land & Cattle Co. v. Custer County, 28 M 286, 72 P 662 (1903).

Employment of Tax Experts:

While the Board of County Commissioners, sitting as a County Board of Equalization (duty now performed by County Tax Appeal Board), was without power to enter into a contract for services the performance of which is cast upon another county official or Board, it could contract with a private individual for information relative to matters of taxation to aid it in the performance of its duties as a County Board of Equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found in the statutes. Simpson v. Silver Bow County, 87 M 83, 285 P 195 (1930).

Since under the law it was the duty of the Board of County Commissioners as the ex officio County Board of Equalization (duty now performed by County Tax Appeal Board) to adjust and equalize the assessments made by the assessor, i.e., to increase or lower them, it had the implied power to contract with experts to furnish it information relative to reclassification, reappraisal and revaluing the real property, with the improvements thereon in a city to enable it intelligently to perform its duties as such Board of Equalization. (This holding not to be understood as declaring that the Board of Equalization may enter into such a contract as would deprive the Assessor of his duty imposed by law, or to relieve him of his official obligation.) State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758 (1930).

Appeal to Courts:

Under former statutes, in the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer could not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the County and State Boards of Equalization (duties now performed by State and County Tax Appeal Boards) being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 215 P 659 (1923).

Under the law as it stood in 1898, since there was no statute providing for an appeal from the action of the County Assessor and Board of County Commissioners, sitting as a Board of Equalization (duty now performed by County Tax Appeal Board), under sections 3700, et seq., and sections 3780 through 3785 of the Political Code of 1895, courts would not interfere with the action of such officers where the Assessor acted fairly and honestly and the Board gave the plaintiff a fair hearing. Danforth v. Livingston, 23 M 558, 59 P 916 (1900).

Responsibilities: Under former statutes, the Board of County Commissioners, sitting as a Board of Equalization (duty now performed by County Tax Appeal Board), was responsible for the correctness of the assessment book of the county. State ex rel. Shapley v. Bd. of Comm'rs. of Yellowstone County, 12 M 503, 31 P 78 (1892).

Attorney General's Opinions

County Commissioners Ineligible: County Commissioners cannot appoint themselves to the County Tax Appeal Boards. 35 A.G. Op. 16 (1973).

15-15-102. Application for reduction in valuation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

2017 Amendment: Chapter 20 in (3) at end of first sentence substituted "valuation cycle" for "2-year reappraisal cycle" and at end of second sentence substituted "the time periods provided for in 15-7-102(3)(a)" for "30 days from the date on the notice required under 15-7-102(3)"; inserted (4) regarding taxpayer appeal of informal review by department of revenue; and made minor changes in style. Amendment effective February 17, 2017.

2015 Amendment: Chapter 361 in (3) inserted first sentence regarding one application for reduction and substituted second sentence providing a 30-day deadline for former second sentence that read: "The application must be submitted on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later"; and made minor changes in style. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

1999 Amendment: Chapter 56 inserted second, third, fourth, and fifth sentences authorizing application for reduction to be obtained at local appraisal office or from appeal board, requiring completed application to be submitted to county clerk and recorder, establishing that date of receipt is date stamped on appeal form upon receipt, and providing that appeal board is responsible for obtaining applications from county clerk and recorder; and in sixth sentence substituted "submitted" for "filed". Amendment effective October 1, 1999.

1995 Amendment: Chapter 30 in second sentence increased from 15 to 30 the number of days within which an application for reduction in property valuation must be filed after receipt of a notice of classification and appraisal or determination after review. Amendment effective February 6, 1995.

1993 Special Session Amendment: Chapter 27 in second sentence, after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in second sentence, after "appraisal", inserted "or determination after review under 15-7-102(3)" and inserted third sentence requiring review in the next tax year if the Department's determination after review is not made in time to allow county tax appeal board review during the current tax year; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1989 Amendment: Near end of first sentence inserted reference to Department's agent; and made minor changes in phraseology. Amendment effective February 13, 1989.

Retroactive Applicability: Section 6, Ch. 9, L. 1989, provided that this amendment applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Temporary Procedures for 1986 Tax Year: Sections 7 and 8, Ch. 35, Sp. L. June 1986, provided: "Application deadline for reduction in 1986 valuation. Notwithstanding the provisions of 15-15-102, the application deadline for reduction in 1986 taxable valuations is August 1, 1986, or 15 days after receipt by the taxpayer of a revised notice of classification and appraisal, whichever is later.

Land valued in excess of average county land value — renotification to taxpayer. For persons paying taxes on real property containing more than 5 acres but less than 20 acres, the department of revenue shall notify each taxpayer whose land value for 1986 due to reclassification to class four by application of 15-7-202 exceeds the average value per acre for such land in the taxpayer's county. The new notice must fully inform the taxpayer as to the reasons for the new notice, including the cause of the increase in value, the right to appeal to the county tax appeal board, and the extension of time for appeal."

Case Notes

Tax Deed Issued — Assessment Dispute — Statutory Requirements: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. On appeal, the defendant claimed that she reported an assessment dispute to the county tax assessor's office, and she argued that the county should not have issued a tax deed while her assessment was being contested. The Supreme Court held that she had not established that she had filed a written application for reduction in valuation under 15-15-102, she did not make her objection prior to the tax lien sale under 15-17-124, and she did not seek exemption from the deposit requirement after the quiet title action had been filed. Thus, the defendant had waived defects in the proceedings, and her claims were barred. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

Filing Application for Reduction of Property Valuation Synonymous With Filing Appeal to Tax Appeal Board: The filing of an application for a reduction of property valuation pursuant to this section is synonymous with filing an appeal to the County Tax Appeal Board. The time for filing an appeal is extended if the taxpayer has submitted a timely request for assessment review under 15-7-102(3) and does not commence until the Department of Revenue has responded to the request. If the taxpayer is aggrieved by the Department's appraisal after the review, the taxpayer can then appeal to the County Tax Appeal Board within the statutory time of after receiving notice of the Department's determination. As used in 15-7-102, the term "submit" is a less restrictive requirement than filing, implying that the receiving party is not required to act but that a unilateral action on the part of a taxpayer will suffice. Canbra Foods Ltd. v. Dept. of Revenue, 278 M 368, 925 P2d 855, 53 St. Rep. 954 (1996).

Failure to File Administrative Appeal — Use of Declaratory Judgment Not Prevented: Woiths attempted to challenge the property tax assessment method provided in House Bill No. 703 (Ch. 636, L. 1989). Woiths intentionally failed to utilize the administrative appeal process provided for in this section and instead proceeded with an alternate remedy of a declaratory judgment action allowed under 15-1-406. The District Court held that Woiths had failed to preserve their appeal and, under the holding in Dept. of Revenue v. Barron, 245 M 100, 799 P2d 533 (1990), were barred from any further remedy. The Supreme Court held that there was no attempt in Barron to limit the remedies of taxpayers using alternate remedies, such as declaratory judgments, in lieu of the administrative appeal process at issue in Barron. Woith v. Cascade County Treasurer, 262 M 170, 864 P2d 752, 50 St. Rep. 1498 (1993), distinguished as to the requirement that taxpayers using alternative statutory remedies comply with requirements of those statutes in Samson v. St., 285 M 310, 948 P2d 232, 54 St. Rep. 1165 (1997).

County Tax Appeal Board Challenge Applicable Only to Challenging Taxpayer: Challenges to an assessment procedure adopted by the Department of Revenue apply only to taxpayers protesting the assessment and do not apply to all similarly situated taxpayers unless an action is brought in District Court under Title 15, ch. 2, part 3. Dept. of Revenue v. Countryside Village, 205 M 51, 667 P2d 936, 40 St. Rep. 1090 (1983).

Illegal Tax Alleged — Improper Dismissal: The court erred in granting defendants' motions to dismiss for lack of subject matter jurisdiction because the complaints alleged an illegal tax, and did not put into issue any question of valuation. Thus the courts, and not the tax appeal boards had original jurisdiction to hear the case under former law and the rule of Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975). U.S. Nat'l Bank of Red Lodge v. Dept. of Revenue, 175 M 205, 573 P2d 188 (1977).

Unconstitutional Assessment — No Need to Exhaust Administrative Remedies: A class action suit protesting method of assessment as being unconstitutional was properly filed directly against the Department of Revenue without first exhausting administrative remedies. Larson v. Dept. of Revenue, 166 M 449, 534 P2d 854 (1975).

Mandamus to Correct Arbitrary Assessment: In an action in the District Court for a Writ of Mandamus by a taxpayer to compel the State Board of Equalization (now Department of Revenue) to reduce the valuation of unimproved lots in the outskirts of a city from $51,325 to $5,420, when the evidence showed the value thereof not to exceed about $5,400, the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant Board to reduce the valuation to a figure consistent with the proof of the actual cash value. Corcoran v. St. Bd. of Equalization, 116 M 499, 154 P2d 795 (1945).

Exclusive Remedy:

Relief from excessive tax must be by written application to the County Board of Equalization (now County Tax Appeal Board). Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928).

Under former statutes, in the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer could not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the County and State Boards of Equalization (now State and County Tax Appeal Boards) being exclusive in the absence of the contingencies referred to. Belknap Realty Co. v. Simineo, 67 M 359, 215 P 659 (1923).

Excessive Taxes: When taxes upon lands were valid but were complained of as excessive, the question of their excessiveness must have been first presented to the County Board of Equalization (now County Tax Appeal Board) under this section, before resort could be had to the statutory remedies. Thwing v. Weiser, 65 M 28, 210 P 750 (1922).

Condition Precedent to Reduction of Assessment or Recovery of Unlawful Taxes: As a condition precedent to the reduction of the valuation of property, the party affected thereby, or claiming a reduction, or his agent, must file a written application therefor with the Board of Equalization (now County Tax Appeal Board), verified by his oath, showing the facts upon which such reduction is claimed. Before a plaintiff in an action to recover taxes paid to the County Treasurer, claimed to be unlawfully assessed, could be entitled to relief, his complaint should show a compliance with this essential condition. Barrett v. Shannon, 19 M 397, 48 P 746 (1897).

15-15-103. Examination of applicant — failure to hear application.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 691, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendment: Chapter 142 in (1) in third sentence substituted "Montana tax appeal board" for "state tax appeal board"; in (1) in two places and in (2)(b) in one place substituted "Montana board" for "state board"; and made minor changes in style. Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendments — Composite Section: Chapter 26 throughout section clarified and standardized references to the state tax appeal board and the county tax appeal board; in (2)(a)(i) after "15-2-302" inserted "(1)"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 361 inserted (3) regarding consideration and use of independent appraisal by county tax appeal board. Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2005 Amendment: Chapter 533 in (1) near middle of fifth sentence after "department" deleted "of revenue"; inserted (2)(b) requiring that the county tax appeal board provide written notification of each application that is automatically granted; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendments — Composite Section: Chapter 56 at end of (2)(b) after "current" deleted "60-day". Amendment effective October 1, 1999.

Chapter 85 at beginning of (2) inserted exception clause; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 134 in (1), at end of fifth sentence, substituted "must be electronically recorded" for "must be taken in shorthand, taken by stenotype, or electronically recorded" and near middle of sixth sentence substituted "the record of the proceedings, including the electronic recording of all testimony, must be forwarded" for "all testimony must be transcribed or otherwise reduced to writing and forwarded". Amendment effective March 24, 1997.

1993 Special Session Amendments: Chapter 15 in (1), at end of second sentence after "attends", substituted "the county tax appeal board hearing" for "and answers all questions pertinent to the inquiry" and inserted third, fourth, and fifth sentences that read: "An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing"; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 27 in (1), in second sentence after "unless", substituted "the applicant" for "such person or agent"; in (2), in second sentence, substituted "department" for "county treasurer" and "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 227 in (2) inserted language concerning appeals; inserted (2)(b) concerning nonautomatic untimely appeals; and made minor changes in style. Amendment effective March 30, 1993.

Effective Date — Retroactive Applicability: Section 5, Ch. 227, L. 1993, provided: "[This act] is effective on passage and approval [approved March 30, 1993] and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992."

1987 Amendment: Near end of fifth sentence of (1), before "mail", deleted "registered or certified".

Administrative Rules

ARM 2.51.307 Orders of the Board.

15-15-104. Appeal to Montana tax appeal board.

Compiler's Comments

2021 Amendment: Chapter 142 in (1) near end substituted "Montana board" for "state board"; and in (2) near end of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2005 Amendment: Chapter 533 in (1) near beginning after "15-15-103" inserted "(1)" and after "department" deleted "of revenue"; inserted (2) providing that if an appeal has been automatically granted by a county tax appeal board pursuant to 15-15-103(2), the department or any municipal corporation aggrieved by the action may appeal to the state tax appeal board; and made minor changes in style. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 15 at beginning, before "person", substituted "If the appearance provisions of 15-15-103 have been complied with, a" for "Any"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 4, Ch. 15, Sp. L. November 1993, provided: "[This act] applies to all property tax appeals on or after January 1, 1994."

Section Not Codified: Section 84-718, R.C.M. 1947, a severability clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 18, Ch. 3, L. 1923.

Part 2
Motor Vehicle Appeals

15-15-201. Motor vehicle tax appeals — payment and protest of local option taxes or fees in lieu of tax on motor vehicles.

Compiler's Comments

2021 Amendment: Chapter 142 in (1) at end of last sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2019 Amendment: Chapter 335 in (1)(a) near end of first sentence before "renewal notice" deleted "mail"; in (1)(b) in last sentence after "61-3-503" deleted "61-3-506" and after "61-3-529" inserted "and established by the department's rulemaking authority in 61-14-101"; and made minor changes in style. Amendment effective May 7, 2019.

2005 Amendments — Composite Section: Chapter 542 in (1)(a) near end of first sentence before "vehicle" inserted "motor" (amendment rendered void by Ch. 596 amendment); in (1)(b) in second sentence deleted reference to 61-3-528; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(a) at end of first sentence substituted "receipt of the mail renewal notice from the department as provided in 61-3-535" for "the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the appeal". Amendment effective January 1, 2006.

2001 Amendment: Chapter 191 in (1)(a) in first sentence near beginning substituted "imposition of local option taxes on light vehicles" for "imposition of taxes"; in (1)(b) near end after "department of justice under" substituted "61-3-503" for "61-3-502 through 61-3-504"; and in (2)(a) in first sentence near middle after "is not required to deposit" substituted "local option vehicle taxes" for "property taxes". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

1999 Amendment — Coordination Instruction: Section 6, Ch. 85, L. 1999, a coordination instruction, substituted (3) concerning time of filing motor vehicle tax appeal for version of (3) in sec. 1, Ch. 85. L. 1999. Amendment effective March 16, 1999.

Effective Date: Section 8, Ch. 85, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

CHAPTER 16
COLLECTION OF PROPERTY TAXES

Chapter Case Notes

Mandatory and Exclusive Statutes: The procedure outlined in Ch. 199, R.C.M. 1935, for the collection of property taxes and the enforcement of tax liens was mandatory and exclusive. Calkins v. Smith, 106 M 453, 78 P2d 74 (1938).

Chapter Collateral References

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

Part 1
Notice and Payment

Part Case Notes

Notice of Sale Must Reflect Sale as Tax Sale: The notice posted by the Sheriff, appointed as Deputy County Treasurer, of the sale of an automobile for delinquent taxes was entitled "Execution sale of personal property for taxes" instead of Treasurer's sale of personal property seized for taxes, and entitled as a court action, it being signed by the Sheriff and his deputy. Since the notice was in effect one of a Sheriff's and not a Treasurer's sale, it did not comply with 15-16-113 (now repealed), and rendered the sale void. Perham v. Putnam, 82 M 349, 267 P 305 (1928).

15-16-101. Treasurer to publish notice — manner of publication.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 201, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 2, Ch. 201, L. 2023, provided: "[This act] applies to property tax notices issued for taxes on or after [the effective date of this act]." Effective October 1, 2023.

2021 Amendment: Chapter 446 in (2)(a)(v) after "the total tax due" inserted "itemized by mill levy"; inserted (2)(a)(vi) requiring notice of voted mill levies; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendments — Composite Section: Chapter 67 in (2)(b) at beginning substituted "If a tax lien is attached to the property" for "If the property is the subject of a tax lien sale for which a tax lien sale certificate has been issued under 15-17-212", in middle after "a statement that" inserted "a tax lien is attached to", and near end after second "property" substituted "that failure to respond will result in loss of property" for "is the subject of a tax lien sale"; in (4) in first sentence substituted "given as provided in 7-1-2121" for "published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places"; and made minor changes in style. Amendment effective March 2, 2017.

Chapter 441 in (2)(a)(vi) inserted "the intangible land value assistance program provided for in 15-6-240". Amendment effective October 1, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

Section 6, Ch. 441, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Severability: Section 5, Ch. 441, L. 2017, was a severability clause.

2015 Amendment: Chapter 361 in (2)(a)(vi) near middle substituted "property tax assistance programs under Title 15, chapter 6, part 3" for "property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2009 Amendment: Chapter 483 inserted (2)(a)(vi) relating to notice for property tax assistance programs; and made minor changes in style. Amendment effective May 10, 2009.

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2007 Amendment: Chapter 110 in (2)(b) in three places substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 453 deleted former (2)(a)(iii) that read: "(iii) the value of each mill in that county"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 472 inserted (2)(b) requiring notice for property subject to tax sale and for which tax sale certificate has been issued to include statement that property is subject to tax sale and that taxpayer may contact county treasurer for information; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 448 inserted (5) providing that an additional tax is not owed if the department revises an assessment that results in an additional tax of $5 or less. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

1993 Special Session Amendment: Chapter 27 in introductory clause of (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1)(a), relating to November tax notice, inserted "or within 30 days after the notice is postmarked" and after "unless paid prior" substituted "to that time" for "thereto"; in (1)(b), relating to May tax notice, after "unless paid prior to" substituted "that time the taxes" for "said date said taxes"; and in (4), relating to publishing of notice, made minor grammatical changes.

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 492 inserted "and assessments" after "taxes" in the first sentence of (2); inserted subsection (2)(d) relating to city services and county SIDs; and inserted subsection (3) requiring municipality to provide information.

Chapter 576 increased the interest on delinquent taxes from 2/3 of 1% per month to 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Penalty Provisions: The penalty prescribed in this section was changed to conform to sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Section Not Codified: Section 84-4102, R.C.M. 1947, which is an effective date and provided for nonretroactivity, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 67, L. 1931.

Case Notes

Statute of Limitations to Run From Date Tax Notice Sent: In defining when actual "imposition" of taxes occurs for purposes of establishing the 90-day period within which a declaratory judgment action must be brought under 15-1-406, the Supreme Court held that imposition of taxes occurs on the date actual notice of taxes due is sent pursuant to this section rather than the date the taxes are entered on the assessment book pursuant to 15-10-305. Holly Sugar Corp. v. Dept. of Revenue, 252 M 407, 830 P2d 76, 49 St. Rep. 299 (1992).

Notice of Default on Tax Deed Not Personally Served — Order Set Aside: In a case involving the setting aside of a default judgment in a tax deed setting, the defaulting party was not personally served, service being accomplished through legal publication. Because a motion to set aside was timely made and service was not personally made, the party was entitled to use former Rule 60(b), M.R.Civ.P. (now superseded), to set aside the order of default. McDonald v. Grassle, 228 M 25, 740 P2d 1122, 44 St. Rep. 1312 (1987).

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Notice of Delinquency Need Not Be Published: The notice mentioned in subsection (3) (now (4)) is the same one referred to in subsection (1) and not the one "mailed" to delinquent taxpayers as provided in subsection (2). Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Penalties and Interest:
A taxpayer, after receiving a notice of delinquent taxes as provided by subsection (2), may not pay his delinquent taxes and then be relieved of the obligation to pay penalty and interest on said taxes. Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Failure of present County Treasurer's predecessors to send plaintiff any notice "showing the amount of taxes due and delinquent for other years", as provided in subsection (2), did not relieve plaintiff of the obligation to pay the principal of the delinquent taxes, but did relieve plaintiff of any obligation to pay penalties and interest on the taxes because of the lack of such statutory notice. Salvation Army v. St., 144 M 415, 396 P2d 463 (1964).

Notice to Nonresident: It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a County Treasurer, instead of the County Assessor, to send tax notices to a certain address which request was ignored. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Failure to Notice Delinquencies Not Fatal to Certificate of Sale: Under this section, failure of County Treasurer to notify taxpayer of amount of delinquent taxes due does not affect the legality of the tax or warrant cancellation of a certificate of sale issued to the county. Smith v. Blaine County, 102 M 116, 56 P2d 177 (1936).

Attorney General's Opinions

Tax Notices for Service Charges Not to Be Mailed Until Service Actually Begun: Under the language of the applicable statutes, the fee for the services of a refuse disposal district could not be charged until the services of the district had commenced. The fee is to be collected in the same assessment of taxes that is sent to members of the district under the procedure of 7-13-233 (now repealed). That section provides a schedule for collection beginning in the month that service begins. Tax notices containing the fee may therefore not be mailed until service is begun. 40 A.G. Op. 45 (1984).

15-16-102. Time for payment — penalty for delinquency.

Compiler's Comments

2023 Amendments — Composite Section: Section 11, Ch. 691, L. 2023, in (5)(a) in second sentence substituted "accept a payment equal to the delinquent taxes, including penalty and interest for one-half of a delinquent tax year" for "accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years"; and made minor changes in style. Amendment effective May 19, 2023.

Section 2, Ch. 734, L. 2023, in (1) at end substituted "payable as provided in this section" for "payable as follows"; in (2)(a) at beginning inserted exception clause; inserted (2)(b) regarding a taxpayer enrolled in alternative payment schedule and providing for nearly equal payments; in (3)(a)(i) at beginning inserted exception clause; inserted (3)(a)(ii) regarding alternative payment schedule delinquent payments; in (4)(b) at beginning inserted exception clause for taxpayers enrolled in alternative payment schedule; and made minor changes in style. Amendment effective October 1, 2023.

Applicability: Section 15, Ch. 691, L. 2023, provided: "[This act] applies to county tax appeal board and Montana tax appeal board proceedings filed after [the effective date of this act]." Effective May 19, 2023.

Section 6, Ch. 734, L. 2023, provided: "[This act] applies to property tax payments due on or after November 30, 2024."

Saving Clause: Section 12, Ch. 691, L. 2023, was a saving clause.

Severability: Section 13, Ch. 691, L. 2023, was a severability clause.

2021 Amendment: Chapter 145 in first sentence inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

2017 Amendment: Chapter 67 in (5)(a) near end of second sentence after "if taxes" substituted "currently due for" for "for both halves of". Amendment effective March 2, 2017.

Applicability: Section 46, Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act].

(2) [Sections 2, 18, and 20] [15-16-102, 15-18-112, and 15-18-114] apply retroactively, within the meaning of 1-2-109, to any tax lien begun or issued prior to [the effective date of this act]." Effective March 2, 2017.

2015 Amendment: Chapter 361 in (4)(b) in first sentence substituted "property tax assistance program provided for in 15-6-305" for "low-income property tax assistance provisions of 15-6-134(1)(c)". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2009 Amendment: Chapter 6 in (4)(b) in first sentence after "15-6-134(1)(c)" deleted "and 15-6-191". Amendment effective February 19, 2009.

Retroactive Applicability: Section 6(1), Ch. 6, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2005 Amendment: Chapter 587 in introductory clause near beginning inserted "10-1-606 or". Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 315 inserted (5)(b) providing that a payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 436 inserted (8) authorizing the county treasurer to accept a partial payment of centrally assessed property taxes. Amendment effective October 1, 2003.

2001 Amendment: Chapter 410 inserted (4)(b) concerning payment of taxes on property qualifying under low-income property tax assistance; and made minor changes in style. Amendment effective April 28, 2001.

Applicability: Section 3, Ch. 410, L. 2001, provided: "[This act] applies to eligible property tax payments made after March 1, 2001."

1999 Amendment: Chapter 448 inserted (7) providing that an additional tax is not owed if the department revises an assessment that results in an additional tax of $5 or less. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

1997 Amendment: Chapter 42 in introduction deleted exception clause referring to 15-16-802 and 15-16-803; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment — Not Codified in Permanent Version: Chapter 33 near end of introductory clause inserted "production from horizontally completed wells, or incremental production". The amendment was intended to clarify the taxation of oil production from horizontally completed wells. Chapter 451 was a bill generally revising the taxation of oil and natural gas, including production from horizontally completed wells. Chapter 451 deleted language from the sentence amended by Ch. 33, rendering the Ch. 33 amendment meaningless. Chapter 33 has not been repealed and is valid law, but it is not codified in the permanent section.

1995 Amendment: Chapter 451 in introductory paragraph, after "15-16-103", deleted "and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121"; and made minor changes in style. Amendment effective January 1, 1996.

Effective Date — Retroactive Applicability: Section 4, Ch. 33, L. 1995, provided: "[This act] is effective on passage and approval [approved February 7, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1993."

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996].

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendments: Chapter 449 inserted (6) authorizing waiver of penalty and interest on delinquent assessments; and made minor changes in phraseology. Amendment effective April 5, 1989.

Chapter 631 near beginning inserted "unless" clause. Amendment effective April 25, 1989, and terminates December 31, 1993.

Chapter 699 at beginning inserted exception clause. Amendment effective May 22, 1989.

Chapter 704 in (5) changed "If the taxes become delinquent" to "A taxpayer may pay his current year taxes without paying delinquent taxes", after "county treasurer" substituted "must" for "may", and at end inserted "The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year." Amendment effective May 22, 1989.

Saving Clause: Section 17, Ch. 449, L. 1989, was a saving clause.

Severability: Section 18, Ch. 449, L. 1989, was a severability clause.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Effective Date: Section 5, Ch. 699, L. 1989, provided that this section is effective May 22, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 704, L. 1989, provided: "A statement of intent is not required for this bill but is included to make clear that the purpose of this bill is to clarify the provisions of Senate Bill No. 162 (Chapter 587, Laws of 1987), relating to partial payments of delinquent property taxes and to the procedures governing the sale of property for delinquent taxes.

In addition, this bill defines the term "costs", clarifies how redemption proceeds are distributed, requires a person who redeems property to pay the taxes and other charges that have been assessed since the date of the sale of the tax lien, revises the method by which county tax-deed land is sold, lengthens the notification period prior to issuing a tax deed, changes the time when proof of notice must be filed, and clarifies the effect of the tax deed.

In 1987, the legislature enacted 15-16-102(5) authorizing the partial payment of delinquent property taxes. The attorney general in 42 Attorney General Opinion [42 A.G. Op. 71 (1988)] opined, however, that a partial payment made pursuant to 15-16-102(5) does not toll the redemption period. In order to redeem the property, the attorney general stated that the taxpayer had to pay all of the delinquent taxes, including penalty and interest, plus all subsequently assessed taxes.

The intent of this bill is to reverse the attorney general's opinion. It is the intent of the legislature that each tax year for which property taxes are delinquent has a separate 36- or 18-month redemption period. If a partial payment is made for a particular tax year, a tax deed may not be issued based on that tax year because the taxes for that year have been paid.

For example, assume that the 1984, 1985, 1986, 1987, and 1988 property taxes are delinquent. Assume further that a 36-month redemption period applies to the property on which the taxes have not been paid. In February 1989, the current year, as that term is used in 15-16-102(5), is the 1988 tax year for which taxes are due on November 20, 1988, and May 31, 1989. The 36-month redemption period has expired for 1984, and it will expire for the 1985 taxes in the summer of 1989. This bill contemplates that a taxpayer may pay his 1988 taxes, even though the first half is delinquent. After the 1988 taxes are paid, the taxpayer may redeem the property for the 1984 tax year by paying the 1984 taxes.

The taxpayer may still lose his property unless he pays his 1985 taxes before the tax deed is issued. Because the current year and the most delinquent year are paid, the taxpayer may redeem the property for the 1985 tax year by paying the 1985 taxes.

In 1990, the taxpayer would have to pay the 1989 taxes before he could pay the 1986 taxes to redeem the property for the 1986 tax year. Following this pattern, the taxpayer would be current on all taxes after 3 years.

As used in this statement of intent, taxes include penalty, interest, and costs."

1987 Amendments: Chapter 69 in (1) and (2) inserted "or within 30 days after the tax notice is postmarked, whichever is later"; and inserted (4) relating to holiday or Saturday.

Chapter 587 in (1) and (2) inserted "or within 30 days after the notice is postmarked, whichever is later"; and inserted (5) relating to partial payment of taxes.

Chapter 655 in introductory clause, before "new production", inserted "interim production and".

Effective Date — Applicability: Section 28, Ch. 655, L. 1987, provided: "This act is effective on passage and approval [approved April 13, 1987] and applies retroactively, within the meaning of 1-2-109, to taxable quarters beginning on or after April 1, 1987. The tax rate and filing method applicable to a well that qualifies as interim production under section 10 [15-23-601, now repealed] but which did not qualify as new production under 15-23-601 [now repealed] prior to the applicability date of this act does not change for tax periods prior to the applicability date."

1985 Amendment: In lead-in language, near middle, after "15-16-103", inserted "and assessments made on new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121".

1981 Special Session Amendment: Reduced the interest on delinquent taxes from ⅚ of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight ⅚ of 1% per month rate on all delinquent taxes.

1981 Regular Session Amendments: Chapter 527 substituted "assessments made for special improvements in cities and towns payable under 15-16-103" for "on municipal special improvement district bonds sold on or before July 1, 1979" after "Montana, except" in the first sentence of the section.

Chapter 576 increased the interest on delinquent taxes from ⅔ of 1% per month to ⅚ of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000.

Penalty Provisions: The penalty prescribed in this section was changed to conform to sec. 1, Ch. 30, Ex. Laws 1933, which read: "From and after the first day of March, 1934, the penalty on all delinquent ad valorem taxes or assessments shall be at the rate of two per cent (2%); provided, however, that nothing herein contained shall be deemed as in any manner whatsoever changing penalties imposed prior to the first day of March, 1934."

Section Not Codified: Section 84-4102, R.C.M. 1947, which is an effective date and provided for nonretroactivity, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 67, L. 1931.

Case Notes

Payment of Taxes Not Yet Due Not Required to Sustain Adverse Possession Claim: Pursuant to 70-19-411, a party claiming adverse possession must occupy the property continuously for 5 years and must have paid all legally levied and assessed taxes on the property. Parker received notice for property taxes due on October 31, 1997, but the taxes were not paid. The 5-year period of adverse possession commenced when Parker received the defective tax deeds on November 24, 1992, so the 5-year adverse possession period would have expired on November 24, 1997. The District Court held that because the 1997 taxes were assessed prior to November 24, 1997, and were unpaid, Parker's claim for adverse possession failed. Parker maintained that the adverse possession language in 70-19-411 should be interpreted in combination with the statutory provisions for levy, notice, and payment of taxes in the tax code in Title 15. The Supreme Court agreed. Pursuant to 15-10-305, real estate taxes are levied and assessed on the second Monday in October, while this section provides that one-half of each year's property taxes is payable on or before November 30 and the other one-half is payable on or before May 31 of the following year. Therefore, although the 1997 taxes were levied prior to the expiration of the 5-year adverse possession period on November 25, 1997, the taxes were not delinquent until November 30, 1997, 1 week after the adverse possession period ended. The Supreme Court concluded that 70-19-411 does not require the payment of taxes that are not yet due in order to sustain a claim of adverse possession. Thus, the District Court erred in concluding that Parker did not meet the requirements of 70-19-411, and the decision was reversed. Tungsten Holdings, Inc. v. Parker, 2001 MT 117, 305 M 329, 27 P3d 429 (2001).

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Interest and Penalties Not Part of Tax for Purpose of Priority: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C.Mont. 1963).

When Interest Accrues: While the interest rate provided by the 1923 law was 1% per month, the section did not state or contemplate that interest shall only be computed in full months, treating each fractional part of a month as a whole. Certainly no one would claim that a note bearing "eight per cent per annum" would require the payment of a whole year's interest for each year, and each fractional part of a year. The interest under the section can only be charged until all delinquent taxes are paid. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Application to City Taxes: This section, providing for the semiannual payment of "all taxes levied and assessed in the state", applies to city taxes as well as to county taxes. Thomas v. Missoula, 70 M 478, 226 P 213 (1924).

Constitutionality: The title to Ch. 96, L. 1923, sufficiently expressed the subject of the act—authorizing the semiannual payment of taxes—to meet the requirements of Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.). Thomas v. Missoula, 70 M 478, 226 P 213 (1924).

Attorney General's Opinions

No Discretion by County Treasurer to Refuse Partial Payment of Delinquent Taxes: A County Treasurer has no discretion to refuse a partial payment of delinquent taxes as long as the payment is made in accordance with subsection (5) of this section. 42 A.G. Op. 117 (1988). (See 1989 amendment made by Ch. 704, L. 1989.)

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of this section apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or 15-17-911. 42 A.G. Op. 95 (1988).

Current Tax Year Defined — Partial Payments: The current tax year for purposes of partial tax payments under subsection (5) of this section is the current tax billing year that extends from the date the County Treasurer mails notice of the tax due to the taxpayer until the following year's tax bill is sent. 42 A.G. Op. 71 (1988).

Partial Payment Conditions Inapplicable to Payment of Delinquent Taxes: The partial tax payment conditions of subsection (5) of this section do not apply to taxpayers who tender complete payment of all delinquent taxes. 42 A.G. Op. 71 (1988).

Delinquency Interest, Penalties, and Costs to Follow Tax: The Montana Supreme Court held in School District v. Pondera County, 89 M 342, 297 P 498 (1931), that unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, school districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. 41 A.G. Op. 25 (1985).

Timeliness of Mailed Payments — Postmark: Tax payments deposited in the United States mail on or before payment deadlines enumerated in this section, as shown by the postmark on the envelope received by the Treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the County Treasurer. 40 A.G. Op. 12 (1983).

Retroactive Application of 1981 Delinquency Rate: The interest rate of ⅚ of 1% a month provided by the 1981 special session amendment applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency. 39 A.G. Op. 76 (1982).

Application to Certain Personal Property: This section applies to personal property taxes that are not a lien on real estate to the extent those taxes draw interest from the time they become delinquent until they are paid and a penalty is added. 38 A.G. Op. 6 (1979).

15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 734, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 734, L. 2023, provided: "[This act] applies to property tax payments due on or after November 30, 2024."

1989 Amendment: In (1)(a) and (1)(b) inserted last sentence relating to waiver of penalty and interest; and made minor changes in phraseology. Amendment effective April 5, 1989.

Saving Clause: Section 17, Ch. 449, L. 1989, was a saving clause.

Severability: Section 18, Ch. 449, L. 1989, was a severability clause.

1981 Amendment: Inserted "the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been" after "towns and cities" in the middle of (1); inserted "as follows:" at the end of (1); inserted "one-half of such taxes shall be payable" at the beginning of (1)(a); deleted "are or may hereafter be provided by the laws of the state of Montana for other" after "nonpayment as" near the end of (1)(a); added "under 15-16-102" to the end of (1)(a); inserted subsection (1)(b) relating to second half payment; substituted "of special assessments or installments of special assessments made for special improvements in towns or cities" for "thereof" at the beginning of (2); and made minor changes in phraseology.

Attorney General's Opinions

When Semiannual Collections Required: A city is required to make semiannual collections of special improvement district assessments only when the SID bond specifies annual interest payments and the bond was issued after July 1, 1981. 40 A.G. Op. 64 (1984).

15-16-104. Entry of payment — receipt.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (1) substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (2)(a), relating to receipt issuance, at beginning inserted exception clause; and inserted (2)(b), the receipt exception.

Attorney General's Opinions

Receipt to Be Issued for Taxes if Fee Withheld: If members of a refuse disposal district were improperly billed for a disposal fee before service was begun, any member paying his district taxes but withholding the fee should be issued a receipt by the County Treasurer for the taxes that were paid. Because the language of the statute directs that a receipt be issued for the payment of "any tax", the Treasurer may also issue a receipt for taxes only, even after the services have begun, if payment of the service fee is withheld. 40 A.G. Op. 45 (1984).

15-16-105. When property assessed more than once.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning, before "treasurer", inserted "county" and at end substituted "report that fact to the department" for "make return of the facts under affidavit to the county clerk and recorder"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Duty of County Treasurer — Double Tax: If a motor vehicle is subject to tax twice in the same year, once in the hands of the dealer and once in the hands of the purchaser, it is the duty of the County Treasurer, under this section, to collect only the tax justly due. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Purpose: The provisions of this section, 15-16-601 (now repealed), and others of like import are intended to secure the collection of lawful revenue and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to anyone. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

15-16-118. Minimum tax payment — limitation of appeal.

Compiler's Comments

1993 Amendment: Chapter 557 in first sentence of (1), after "15-16-101(2) are", inserted "less than $5 or if a tax notice of taxes and special assessments due on personal property is" and inserted third sentence requiring deposit of the difference between taxes and assessments in the county general fund; in (2), after "15-16-101(2)", inserted "or in the notice of taxes and special assessments due on personal property"; and inserted (4) providing that the minimum assessment does not apply to levies against certain governmental entities unless total assessments are less than $5.

Applicability: Section 2, Ch. 557, L. 1993, provided: "[Section 1] [15-16-118] applies to all tax notices sent to taxpayers after September 30, 1993."

Applicability: Section 4, Ch. 474, L. 1991, provided: "[This act] applies to taxable year 1992, beginning January 1, 1992, and to all taxable years thereafter."

15-16-119. Taxation of personal property — duty of department — collection by department of administration.

Compiler's Comments

2021 Amendment: Chapter 145 in (8) near middle inserted "coal gross proceeds taxes or" and near end inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

1999 Amendment: Chapter 197 in (4) in third sentence substituted language entitling sheriff to fees, mileage, and costs, as provided in 7-32-2141 and 7-32-2143, as assessment against taxpayer for "may receive the same fees as for making a seizure and sale as provided in 15-17-911". Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

1997 Amendment: Chapter 42 in (7) substituted "department of administration" for "state auditor". Amendment effective March 12, 1997.

1995 Amendment: Chapter 589 in (3), after "delinquent", inserted "either proceed under subsection (7)"; and inserted (7) concerning delinquent personal property taxes. Amendment effective July 1, 1995.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that this section applies to tax years after December 31, 1993.

Effective Date: Section 173(1), Ch. 27, Sp. L. November 1993, provided that this section is effective January 1, 1994.

Case Notes

Invalid Application — Flathead Reservation Indians: Section 15-16-111 (now repealed) was invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Former Statute Unconstitutional: Former section 3940 of the 1895 Political Code, which required the Assessor to collect taxes on all personal property, when, in his opinion, such taxes were not a lien on real property sufficient to secure payment of the personal property tax, was unconstitutional since the Legislature had no power to vest any other person than the Treasurer with power to collect taxes. Mut. Life Ins. Co. of New York v. Martien, 27 M 437, 71 P 470 (1903). See also Missouri River Power Co. v. Steele, 32 M 433, 80 P 1093 (1905); Butte v. Bennetts, 51 M 27, 149 P 92 (1915); and Pohl v. Chicago, Milwaukee, & St. Paul Ry., 52 M 572, 160 P 515 (1916).

Personal Property of National Bank: Personal property of a national bank is not subject to taxation under the state laws. First Nat'l Bank v. Province, 20 M 374, 51 P 821 (1898).

Assessment of Real Estate: The statutes in force in 1889, regulating taxation, contemplated the assessment of each distinct parcel of real estate separately, and created a direct lien on each parcel only for the tax levied thereon, and the lands of a delinquent taxpayer were not chargeable thereunder with a direct lien for a personalty tax. Ward v. Bd. of Comm'rs, 12 M 23, 29 P 658 (1892).

15-16-122. Alternative payment schedule for primary residences.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Applicability: Section 6, Ch. 734, L. 2023, provided: "[This act] applies to property tax payments due on or after November 30, 2024."

Part 2
Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities.

Compiler's Comments

1991 Amendment: In (2) changed subsection reference to 90-6-302. Amendment effective March 29, 1991.

1981 Amendment: In (2), inserted "other than a large-scale mineral development as defined in 90-6-302(4)".

15-16-203. Assessment of property previously exempt.

Compiler's Comments

2015 Amendment: Chapter 372 in (1) inserted reference to 15-6-231(3) and before "subject to taxation" deleted "the property of a person"; and made minor changes in style. Amendment effective April 30, 2015, and terminates December 31, 2021.

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (4), after "department", deleted "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Applicability: Section 4, Ch. 570, L. 1991, provided: "[This act] applies after December 31, 1991."

Part 3
Reporting Delinquent Taxes

Part Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). However, see Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, in which the Supreme Court held that failure to comply with a tax lien statute did not render the tax deed void.

15-16-301. Delinquent list — list of taxes suspended or cancelled — real property.

Compiler's Comments

2021 Amendment: Chapter 145 in (2) near middle inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

2005 Amendment: Chapter 189 in (1) at beginning of first sentence deleted "On the third Monday of December and" and inserted second sentence requiring electronic submission of the report to the county clerk and recorder; in (2) near end after "during the" substituted "1-year period" for "6-month period"; and made minor changes in style. Amendment effective April 8, 2005.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (2) requiring the County Treasurer to report suspended or canceled taxes under Title 15, ch. 24, part 17; and made minor changes in phraseology. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: In first sentence, before "list", deleted "delinquent" and made minor changes in grammar and phraseology.

Case Notes

Strict Compliance With Statutes Governing Tax Deeds: The defendant trust acquired tax deeds to three tracts of real property after the plaintiff taxpayer failed to pay the property taxes. The defendant and the plaintiff filed quiet title claim actions to determine the validity of the tax deeds. The plaintiff submitted a memorandum from the county treasurer admitting that she had failed to provide the County Clerk and Recorder a report of all persons and property owing taxes, including 13 additional examples of failure to comply with the tax deed statutes, because she had relied on records provided by the county. Therefore, the plaintiff argued that the county and the trust had failed to comply with several statutes and that the tax deed was void. The District Court's first order granted summary judgment to the plaintiff declaring the tax deeds void, and the second order addressed calculation of the final redemption amount to be paid to the defendant. The defendant appealed. The Supreme Court affirmed, holding that Montana law requires strict compliance with statutes governing tax deeds. Johnson v. Wayne S. Hansen Trust, 2016 MT 46A, 382 Mont. 312, 369 P.3d 998.

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with this section, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). However, see Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, in which the Supreme Court held that failure to comply with a tax lien statute did not render the tax deed void. See also Johnson v. Wayne S. Hansen Trust, 2016 MT 46A, 382 Mont. 312, 369 P.3d 998.

15-16-302. Tabulation and transmittal of property delinquent list.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in three places substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (3), relating to duties of County Clerk and Recorder, made minor changes in grammar and phraseology.

15-16-303. Treasurer charged with delinquent taxes.

Compiler's Comments

2021 Amendment: Chapter 145 near middle inserted reference to 15-23-708; and made minor changes in style. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: In middle inserted "minus taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17". Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: Substituted "in 15-16-302" for "herein" and made minor changes in phraseology by deleting redundant wording.

Part 4
Liens and Limitations

Part Case Notes

Personal Property Taxes Due Are Liens: When taxes were due on personal property (cattle), the tax was a lien on that property and also a lien on the real property of the owner. Since the cattle have long since been disposed of, the lien on the cattle per se has evaporated. It has not evaporated, however, as against the real property of the owners of the cattle. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

15-16-401. Tax due as a judgment or lien.

Compiler's Comments

2021 Amendment: Chapter 145 in first sentence near beginning and in second sentence near middle inserted references to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

1999 Amendment: Chapter 197 in second sentence after "to the sheriff" inserted language regarding sheriff of any county where property is located, inserted third sentence concerning issuance of writs of execution, and in fifth sentence after "to the fees" substituted language entitling sheriff to mileage and costs as assessment against taxpayer for "fees provided for in 15-17-911"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: At beginning of first sentence and in middle of second sentence inserted "unless suspended or canceled under the provisions of Title 15, chapter 24, part 17". Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: Made minor changes in grammar and in next-to-last sentence substituted "fees provided for in 15-17-911" for "same fees for his services in executing the same, to be collected in the same manner".

Application: The word "title" as used in this section first appeared in section 3827, Political Code of 1895. The reference to "this title" was not changed during the 1979 or any previous recodification, and therefore might not technically apply to all sections currently codified in Title 15, MCA, and might apply to some sections codified in other MCA titles.

Case Notes

Real Property — Inapplicable: This section is inapplicable to real property. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Purpose of Resort to Property: Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment when the owner makes default. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Migratory Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, R.C.M. 1947 (now repealed), county had a lien for the tax under this section, as amended in 1963, and 15-16-402 and properly seized and noticed up for sale 200 head of cattle, as the lien was not limited to 1960 cattle by 15-16-113 or 15-17-901 (both now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Priority:

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Liens for taxes take precedence over mortgages of a federal agency. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

This section and 15-16-403 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Priority — Interest and Penalties: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Taxes on Realty Not Collectible by Court Action:

Taxes on real estate cannot be collected by civil action, but only through voluntary payment or sale of the property at tax sale. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Taxes on realty cannot be collected by an action for that purpose, nor can the tax lien be foreclosed, not only because the Legislature has provided no such remedy, but also because this section provides that the tax has the effect of a personal judgment and levy of execution upon all personal property of the delinquent which is not satisfied until the tax is paid or the property is sold for payment of the tax. State ex rel. Tillman v. District Court, 101 M 176, 53 P2d 107 (1936).

Subrogation: When a mortgagor who had not paid any of the principal or interest and mortgagee allowed lien to outlaw but paid the taxes on the land to prevent delinquency, the mortgagee, who paid the taxes, became subrogee of the county and state as to the lien against the land, and acquired all the rights of the county and state except the rights to impose penalties for delinquency, and was entitled to reimbursement for the taxes before the court would quiet title to the land in mortgagor on the theory of equitable subrogation. Swingley v. Riechoff, 112 M 59, 112 P2d 1075 (1941).

Not Applicable to Special Assessments: The provision of this section that every tax has the effect of a judgment applies only to general taxes, not special taxes. State ex rel. Spokane & E. Trust Co. v. Nicholson, 74 M 346, 240 P 837 (1925). See also State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928).

Not Applicable to Corporation Filing Fee: The fee for filing articles of incorporation, required of a foreign corporation by 2-6-103 (now repealed), was not a property tax, creating a lien on the property until paid. State ex rel. Gen. Elec. Co. v. Alderson, 49 M 29, 140 P 82 (1914), explained in J. I. Case Threshing Mach. Co. v. Stewart, 60 M 380, 199 P 909 (1921).

Attorney General's Opinions

Duration of Tax Lien: Under this section, a tax lien created under Title 15 is valid and enforceable until the taxes are paid or the property is sold for the payment of the delinquent tax regardless of whether the lien is upon real property or personal property. 42 A.G. Op. 122 (1988).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Writ of Execution Issuable to Sheriff of Any County: The provisions of 15-16-401 and 15-24-206 do not apply exclusively to the county where the original tax was assessed, and a Writ of Execution against a delinquent personal property taxpayer may be issued by the County Treasurer to the Sheriff of any county in the state. 35 A.G. Op. 79 (1974).

15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.

Compiler's Comments

2021 Amendment: Chapter 145 in (7) inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

2009 Amendment: Chapter 2 in (2) in fifth sentence after "tax" inserted "lien". Amendment effective October 1, 2009.

1993 Special Session Amendment: Chapter 27 in (3), after "county", inserted "and with the department"; in (5), at beginning of first sentence, substituted "A holder" for "Any owner", in second sentence, before "certified", deleted "registered or", and in third sentence, in two places after "department", deleted "or its agent"; in (5), near middle of first sentence, and in (6)(b), after "department", deleted language concerning the Department's agent in the county in which property is located; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Throughout (2) increased taxable value to $10,000 from $1,000; in (3), in introductory clause, inserted "each year"; in (4) deleted last sentence that read: "If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice"; and made minor changes in style.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendments: Chapter 286 inserted (6) relating to filing of a copy of a certificate of satisfaction with the County Treasurer and Department of Revenue.

Chapter 631 inserted (7) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Applicability: Section 3, Ch. 286, L. 1989, provided: "[This act] applies to notices and written requests filed under the provisions of 15-16-402 after September 30, 1989."

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: At end of (1), relating to tax being prior lien, substituted "on and after January 1 of each year" for "from and after 12 midnight of January 1 in each year".

Case Notes

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Purpose of Resort to Property: Property is resorted to for the purpose of ascertaining the amount of the delinquent tax and for the purpose of enforcing its payment when the owner makes default. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Migratory Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960 under section 84-5202, R.C.M. 1947 (now repealed), county had a lien for the tax under this section and 15-16-401, as amended in 1963, and properly seized and noticed up for sale 200 head of cattle, as the lien was not limited to 1960 cattle by 15-16-113 or 15-17-901 (both now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

Attorney General's Opinions

Payment to Person With Security Interest Not Necessary Prior to Seizure and Sale: Because tax liens on personal property are superior to all other liens, when personal property is subject to a delinquent tax lien, a county is not required to tender payment to a person having a security interest in the property before seizing and selling the property. 43 A.G. Op. 19 (1989). See also 42 A.G. Op. 95 (1988); 40 A.G. Op. 80 (1984); and 38 A.G. Op. 6 (1979).

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Purchaser Under Contract for Deed Not "Owner" for Purpose of Attaching Tax Lien: One who is purchasing land under a contract for deed is not the "owner" of the property for purposes of subsection (1) of this section. Personal property taxes assessed to the purchaser would not constitute a lien on the land because title remains in the seller until the contract is finally executed. 42 A.G. Op. 27 (1987), citing A.G. Op. 440 (1920-22).

Attachment of Tax Lien on All Personal Property: The language of this section clearly indicates that a tax lien attaches to the taxpayer's property that has been assessed and to any other personal property in his possession. This holding is consistent with the decision in O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964). 41 A.G. Op. 90 (1986).

Annual Notice Not Required Until Tax Delinquent: A mortgage holder or lienholder is not generally required to file annual notices to prevent taxes on personal property valued in excess of $1,000 from becoming a first and prior lien against the real property. However, 15-16-402(5) requires that when the personal property taxes have been delinquent for 1 or more years, the mortgage holder must comply with the procedural requirements in this section on an annual basis to prevent the personal property taxes from becoming a lien on the real property. 41 A.G. Op. 83 (1986).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Transfer of Property — Effect on Lien: The personal property tax lien created by this section is not extinguished when the property is transferred to a third person. 36 A.G. Op. 69 (1976).

15-16-403. Lien on real property and improvements.

Compiler's Comments

2005 Amendment: Chapter 392 inserted second sentence providing that a person who issues check, draft, converted check, electronic funds transfer, or payment order of real property taxes is liable if instrument is dishonored or if issuer stops payment with intent to fraudulently defeat a possessory lien or to defraud payee. Amendment effective October 1, 2005.

Case Notes

Failure of County Treasurer to Comply With Procedural Tax Deed Requirements — Tax Lien Sale Invalid: After the defendant failed to pay property taxes, the county held a tax lien sale. The tax lien failed to sell, and the county was deemed to be the purchaser under 15-17-214 (now repealed). The plaintiff then notified the defendant that it planned to acquire the lien from the county if the defendant did not pay the taxes within 2 weeks of the notice. The plaintiff then acquired the tax lien, applied for a tax deed, and filed a quiet title action. Both parties filed motions for summary judgment. The defendant argued that the county had failed to comply with the requirements of the tax deed statutes. The District Court agreed and granted summary judgment to the defendant. On appeal, the Supreme Court affirmed, agreeing that the county had issued documents that contained numerous errors and had not satisfied the procedural requirements for a tax lien sale. Zinvest, LLC v. Anderson, 2015 MT 204, 380 Mont. 139, 353 P.3d 1192. (See changes to process for sale of a tax lien and issuance of a tax deed in Ch. 67, L. 2017.)

Priority:

A lien for taxes is superior to other liens, ex proprio vigore, even in the absence of a statute expressly so declaring. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Liens for taxes take precedence over mortgages of a federal agency. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

The relative priority of taxes upon real property under Montana law cannot be determined solely upon the basis of this section. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

This section and 15-16-401 do not and cannot in themselves operate to confer priority on state tax claims over those of the federal government. Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Priority — Interest and Penalties: While lien for taxes extends to penalties and interest, the interest and penalties do not constitute a part of the tax so as to share priority of tax lien. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Time of Attachment of Lien: Even though this section, prior to its amendment in 1975, provided that the tax lien attached in March, the lien could not become choate for the purpose of determining its priority as against federal tax liens until the amount was determined pursuant to 7-6-2502 (now repealed, however see 7-6-4034 through 7-6-4036). Streeter Bros. v. Overfelt, 202 F. Supp. 143 (D.C. Mont. 1962).

Action for Collection of Taxes on Realty: Taxes on real property cannot be collected by an action, either at law or in equity, in the absence of statute so providing, such action being rendered unnecessary by the provisions of this section making taxes a lien akin to a judgment against the property. State ex rel. Tillman v. District Court, 101 M 176, 53 P2d 107 (1936).

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Priority as to Local Tax Liens, Private Mortgages, and Small Business Administration Liens: Montana law expressly confers priority of local tax liens on personal property. Although there is no such provision for liens on real property, the tax statutes read as a whole and federal case law compel the conclusion that local tax liens on both personal and real property have priority over liens of private mortgagees. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: first in time is first in right, unless a federal statute provides otherwise. Under 15 U.S.C.A. 646, Small Business Administration liens are subordinate to state and local tax liens. 40 A.G. Op. 80 (1984).

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

15-16-404. County lien on money of taxpayer.

Compiler's Comments

2021 Amendment: Chapter 145 in first sentence near end inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: At end of first sentence inserted "and that are not delinquent personal property taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17"; and made minor changes in phraseology. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

1987 Amendment: At end of section substituted "if known" for "if any".

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Part 5
Collection by Suit

15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-16-504. Evidence at trial.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near middle, before "treasurer", inserted "county" and substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: Near end of section substituted "the taxes, plus interest, penalties, and costs" for "such tax and the per centum" and made minor change in grammar.

15-16-506. Civil action to collect delinquent taxes.

Compiler's Comments

Effective Date: Section 3, Ch. 269, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 3, 2017.

Applicability: Section 4, Ch. 269, L. 2017, provided: "[This act] applies to property taxes that are delinquent on or after [the effective date of this act]." Effective May 3, 2017.

Part 6
Refunds

Part Case Notes

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under 15-1-402 then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of 15-16-602 (prior to 1993 amendments) allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under 15-1-402. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. Section 15-16-602 permits a taxpayer to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

Use of Administrative Remedies Not Precluded by Alleged Breach of Settlement Agreement: Plaintiff and Department of Revenue entered into a settlement agreement for tax assessments applicable to years 1978 through 1985. When the Department adjusted the assessment by adding land value to improvement value and increased the valuation for years after 1985, resulting in figures higher than stated in the agreement, plaintiff obtained a restraining order to preclude collection of taxes and attempted to proceed directly to District Court based on breach of the settlement agreement. The District Court properly dismissed the complaint for lack of subject matter jurisdiction and quashed the restraining order. The Supreme Court affirmed, finding plaintiff had failed to exhaust administrative remedies and had no recourse to statutory remedies provided in 15-1-406, 15-2-307 (now repealed), or 15-16-601 (now repealed). Hedden-Empire Ltd. Partnership v. Dept. of Revenue, 243 M 206, 793 P2d 828, 47 St. Rep. 1139 (1990).

Refund Due for Erroneous Assessment: For 4 years the property owner received tax assessment notices for certain property he owned and paid the taxes each year without protest. The Department of Revenue subsequently discovered it had overvalued the property. The Department reappraised the property and reduced the assessment. The property owner then sought a refund, which was denied by his County Commissioners. The property owner appealed to his County Tax Appeal Board, which declared he was owed a refund. That decision was affirmed by the State Tax Appeal Board (now Montana Tax Appeal Board). When the Department appealed the state Board's decision to the Supreme Court, the court held that under 15-16-601 (now repealed) the State Tax Appeal Board has the authority to change the value of property for past tax years when a taxpayer has not filed any administrative appeals as to those years. The taxpayer is entitled to a refund of taxes paid because of an erroneous assessment made on his land. Dept. of Revenue v. Jarrett, 216 M 189, 700 P2d 985, 42 St. Rep. 734 (1985).

Mandamus Not Available to Compel Refund: Mandamus was not a proper remedy to compel the County Commissioners to refund erroneously collected taxes, since 15-16-601 (now repealed) gave a plain, speedy, and adequate remedy at law. Moran v. Bd. of County Comm'rs, 139 M 351, 363 P2d 1073 (1961).

Unwarranted or Illegal Action by Tax Officials Required: To authorize recovery under 15-16-601 (now repealed), there must have been unwarranted or illegal action on part of taxing officials. N. Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P2d 339 (1946), followed in Lingscheit v. Cascade County, 249 M 526, 816 P2d 682, 48 St. Rep. 820 (1991).

Voluntary Payment — Mistake of Law: When mining company furnished statement to county of its gross yield, erroneously including the bonus or subsidy received from the government because of mistake of law, and paid taxes based on that statement without protest, mining company was not entitled to recover the taxes under 15-16-601 (now repealed). N. Butte Min. Co. v. Silver Bow County, 118 M 618, 169 P2d 339 (1946).

Cancellation of Taxes Due on Land Reverting to State: Article V, sec. 39, 1889 Mont. Const., prohibited the cancellation of an obligation due the state, and the authority of the Legislature to authorize cancellation of taxes in the sense of releasing taxpayer's obligation to pay, is doubted, however, 77-2-314 may be properly construed to mean the cancellation of the lien against the land reverting to the State and not as canceling the tax owed by the prior owner of the land. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937), explained in Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Purpose — Former Law: The purpose of 15-16-601 (now repealed) was to do justice in a class of cases when the application of the doctrine of caveat emptor or the common-law rule that where taxes are voluntarily paid they may not be recovered, will work a hardship to one who has paid money which it is inequitable for the county to retain. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Erroneous and Illegal Assessments Distinguished: An erroneous assessment occurs when the taxing officers have power to act but err in the exercise of that power, and an illegal assessment takes place when they have no power to act at all. Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Individual Liable for Tax — Lien as Security: Taxes are not levied upon the property but upon the person, while the property that the person owns is used to determine the amount of the tax he shall pay, it is, after all, the person who pays the tax; he is liable. The property under our statutes is security for the payment. Ford Motor Co. v. Linnane, 102 M 325, 57 P2d 803 (1936).

Paid More Than Once: The portion of 15-16-601 (now repealed) that related to taxes "paid more than once" must be considered a special statute on the subject and when the Board of County Commissioners took no action on a claim for more than 2 years, the remedy by court action was available to the claimant, and in such action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. Williams v. Harvey, 91 M 168, 6 P2d 418 (1931). See also Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Remission or Compromise of Taxes Unconstitutional: Under 15-16-601 (now repealed), which authorized the Board of County Commissioners to refund taxes when paid more than once or erroneously or illegally collected, the Board was without power to remit taxes that had never been paid or compromise delinquent taxes, and under Art. V., sec. 39, 1889 Mont. Const., forbidding the release, remission, or extinguishment of any obligation due the state or a municipal corporation therein, except by payment thereof into the proper treasure, the Legislature may not confer such power. Yellowstone Packing & Provision Co. v. Hays, 83 M 1, 268 P 555 (1928), affirmed in Christofferson v. Chouteau County, 105 M 577, 74 P2d 427 (1937).

Purpose: The provisions of 15-16-105, 15-16-601 (now repealed), and others of like import are intended to secure the collection of lawful revenue and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to anyone. Anaconda Copper Min. Co. v. Ravalli County, 52 M 422, 158 P 682 (1916).

15-16-602. Concurrent remedies.

Compiler's Comments

1993 Amendment: Chapter 539 in two places substituted "Sections 15-16-603 through 15-16-605" for reference to 15-16-601; and made minor changes in style.

Case Notes

Choice of Available Remedies — Concurrent Remedies Statute Inapplicable to Consecutive Remedies: A bank that was denied a claim for a refund under 15-1-402 then sought to proceed on a claim for a tax refund pursuant to 15-16-601 (now repealed). The District Court held that because the bank's original claim was dismissed, it could not file for another refund under a different statute. The bank asserted that the plain language of this section allowed it to proceed under 15-16-601 (now repealed) after it lost on procedural grounds under 15-1-402. However, the bank did not pursue its remedies at the same time, but rather received an unfavorable judgment on one theory and then tried another for a more favorable result. This section permits a taxpayer to whom various options are available to choose among statutory remedies; it does not provide for a taxpayer to consecutively try different methods of relief. To hold otherwise would destroy the rule of res judicata in tax matters. Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991).

15-16-603. Refund of taxes — limitations on refunds.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 755, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 4, Ch. 755, L. 2023, provided: "[This act] applies to requests for refunds received on or after [the effective date of this act]." Effective July 1, 2023.

2021 Amendment: Chapter 142 in (1)(e) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2013 Amendment: Chapter 46 in (1)(d) after "property tax" deleted "or local government severance tax"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 85 inserted (1)(f) concerning motor vehicle refund; and made minor changes in style. Amendment effective March 16, 1999.

Retroactive Applicability: Section 9, Ch. 85, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 440 inserted (3)(b) requiring refund to be made for shorter of either 5 years or duration of error; inserted (3)(c) prohibiting refund unless taxpayer allowed the Department access to appraise property; and made minor changes in style. Amendment effective April 14, 1995.

Effective Date — Retroactive Applicability: Section 2, Ch. 440, L. 1995, provided: "[This act] is effective on passage and approval [approved April 14, 1995] and applies retroactively, within the meaning of 1-2-109, to errors in the description or location of real property or improvements that existed after December 31, 1992."

Case Notes

Failure to Submit Petition to Tax Appeal Board — Motion to Dismiss Granted — Lack of Subject Matter Jurisdiction: Years after the plaintiffs purchased a tax deed certificate, they learned that the real property had been erroneously appraised and overvalued by the Department of Revenue. The plaintiffs requested the defendant board of county commissioners to issue a refund and abatement of the property taxes, which it denied following a hearing. The plaintiffs then filed a petition for judicial review with the District Court. The defendant filed a motion to dismiss based on the District Court's lack of subject matter jurisdiction because the plaintiffs had not followed the administrative appeal process. The District Court granted the motion to dismiss. On appeal, the Supreme Court affirmed, agreeing that the plaintiffs had failed to exhaust administrative remedies. K & J Invs., LLC v. Flathead County Bd. of County Comm'rs, 2020 MT 277, 402 Mont. 33, 476 P.3d 20.

15-16-605. Payment of refunds — exception.

Compiler's Comments

1999 Amendment: Chapter 448 in (2) at beginning inserted exception clause; inserted (3) providing that a refund is not owed if the board revises a property tax assessment that results in a refund of taxes of $5 or less; and made minor changes in style. Amendment effective April 22, 1999.

Effective Date — Applicability — Retroactive Applicability: Section 5, Ch. 448, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax bill or refund has not yet been issued."

15-16-611. Reduction of property tax for property destroyed by natural disaster — proration of taxes on replaced property.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 717 in (1) inserted "or that personal property taxed under Title 15, chapter 6, part 1" and after "improvements" inserted "or personal property"; in (2), after "15-16-102", inserted "or on personal property under 15-16-113 or 15-24-202"; inserted (5) concerning notification of replacement of destroyed personal property and concerning proration of tax; and in (6) inserted last three sentences concerning fire, arson, and collection of adjusted taxes. Amendment effective April 27, 1991.

Chapter 773 in (1), after "mobile home", deleted "as described in 15-6-142". Amendment effective May 15, 1991.

Effective Date — Retroactive Applicability: Section 2, Ch. 717, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Applicability: Section 18(1), Ch. 773, L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

1985 Amendment: In (1) near middle, changed "15-6-134(1)(c)" to "15-6-142" and near end, after "adjust", inserted "the taxable value on the property, accounting for the destruction"; in (2) at beginning inserted "The county treasurer shall adjust" and changed "subsection (2)" to "subsection (3)"; in (3)(a) after "assessed on", inserted "the original taxable value of"; and inserted (3)(b) describing the formula for calculating postdisaster tax.

1981 Amendment: Inserted "or a trailer or mobile home as described in 15-6-134(1)(c)" in (1).

15-16-612. Refund of tax paid.

Compiler's Comments

1993 Amendment: Chapter 539 in (2), at end, substituted "15-16-603 through 15-16-605" for "15-16-601"; and made minor changes in style.

15-16-613. Refund of certain taxes paid on migratory property.

Compiler's Comments

2001 Amendment: Chapter 59 in (1) near beginning substituted "property tax" for "tax"; in (2) near beginning substituted "board of county commissioners" for "county treasurer" and near middle after "15-16-603, the" deleted "taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment"; and made minor changes in style. Amendment effective March 16, 2001.

Retroactive Applicability: Section 3, Ch. 59, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1993 Amendments: Chapter 539 in (1), near beginning, substituted "15-16-603 through 15-16-605" for "15-16-601"; in (2), at beginning of second sentence, inserted "If a taxpayer receives an order by the board of county commissioners pursuant to 15-16-603, the"; and made minor changes in style.

Chapter 587 near end of (1), after "property", substituted "is located" for "has taxable situs"; and near end of first sentence of (3), after "property", substituted "was located" for "had taxable situs". Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

1991 Amendment: In (1) substituted "Subject to the provisions of 15-16-601 and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property has taxable situs in the state is entitled to a refund, as provided in this section" for "Subject to the provisions of 15-16-601 and upon proof that tax was paid in another state, a taxpayer is entitled to a refund equal to the amount of tax paid in another state on a helicopter or property that was assessed in Montana under 15-6-138(1)(g) on January 1 of the year for which the refund is due. The refund under this section may not exceed the tax that was paid in Montana on the same property for the same period of time"; inserted (2) concerning taxpayer application for refund with County Treasurer on form provided by Department of Revenue and time for submission of application and payment of refund; inserted (3) concerning method of calculation of refund and prohibiting refund to exceed amount of tax paid in this state; and inserted (4) defining month. Amendment effective May 17, 1991.

Retroactive Applicability: Section 2, Ch. 778, L. 1991, provided: "[Section 1] [15-16-613] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.21.162 Personal property taxation dates.
ARM 42.21.163 Personal property tax refund.

Part 7
Cancellations

15-16-701. List of delinquent personal property taxes and real property taxes.

Compiler's Comments

2017 Amendment: Chapter 67 in (1)(a) after "The county treasurer shall prepare" deleted "in triplicate"; in (2)(a) in first sentence after "the county treasurer may prepare" deleted "in triplicate" and after "delinquent for" substituted "5 years" for "10 years" and in second sentence substituted "the county treasurer must have attached a tax lien to each property as provided in chapter 17" for "the tax lien for each property must have been sold at a tax lien sale under chapter 17, which includes the county as purchaser of the tax lien under 15-17-214"; in (2)(a)(vi) substituted "the date the county treasurer attached a tax lien to the property" for "the date of the last tax lien sale on the property"; deleted former (4) that read: "(4) At the time the list is prepared as provided in subsection (1)(a), the county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", or "promissory note", as applicable; and

(c) the date of obligation, the date when the last payment became due, the date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1)"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 316 inserted (2) concerning list of real property taxes delinquent for 10 years or more; inserted (3) concerning cancellation of taxes on property used solely for road purposes; and made minor changes in style. Amendment effective April 28, 2007.

Saving Clause: Section 3, Ch. 316, L. 2007, was a saving clause.

1993 Amendment: Chapter 521 in (1), near end, reduced from 10 years to 5 years the years of delinquency of taxes included in list; inserted (2) relating to uncollected personal property taxes; and made minor changes in style.

1987 Amendment: In (1)(b) substituted "amount of the delinquent taxes, plus interest, penalties, and costs, if any" for "amount of the delinquent tax, plus penalty, if any"; in (1)(c) substituted "the date the taxes became delinquent" for "the year the tax became delinquent"; in (2), before "27-2-202(1)", inserted "provided in"; in (2)(c) inserted "provided in 27-2-202(1)"; and made minor changes in grammar and phraseology.

15-16-702. Cancellation of taxes and obligations — filing of lists.

Compiler's Comments

2007 Amendment: Chapter 316 in (1) at end of second sentence inserted "and, subject to subsection (2), canceling real property taxes"; inserted (2) concerning canceling delinquent real property taxes; and made minor changes in style. Amendment effective April 28, 2007.

Saving Clause: Section 3, Ch. 316, L. 2007, was a saving clause.

1987 Amendment: Made minor changes in grammar and phraseology.

15-16-703. Adjustment of accounts after cancellation.

Compiler's Comments

1987 Amendment: Made minor changes in grammar and phraseology.

15-16-704. Certain unpaid taxes uncollectible — stricken from records.

Compiler's Comments

1987 Amendment: Made minor change in grammar.

Part 8
Suspensions

15-16-801. Payment of suspended delinquent property taxes.

Compiler's Comments

2021 Amendment: Chapter 145 in first sentence inserted "coal gross proceeds or", inserted "coal gross proceeds taxpayer or", and inserted references to 15-23-708 in two places. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

CHAPTER 17
TAX LIENS

Chapter Compiler's Comments

Transition: Section 61, Ch. 587, L. 1987, provided: "(1) (a) Except as provided in subsection (1)(b), for the purpose of implementing the provisions of Title 15, chapters 17 and 18, no tax deed may be applied for or issued during the period between April 23, 1987, and July 1, 1988.

(b) A tax deed may be issued between April 23, 1987, and July 1, 1988, if the tax deed is issued for property on which property taxes are delinquent for 1982 and prior years. In such a case the tax deed is to be issued based on the procedures provided for in Title 15, chapters 17 and 18.

(2) During the period between April 23, 1987, and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties

on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in 15-18-212, for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the purchaser or assignee of his obligation to give notice as required in 15-18-212. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in 15-18-212."

Part of Section Not Codified: Part of section 84-4124, R.C.M. 1947, which is a validation clause enacted in 1923 dealing with certificates of sale issued to any county on the purchase of any county of real property sold at any delinquent tax sale, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 46, L. 1923, as amended by sec. 1, Ch. 31, L. 1929, and sec. 1, Ch. 170, L. 1947.

Chapter Case Notes

Failure to File Affidavit — Declaration of Voidness Overruled: The plaintiff purchased real property at a tax sale after the owners had not paid property taxes for several years. Following the purchase, the plaintiff filed a quiet title action to the property and the owners opposed it. The owners claimed that the county treasurer had not timely filed an affidavit as required under the tax sale laws, and the tax deed was therefore void. The District Court agreed and declared the tax deed void. The plaintiff appealed to the Supreme Court, which reversed and remanded the case to the District Court for entry of judgment in favor of the plaintiff. In distinguishing Isern v. Summerfield, 1998 MT 45, 287 Mont. 461, 956 P.2d 28, the Supreme Court noted that unlike the owners in Isern, the owners in this case had constructive notice of the sale and the requirement to publish notice was therefore superfluous. Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135.

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). However, see Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, in which the Supreme Court held that failure to comply with a tax lien statute did not render the tax deed void. (See changes to process for sale of a tax lien and issuance of a tax deed in Ch. 67, L. 2017.)

Entry of Judgment by Court of General Jurisdiction in Foreclosure Action Affirmed — Collateral Attack Precluded: Glickman contended that the District Court acted outside or in excess of its jurisdiction by decreeing that the purchaser of Glickman's property at a Sheriff's foreclosure sale be "let into possession". A judgment entered by a court lacking subject matter jurisdiction is subject to attack at any time. A collateral attack on a judgment is possible only if the judgment is void on its face and if it appears affirmatively from the judgment roll that the court did not have jurisdiction or committed an act in excess of jurisdiction. Absent any authority that a court of general jurisdiction may not enter a judgment in a foreclosure sale, the Supreme Court held that the District Court did not act outside or in excess of its jurisdiction by decreeing that the purchaser of the property at a Sheriff's foreclosure sale be "let into possession". Further, Glickman's failure to allege any statutory causes of action in his original petition precluded him from bringing an independent action under the residual clause of former Rule 60(b), M.R.Civ.P. (now superseded). Glickman v. Whitefish Credit Union Ass'n, 1998 MT 8, 287 M 161, 951 P2d 1388, 55 St. Rep. 27 (1998).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Lienholder's Right to Redeem: One who was occupier of land and assignee of tax sale certificate held lien on such land in accord with 15-17-206 (now repealed), and thus could redeem subsequent tax sale certificate at any time before application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Purchaser Not to Have Whole Day to Appear: The purchaser does not have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots or blocks is "completed" as provided under 15-17-201 (now repealed). Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Irregularities That Did Not Impact Jurisdiction Cured by Validating Clause: Irregularities in sale of delinquent real property not affecting jurisdiction, were cured by Ch. 46, L. 1923, as amended by Ch. 31, L. 1929, validating certificates of sale, and section 84-4160.1, R.C.M. 1947 (not codified) validating tax deeds theretofore issued. Martin v. Glacier County, 102 M 213, 56 P2d 742 (1936), distinguished in Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Charge for Duplicate Certificate: When the county is the purchaser of property at tax sale, the Treasurer is without authority to charge it 50 cents for the duplicate certificate of sale, and therefore the county may not, in its application for a tax deed, add such charge to the amount which the redemptioner must pay to redeem the property. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Sale En Masse:

Under 15-17-207 (now repealed), as amended by Ch. 46, L. 1923, a tax sale certificate issued to the county showing on its face that several parcels of land were sold en masse, is not void on its face, since thereunder the entire property assessed may be struck off to the county for want of purchasers. Skillen v. Harris, 90 M 389, 3 P2d 1054 (1931).

A tax deed to two or more noncontiguous tracts of land, showing on its face that the tracts were struck off to the county together, was not void for that reason, as 15-17-207 (now repealed) provides that where there is no purchaser in good faith "the whole amount of the property must be struck off to the county". Rogers v. Embleton, 90 M 134, 300 P 296 (1931).

Under former law, a tax deed, showing on its face that it was based on a sale en masse of several noncontiguous parcels, was void. Lindeman v. Pinson, 54 M 466, 171 P 271 (1918); Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913); N. Real Estate Loan & Title Co. v. Billings Loan & Trust Co., 36 M 356, 93 P 40 (1907); Casey v. Wright, 14 M 315, 36 P 191 (1894).

Clause Ineffective to Cure Irregularities in Tax Deed Void on Face: Chapter 31, L. 1929, amending Ch. 46, L. 1923, enacted to cure irregularities in the issuance of certificates of sale to lands struck off to the county on delinquent tax sales, has no application to a tax deed void on its face. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Irregularities Cured by Validating Clause: In an action to enjoin a County Treasurer from issuing a tax deed to city lots bought by the county at delinquent tax sale, irregularities affecting general taxes for the year for nonpayment of which the property was sold, relied upon by appellant, were cured by Ch. 46, L. 1923, as amended by Ch. 31, L. 1929, when the taxes were regularly levied and there was a substantial compliance with the statutes relative to notice and sale, thus rendering the certificate of sale immune to attack. Morse v. Kroger, 87 M 54, 285 P 185 (1930).

Year of Assessment: When from recitals in a tax deed the year of the assessment was made apparent indirectly, the fact that it contained no direct statement imparting such information did not render the deed void. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

County Not to Bid Competitively at Sale: Former section 15-17-207 prohibited the county from becoming a competitive bidder at the sale of property for delinquent taxes, and it can only acquire it when there is no other purchaser in good faith; and the recitals in the deed must show the right of the county to take the property, and that it did not enter the lists as a competitive bidder for the same, otherwise the deed is void. The county cannot purchase lands at a tax sale unless authorized to do so by the statute, and a strict compliance with the statute must be had before the title of the owner can be divested. Rush v. Lewis & Clark County, 36 M 566, 93 P 943 (1908), affirmed, 37 M 240, 95 P 836 (1908).

Chapter Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

Chapter Collateral References

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

Part 1

Attachment of Tax Lien

Part Case Notes

Notice to Nonresident: It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a County Treasurer, instead of the County Assessor, to send tax notices to a certain address which request was ignored. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Sufficiency of Publication: When a notice of sale for delinquent taxes was published December 30, 1895, and January 6 and 13, 1896, and the sale took place January 27, 1896, the publication was for a sufficient time. Section 15-17-101 (now repealed) does not require the Commissioners to designate a paper for publication, but to direct the publication to be made in a certain paper. Conklin v. Cullen, 29 M 38, 74 P 72 (1903).

Part Attorney General's Opinions

Failure to Pay Refuse Disposal Fee Subjects Property to Tax Sale: The nonpayment of a refuse disposal fee by someone receiving a service from a refuse disposal district constitutes a lien upon the underlying real property, and that property thereby becomes subject to a tax sale under the proceedings provided in Title 15, ch. 17. 40. A.G. Op. 45 (1984).

Construction: The procedure a County Treasurer must follow under 15-17-101 (now repealed) is clear and unequivocal, leaving nothing to construe, and creation of a legitimate deviation from the present statutory procedure must be done by the Legislature. 39 A.G. Op. 40 (1981).

Correction of Defective Notice After Time for Notice: If, because of a defective first notice, a County Treasurer cannot publish a proper notice of a tax sale on or before the last Monday of June as required by 15-17-101 (now repealed), the Treasurer does not have authority to publish a corrected notice after that date and conduct a legal tax sale. 39 A.G. Op. 40 (1981).

Lack of Compelling State Interest to Invade Privacy: Publication by county officers of a list of delinquent taxpayers in a newspaper for purposes of embarrassment would be an excessive exercise of their statutory powers provided by 15-17-101 (now repealed) and an invasion of privacy in violation of Art. II, sec. 10, Mont. Const. 35 A.G. Op. 62 (1974).

15-17-121. Definitions.

Compiler's Comments

2019 Amendment: Chapter 317 inserted (3)(a)(vi) concerning sale or resale; in (3)(b) at end of second sentence inserted "and 15-18-219"; in (3)(c)(ii) following "issuance" inserted "or auction"; inserted (5) defining "dwelling"; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 inserted definitions of assignee, assignment certificate, and tax lien certificate; deleted former definitions that read: ""Certificate" or "tax lien sale certificate" means the document described in 15-17-212" and ""Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax lien sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser"; in definition of cost in (a)(ii) substituted "pending attachment of a tax lien" for "pending tax lien sale", deleted former (a)(iii) that read: "(iii) conducting the tax lien sale", in (b) at end of first sentence substituted "an assignee" for "the purchaser of a property tax lien other than the county", in second sentence in two places substituted "assignee" for "purchaser of the property tax lien" and before "certificate" deleted "sale", and in last sentence substituted "an assignee" for "a purchaser; in definition of property tax lien near beginning added "or "tax lien"" and substituted "a lien attached by the county for nonpayment of property taxes" for "a lien acquired by the payment at a tax lien sale of all outstanding delinquent taxes"; in definition of tax lien sale deleted former (a) that read: "(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 323 in definition of cost in (b) in first sentence before "costs" deleted "receipted", in second sentence after "The" inserted "county treasurer may require", substituted "to provide" for "shall provide", and after "receipts" inserted language allowing use of notarized affidavit of costs in lieu of receipts, and inserted third sentence allowing county treasurer to require receipted costs. Amendment effective October 1, 2009.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale. Amendment effective October 1, 2007.

2003 Amendment: Chapter 241 in definition of cost in (b) at beginning substituted "The term includes receipted costs that are required by law and incurred by the purchaser" for "Cost does not include the costs incurred by the owner" and inserted second sentence requiring the purchaser of the property tax lien to provide receipts and notification and inserted (c) providing that cost does not include interest for payments for certain items. Amendment effective October 1, 2003.

1989 Amendment: Inserted definition of cost. Amendment effective May 22, 1989.

15-17-122. Notice of pending attachment of tax lien.

Compiler's Comments

2021 Amendment: Chapter 145 in (4) near end inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

2017 Amendments — Composite Section: Chapter 67 in (1) substituted "attachment of a tax lien" for "tax lien sale"; in (1)(a) substituted "the specific date on which the county will attach a property tax lien to property on which the taxes are delinquent" for "the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale"; in (1)(b) after "paid prior to the" substituted "specified date" for "time of the tax lien sale" and at end substituted "a tax lien will be attached and may be assigned to a third party" for "the lien will be offered for sale at the time and place specified in subsection (1)(a)"; in (3) at end of first sentence substituted "given as provided in 7-1-2121" for "published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 18-7-411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places"; deleted former (4), (5), and (6) that read: "(4) Except as provided in 15-17-211 (2), the tax lien sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the office of the county treasurer.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and tax lien sale. In the event of improper notification, the tax lien sale may be held on all property properly noticed"; and made minor changes in style. Amendment effective March 2, 2017.

Chapter 372 in (3) in first sentence substituted "given as provided in 7-1-2121" for "published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 18-7-411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale or sale; in (5) substituted "office of the county treasurer" for "county courthouse"; and made minor changes in style. Amendment effective October 1, 2007.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (7) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

15-17-123. Copy of notice to be filed with county clerk — affidavit.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) at beginning deleted "Immediately"; and in (2) before "newspaper" inserted "qualified" and after "the county" inserted "or an adjacent county". Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

Case Notes

Failure to File Affidavit — Declaration of Voidness Overruled: The plaintiff purchased real property at a tax sale after the owners had not paid property taxes for several years. Following the purchase, the plaintiff filed a quiet title action to the property and the owners opposed it. The owners claimed that the county treasurer had not timely filed an affidavit as required under the tax sale laws, and the tax deed was therefore void. The District Court agreed and declared the tax deed void. The plaintiff appealed to the Supreme Court, which reversed and remanded the case to the District Court for entry of judgment in favor of the plaintiff. In distinguishing Isern v. Summerfield, 1998 MT 45, 287 Mont. 461, 956 P.2d 28, the Supreme Court noted that unlike the owners in Isern, the owners in this case had constructive notice of the sale and the requirement to publish notice was therefore superfluous. Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135.

15-17-124. Irregular assessment.

Compiler's Comments

2017 Amendment: Chapter 67 near beginning substituted "prior to attachment of the tax lien" for "prior to the tax lien sale" and in middle substituted "the county treasurer may not attach a tax lien" for "the county treasurer may not offer the property or a property tax lien for sale". Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in first sentence substituted "tax lien sale" for "tax sale". Amendment effective October 1, 2007.

1993 Special Session Amendment: Chapter 27 in second sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Case Notes

Tax Deed Issued — Assessment Dispute — Statutory Requirements: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. On appeal, the defendant claimed that she reported an assessment dispute to the county tax assessor's office, and she argued that the county should not have issued a tax deed while her assessment was being contested. The Supreme Court held that she had not established that she had filed a written application for reduction in valuation under 15-15-102, she did not make her objection prior to the tax lien sale under 15-17-124, and she did not seek exemption from the deposit requirement after the quiet title action had been filed. Thus, the defendant had waived defects in the proceedings, and her claims were barred. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

15-17-125. Attachment of tax lien and preparation of tax lien certificate.

Compiler's Comments

2017 Amendment: Chapter 67 in (1)(a) at beginning deleted "After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs" and after "The county treasurer shall" inserted "attach a tax lien no later than the first working day in August to properties on which the taxes are delinquent and for which proper notification was given as provided in 15-17-122 and subsection (4) of this section. Upon attachment of a tax lien, the county is the possessor of the tax lien unless the tax lien is assigned pursuant to 15-17-323"; inserted (1)(b) prohibiting attachment of a tax lien without proper notice; in (2) at beginning inserted "After attaching a tax lien, the county treasurer shall" and before "certificate" deleted "sale"; in (2)(b) at end substituted "attached to the property" for "sold at a tax lien sale"; deleted former (2)(e) that read: "the name and mailing address of the purchaser"; in (2)(e) at beginning deleted "the amount paid to liquidate the delinquency, including"; in (2)(f) before "certificate" inserted "tax lien"; in (2)(g) substituted "the county or an assignee" for "the purchaser"; in (2)(h) after "tax lien" deleted "sale" and after "certificate" deleted "number recorded by the county treasurer as required in 15-17-213"; in (3) in three places before "certificate" inserted "tax lien", at end of first sentence after "county treasurer" deleted "and delivered to the purchaser" and at end after "property tax" substituted "liens" for "lien sales"; in (4) in first sentence substituted "Prior to attaching a tax lien to the property, the county treasurer shall send notice of the pending attachment of a tax lien" for "Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail", in second sentence substituted "The notice must include the information listed in subsection (2), state that the tax lien may be assigned to a third party, and provide notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance programs under Title 15, chapter 6, part 3, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341" for "The form of the notice must be adopted by the department by rule", and in third sentence substituted "on which the county treasurer attaches the tax lien" for "of the payment but may not be mailed earlier than 60 days prior to the date of the payment. The person making the payment shall provide proof of the mailing"; inserted (5) regarding filing a tax lien certificate with the county clerk and recorder; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 323 in (3) in third sentence at end inserted language providing that notice of payment may not be made more than 60 days prior to payment. Amendment effective October 1, 2009.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale. Amendment effective October 1, 2007.

2001 Amendment: Chapter 472 in (1) at beginning inserted "After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and"; in (2) inserted second sentence requiring copy of certificate to be mailed to person assessed taxes along with notice regarding property tax sale; inserted (3) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

No Shortage in Postnotice Payment: The plaintiff filed an action in District Court to quiet title in real property on the basis that a tax deed was void because the defendant paid the back taxes 2 hours and 45 minutes short of the 2-week period provided in the assignment notice. The District Court concluded the 2-week notice requirement under the 2007 version of 15-17-212 (renumbered 15-17-125) was satisfied. The Supreme Court affirmed. The 3-day mailing rule in former Rule 6(e), M.R.Civ.P. (now superseded), does not apply to the mailing of a notice of intent under 15-17-212(3) (renumbered 15-17-125). In addition, the District Court properly disregarded the deficiency of 2 hours and 45 minutes in this case because, pursuant to 1-1-305, the law regards the day as an indivisible unit and discards fractional days in most time computations. Tacke v. Mont. Lakeshore Properties, LLC, 2011 MT 197, 361 Mont. 390, 260 P.3d 128.

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with this section or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). However, see Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, in which the Supreme Court held that failure to comply with a tax lien statute did not render the tax deed void.

15-17-131. Common undivided ownership interest — separate assessment — property tax payments.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) at end substituted "attachment of a tax lien" for "a tax lien sale; in (2)(b) in first sentence after "considered the" substituted "assignee" for "purchaser", before "certificate" deleted "sale", and at end substituted "assignee" for "purchaser", near beginning of second sentence before "certificate" inserted "tax lien" and substituted "15-17-212(2)(a) and (2)(b)" for "15-17-212(1)(a) and (1)(b)", and in last sentence substituted "15-17-212(3)" for "15-17-212(2)" and before "certificate" inserted "tax lien"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46, Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in (1) in third sentence and in (2)(b) in first sentence substituted references to tax lien sale for references to tax sale. Amendment effective October 1, 2007.

Effective Date: This section is effective October 1, 2003.

Part 3
Procedure After Attachment of Tax Lien

Part Compiler's Comments

Sections Not Codified:

Section 84-4143, R.C.M. 1947, which provided that Ch. 65, L. 1933 is not to be construed as an amendment or modification of section 84-4161, R.C.M. 1947 (15-18-403, now repealed) was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be make to sec. 5, Ch. 65, L. 1933.

Section 84-41-102, R.C.M. 1947, which provided that Ch. 33, Ex. L. 1933 did not amend or modify sections 84-4140 through 84-4143, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 33, Ex. L. 1933.

Part Case Notes

Failure to File Affidavit — Declaration of Voidness Overruled: The plaintiff purchased real property at a tax sale after the owners had not paid property taxes for several years. Following the purchase, the plaintiff filed a quiet title action to the property and the owners opposed it. The owners claimed that the county treasurer had not timely filed an affidavit as required under the tax sale laws, and the tax deed was therefore void. The District Court agreed and declared the tax deed void. The plaintiff appealed to the Supreme Court, which reversed and remanded the case to the District Court for entry of judgment in favor of the plaintiff. In distinguishing Isern v. Summerfield, 1998 MT 45, 287 Mont. 461, 956 P.2d 28, the Supreme Court noted that unlike the owners in Isern, the owners in this case had constructive notice of the sale and the requirement to publish notice was therefore superfluous. Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135.

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). However, see Zinvest, LLC v. Hudgins, 2014 MT 201, 376 Mont. 72, 330 P.3d 1135, in which the Supreme Court held that failure to comply with a tax lien statute did not render the tax deed void.

Entry of Judgment by Court of General Jurisdiction in Foreclosure Action Affirmed — Collateral Attack Precluded: Glickman contended that the District Court acted outside or in excess of its jurisdiction by decreeing that the purchaser of Glickman's property at a Sheriff's foreclosure sale be "let into possession". A judgment entered by a court lacking subject matter jurisdiction is subject to attack at any time. A collateral attack on a judgment is possible only if the judgment is void on its face and if it appears affirmatively from the judgment roll that the court did not have jurisdiction or committed an act in excess of jurisdiction. Absent any authority that a court of general jurisdiction may not enter a judgment in a foreclosure sale, the Supreme Court held that the District Court did not act outside or in excess of its jurisdiction by decreeing that the purchaser of the property at a Sheriff's foreclosure sale be "let into possession". Further, Glickman's failure to allege any statutory causes of action in his original petition precluded him from bringing an independent action under the residual clause of former Rule 60(b), M.R.Civ.P.

(now superseded). Glickman v. Whitefish Credit Union Ass'n, 1998 MT 8, 287 M 161, 951 P2d 1388, 55 St. Rep. 27 (1998).

Tax Deed and Sale Proceedings Invalid for Lack of Jurisdiction — County's Reversionary Interest Relinquished by Settlement to Heirs of Pretax Deed Owner: Rosebud County applied for and received a tax deed pursuant to law (now repealed) and subsequently quitclaimed all but a royalty interest in the property. The Stanfords brought an action in District Court, alleging the invalidity of the tax deed and alleging that they were the owners of a royalty interest in the property. The county settled its interest in the action by relinquishing all its interests in the property. The District Court held that the tax deed was invalid but awarded the property to another party. The Supreme Court found that the tax deed was invalid under the former law because the proceedings on tax sales are in invitum. Citing King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), the court held that the failure to file an affidavit of notice of application for the tax deed, the fact that there was a recitation in the notice for application of a tax deed that the time for redemption had "long since expired" (contrary to the law), and the failure of the record to include an "affidavit of notice of tax sale" resulted in a lack of jurisdiction in the County Treasurer to issue the tax deed. The reservation of the royalty interest by the county survived the defective tax sale, and when the county relinquished all rights to its royalty interest as part of the settlement agreement, that interest reverted to the pretax sale owner. The heirs of that owner thus had a prima facie claim to the royalty interest. Stanford v. Rosebud County, 251 M 128, 822 P2d 1074, 48 St. Rep. 1124 (1991).

Insufficient Notice of Tax Sale — County Tax Deed Void: County's tax deed was void for insufficient notice of the tax sale and failure to give notice of application for a tax deed to the owners of the property. The county had deeded the land to Swigart, reserving a 6¼% royalty interest. Swigart, using a statutory proceeding, applied for and received a deed confirming the tax deed. The confirmation deed did not mention the county's 6¼% royalty interest. The confirmation deed was void for failure to give sufficient notice to the owners who had lost the land to the county or to their successors in interest. The two original owners had each had an undivided one-half interest in the land. Plaintiff heirs of one of the original owners sued to quiet title to the county's 6¼% royalty interest and then quitclaimed to Swigart's heirs all plaintiffs' interest in the land, reserving a 6¼% royalty interest. In return, Swigart's heirs quitclaimed the 6¼% royalty interest to plaintiffs. Plaintiffs' quitclaim to Swigart's heirs did not convey or give up any claim plaintiffs had to or any interest they had in the 6¼% royalty interest. The court analyzed 10 factors relating to laches and ruled that laches barred plaintiffs' claim and that the 6¼% royalty interest was vested in the county. Anderson v. Richland County, 219 M 60, 711 P2d 784, 42 St. Rep. 1843 (1985).

Failure to Assert Royalty Interest in Tax Deed Land — Laches: A tax deed issued to the county in 1930 without affidavits setting forth the statutorily requisite statements as to notice to the owner and as to occupancy was void. The county sold the land to A.O., reserving a 6¼% royalty interest. Plaintiff children of the original owner who had lost the land for failure to pay taxes quitclaimed all their interest in the land to A.O.'s successors, reserving their claim to and interest in the 6¼% royalty claimed by the county, and in turn A.O.'s successors conveyed to plaintiffs all of the successors' interest in that royalty. Plaintiffs' conveyance cleared the title of any insufficiency in the tax deed proceedings but did not convey or give up plaintiffs' claim to the 6¼% royalty interest. Plaintiffs' redemption argument failed because they had never attempted a redemption. After analyzing nine factors relating to laches, the court ruled that laches barred plaintiffs' claim to the county's royalty interest. Richardson v. Richland County, 218 M 48, 711 P2d 777, 42 St. Rep. 1834 (1985), followed in Filler v. Richland County, 247 M 285, 806 P2d 537, 48 St. Rep. 200 (1991). (The court also stated that King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), in which the court concluded that laches was inapplicable because laches did not commence until oil was produced and royalties earned, was incomplete in its laches analysis because the court overlooked the inchoate ownership of the royalty interest.)

Ex Post Facto Rule — Inapplicable to Tax Delinquency Proceedings: The prohibition against ex post facto laws applies only to penal or criminal matters. The collection of delinquent taxes by the assessment of interest and penalties on the amounts due does not change a civil proceeding to a penal or criminal matter. Thus the ex post facto rule does not apply to a legislative enactment that retroactively applied an increase in the rate of interest charged on delinquent tax payments. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Retroactive Application of Tax Delinquency Interest Increase: After the Legislature passed an amendment raising the rate of interest applied to tax payments in delinquency, the Attorney General issued two opinions as to whether the increase should be given retroactive application, the first opinion saying "no" and the second opinion, issued 2 months later, saying "yes". Appellant claimed that the effect of the Attorney General's opinions was to divide delinquent taxpayers into two groups, those to whom the increase was not retroactively applied, under the first opinion, and those to whom the increase was applied, under the second opinion, and that therefore, retroactive application of the increase violated the Due Process and Equal Protection Clauses of the Montana Constitution as well as the 14th amendment of the United States Constitution. The Supreme Court upheld the District Court's dismissal of appellant's claim, ruling that the constitutionality of a law is determined by looking at the enactment itself rather than at an administrative interpretation of it. Further, the law is not discriminatory and a delinquent taxpayer does not have a vested right to application of a particular rate of interest. O'Shaughnessey v. Wolfe, 212 M 12, 685 P2d 361, 41 St. Rep. 1557 (1984).

Due Process: A tax sale is a proceeding in rem against the property itself and not in personam. Thus a notice with description of the property accurately contained therein suffices to support any requirements of due process. Meyer v. Chessman, 132 M 187, 315 P2d 512 (1957).

Land Transferred After Tax Deed: Defendants in quiet title action acquired no property rights in disputed land by deed from transit company because at the time they received deed, transit company had already been divested of title in proceedings for the taking of a tax deed. Meyer v. Chessman, 132 M 187, 315 P2d 512 (1957).

Assignee Does Not Receive Title: An assignee does not receive title to the property; rather, he has an inchoate right that can ripen into a title free from all encumbrances. Higgins v. Mont. Hotel Corp., 181 M 149, 592 P2d 930 (1979).

Irrigation District Land Acquired at Tax Sale:

The County Treasurer is without authority to assign the right of his county to irrigation lands acquired by it at tax sale under either the irrigation district law as it was prior to July, 1920, when the district sold its bonds, or under 15-17-303 (now repealed), a general statute, which provides that where a county has bid in a parcel of land for "taxes" the Treasurer shall assign its right to any person willing to pay the amount due, irrigation district assessments not being taxes within the meaning of the section. State ex rel. Malott v. Cascade County, 94 M 394, 22 P2d 811 (1933).

It is the duty of a county which holds irrigation district lands acquired at tax sale to apply for tax deed, sell the land as speedily as possible and distribute the proceeds agreeably to equity, and where it has disposed of such land by assignment of its right under 15-17-303 (now repealed), it must return the purchase price. State ex rel. Malott v. Cascade County, 94 M 394, 22 P2d 811 (1933).

Informality or Irregularity: When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Personal Property: Section 15-17-311 (now repealed) does not apply to personal property. Birney v. Warren, 28 M 64, 72 P 293 (1903).

Injunction: The fact that the Treasurer intends to violate 15-17-304 and 15-17-305 (both now repealed) by exposing for sale, for the delinquent taxes of 1 year, part of the lands purchased by the county at the sale for the taxes of the preceding year, and yet unredeemed, does not entitle the owner of the equity of redemption to an injunction. Cobban v. Hinds, 23 M 338, 59 P 1 (1899), explained in Danforth v. Livingston, 23 M 558, 59 P 916 (1900).

Part Attorney General's Opinions

Payment of Delinquent and Outstanding Assessments on Assigned Property to Obtain Tax Deed — Pre-1987: Prior to 1987, a city, as assignee, could not obtain a valid tax deed on property it received through a tax sale until the outstanding and delinquent assessments on the property were paid and discharged. 42 A.G. Op. 82 (1988).

Payment of Delinquent Taxes, Including Special Assessments, to Effect Assignment of Rights: Under 15-17-303 (now repealed), an assignee must pay the amount for which the property was bid at the tax sale, and no provision is included for an assignment following partial payment of the delinquent general taxes, excluding unpaid special assessments, which are treated the same as general taxes under 7-12-4183. Therefore, a city must pay all delinquent taxes, including special assessments, to a county to effect an assignment of the rights of the county in property struck off following a tax sale. 41 A.G. Op. 77 (1986).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

15-17-316. Definitions.

Compiler's Comments

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-317. Municipality as assignee.

Compiler's Comments

2017 Amendment: Chapter 67 substituted (1) and (2) regarding assignment of a tax lien to a municipality, delivery of a copy of the tax lien certificate, prohibiting the county treasurer from charging a fee to a municipality, and making an entry on the property tax record for former language that read: "Whenever property that has been struck off to the county at a tax lien sale under 15-17-214 is subject to the lien of delinquent special assessments and has not been assigned under 15-17-214 or 15-17-323 at the request of the municipality, the county treasurer shall assign all of the rights of the county acquired in the property at the tax lien sale to the municipality upon payment of any delinquent taxes, excluding assessments, and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality, who shall file it. A charge may not be made for the duplicate certificate when the municipality is the purchaser, and the county treasurer shall make an entry "sold to the municipality" on the property tax record opposite the tax. The county treasurer must be credited with the delinquent amount in the settlement"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in two places in first sentence substituted references to tax lien sale for references to tax sale or sale; and made minor changes in style. Amendment effective October 1, 2007.

1993 Special Session Amendment: Chapter 27 at end of third sentence substituted "property tax record" for "assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: Near beginning of first sentence, in clause relating to tax sale, deleted "15-17-207" and removed brackets from around "15-17-214" and in clause relating to assignment deleted "15-17-208" and "15-17-303" and removed brackets from around "15-17-214" and "15-17-323".

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Code Commissioner Correction — Bracketed References: Chapter 587, L. 1987, repealed the former tax sale procedure and replaced it with a new procedure. Chapter 587 repealed 15-17-207, 15-17-208, and 15-17-303. The Code Commissioner has inserted the corresponding sections from Ch. 587 in brackets.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

Attorney General's Opinions

Collection of Delinquent Taxes From Assignee — Exception for Municipality: If a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency. The only exception is if the county assigns its interest to a municipality under this section, in which case a municipality is excused from paying delinquent assessments. 43 A.G. Op. 38 (1989).

15-17-318. Assignment of municipality's interest.

Compiler's Comments

2017 Amendment: Chapter 67 in (2) in first sentence substituted "an assignment certificate" for "a certificate of sale for the parcel", substituted "must" for "may", before "the form provided" deleted "substantially", and substituted "15-17-323" for "15-17-212", and in second sentence in three places before "certificate" inserted "assignment" and before "becomes lost" deleted "of sale"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (2), in clause relating to form of certificate, deleted "15-17-303" and removed brackets from around "15-17-212".

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Code Commissioner Correction — Bracketed Reference: Chapter 587, L. 1987, repealed the former tax sale procedure and replaced it with a new procedure. Chapter 587 repealed 15-17-303. The Code Commissioner has inserted the corresponding section from Ch. 587 in brackets.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

Attorney General's Opinions

Assignment of Interest Only After Payment of Purchase Price and Delinquent Assessment: After a municipality has purchased a county's interest in tax sale property pursuant to 15-17-317, the municipality must reassign that interest only if a subsequent purchaser pays the municipality's purchase price and the delinquent assessment, plus penalties, interest, and costs. 43 A.G. Op. 38 (1989).

15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.

Compiler's Comments

1993 Amendment: Chapter 369 in two places, in first sentence after "sell", inserted "donate"; and made minor changes in style. Amendment effective April 16, 1993.

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-320. Taxes and subsequent installments of special assessments on land acquired by a municipality.

Compiler's Comments

2017 Amendment: Chapter 67 near end substituted "the property is again subject to the attachment of a tax lien" for "the property must again be sold", after "assessments of taxes, and the" substituted "attachment of a tax lien" for "sale of the property", and at end after "has been redeemed" deleted "from such sale". Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

Applicability: Section 16, Ch. 617, L. 1987, provided: "This act applies to the enforcement of all outstanding and future tax and assessment liens except those installments of outstanding special assessments that are delinquent and have been the subject of a sale for delinquent taxes or assessments before the effective date of this act." Effective April 27, 1987.

Severability: Section 15, Ch. 617, L. 1987, was a severability section.

15-17-323. Assignment of rights — form.

Compiler's Comments

2019 Amendment: Chapter 70 in (5) in second sentence at end inserted "and not more than 60 days prior to purchasing the assignment"; in (6) under "Parcel number" deleted "Geocode(s) ...." and at end inserted "Printed name of company (if applicable)"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 67 in (1)(a) at beginning after "A tax lien" deleted "sale" and substituted "possessor of the tax lien" for "purchaser"; inserted (1)(b) requiring county treasurer to develop policy with input from county clerk and recorder and county attorney; in (2)(a) after "of an assignment certificate in" deleted "substantially", after "hereby certify that" substituted "tax lien.......... (insert tax lien certificate number) was attached on" for "a tax lien sale for tax year 20..., in the county of ...., was held on", after "liquidating delinquent assessments" substituted "on" for "and I further certify that a property tax lien for delinquent taxes in", after "(insert property description)" deleted "was offered for sale and that there was no purchaser of the property tax lien", in second sentence substituted "Because delinquent taxes, penalties, interest, and costs remained unpaid on the date of attachment of the tax lien, the county is the possessor of the tax lien" for "Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA", in third sentence before "certificate" inserted "assignment", and near end substituted "by virtue of attachment of a tax lien" for "by virtue of the tax lien sale"; in (2)(b) at end substituted "property tax liens, and property tax assistance programs" for "property tax lien sales"; in (3) after "An assignment made" deleted "by a purchaser other than the county"; before "assignee's interest" deleted "purchaser's or other"; and near end inserted "The county treasurer must file a copy of the statement with the clerk and recorder"; in (3)(b) substituted "assignee" for "purchaser of the tax lien sale certificate"; in (3)(d) after "contained in the tax lien" deleted "sale"; in (3)(e) after "the signature of the party" deleted "whether it is the purchaser or the assignee"; in (4) substituted "the assignment certificate" for "the certificate described in subsection (1) or the statement" and after "issue a duplicate" inserted "assignment"; in (5) deleted former second sentence that read: "The form of the notice must be adopted by the department by rule" and after "date of the payment" inserted "but not earlier than August 15"; substituted (6) prescribing the form of a notice of pending assignment for former (6) that read: "(6) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax lien sale may now have"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 2 in (2)(b) at end after "tax" inserted "lien". Amendment effective October 1, 2009.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale or sale; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 472 in (1) in middle inserted "after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5)"; inserted (2)(b) requiring copy of assignment certificate to be mailed to person assessed taxes; inserted (5) requiring 2 weeks' notice of proposed payment by certified mail and proof of mailing prior to payment of delinquent taxes, penalties, interests, and costs; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 51 in (2) in first paragraph after "year" substituted "20..." for "19..." and at end of third paragraph after "day of ...." substituted "20..." for "19..."; and made minor changes in style. Amendment effective January 1, 2000.

Case Notes

Failure of County Treasurer to Comply With Procedural Tax Deed Requirements — Tax Lien Sale Invalid: After the defendant failed to pay property taxes, the county held a tax lien sale. The tax lien failed to sell, and the county was deemed to be the purchaser under 15-17-214 (now repealed). The plaintiff then notified the defendant that it planned to acquire the lien from the county if the defendant did not pay the taxes within 2 weeks of the notice. The plaintiff then acquired the tax lien, applied for a tax deed, and filed a quiet title action. Both parties filed motions for summary judgment. The defendant argued that the county had failed to comply with the requirements of the tax deed statutes. The District Court agreed and granted summary judgment to the defendant. On appeal, the Supreme Court affirmed, agreeing that the county had issued documents that contained numerous errors and had not satisfied the procedural requirements for a tax lien sale. Zinvest, LLC v. Anderson, 2015 MT 204, 380 Mont. 139, 353 P.3d 1192.

Attorney General's Opinions

Collection of Delinquent Taxes From Assignee — Exception for Municipality: If a county assigns its interest as purchaser of a tax sale certificate, it must collect from the assignee all delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency. The only exception is if the county assigns its interest to a municipality under 15-17-317, in which case a municipality is excused from paying delinquent assessments. 43 A.G. Op. 38 (1989).

15-17-324. Assessment of property with tax lien attached.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) after "assessment of property" substituted "on which the county has attached a tax lien" for "on which a tax lien sale certificate has been issued" and substituted "the possessor of the tax lien" for "listed as the purchaser, as provided in 15-17-214"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in (1) substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

Attorney General's Opinions

County Not Required to Pay Special Assessments After Tax Sale: It would be illogical to consider a county the purchaser of a tax sale certificate, without payment of delinquent taxes and assessments, when no other purchaser comes forward at a tax sale, and then to place responsibility on the county for payment of future assessments. Therefore, when a county becomes a purchaser of a tax certificate pursuant to 15-17-214 (now repealed), the county is not required to pay special assessments levied against the property after the tax sale. 43 A.G. Op. 38 (1989). (See changes to process for sale of a tax lien and issuance of a tax deed in Ch. 67, L. 2017.)

15-17-325. Sale not voided by misnomer of ownership.

Compiler's Comments

2017 Amendment: Chapter 67 near beginning substituted "assignment is taken" for "sale certificate is acquired" and substituted "15-17-323" for "15-17-212", in middle substituted "the possessor of the tax lien" for "listed as the purchaser, as provided in 15-17-214", and near end substituted "tax lien" for "sale"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 near beginning substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

Case Notes

Tax Assessment to Someone Other Than Owner When Records Disclosed Owner — Tax Assessment Invalid — Subsequent Tax Lien Sale and Issuance of Tax Deed Void — Quiet Title Action Failed: The Supreme Court reversed the District Court and determined that a defective property tax assessment voided a lien sale. It was undisputed that the defendant properly recorded its deed to a lot and that the Department of Revenue received the realty transfer certificate, which showed correctly the conveyance of the lot from the seller to the defendant. It was also undisputed that the Department continued to assess the lot to the seller, rather than to the defendant; that the defendant did not receive any notices of taxes due on the lot; and that the defendant paid all taxes due on the notices it did receive for other property that was purchased from the seller. The defendant argued that, under these facts, the Department's tax assessments on the lot were invalid and therefore rendered void the tax deed to the plaintiff. The District Court disagreed and held that, even though the wrong party was assessed, the tax assessment was valid under 15-8-201. On appeal, the Supreme Court reversed the District Court through the statutory interpretation of 15-8-201. The Supreme Court reasoned that because the provisions requiring the owner to be named are mandatory, and 15-8-201 provides no cure for a defect in the identity of the owner, a tax assessment to a person or entity other than the owner, where the owner is known to the Department through properly recorded transfer records, is not a valid assessment. Because the tax assessment was void, the subsequent tax lien sale and issuance of a tax deed was also voided. The county lacked jurisdiction to hold the tax lien sale on the property because there was no valid assessment. The subsequent tax deed issued to the plaintiff was void, and its quiet title action failed. Zinvest, LLC v. Gunnersfield Enterprises, 2017 MT 284, 389 Mont. 334, 405 P.3d 1270. See also Moran v. Robbin, 261 Mont. 478, 863 P.2d 395 (1993).

15-17-326. Voided tax lien — refund — limitation on action for royalty interest.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) after "If a tax lien" substituted "attached" for "sale held", after "assignment, levy, or" substituted "assignment or if a tax lien is assigned in error" for "sale", after "the money paid by the" deleted "purchaser at the tax lien sale or by any", after "of the payment" substituted "to the assignee" for "to the purchaser or owner of the tax lien sale certificate", and at end substituted "assignee" for "purchaser"; in (2) in first sentence substituted "the possessor of the" for "considered the purchaser and has a property", in second sentence substituted "15-17-323" for "15-17-212", and in third sentence substituted "An assignment made" for "A purchaser of a property tax lien or owner of a property tax lien by assignment when sales have been made"; and in (3) in three places substituted "assignee" for "purchaser" and near end substituted "assignee's" for "purchaser's"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in (1) in three places substituted references to tax lien sale for references to tax sale or sale; and made minor changes in style. Amendment effective October 1, 2007.

Part 9
Sale of Personal Property

Part Case Notes

Invalid Application — Flathead Reservation Indians: Subsection (1) of 15-17-901 (now repealed) is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.

Compiler's Comments

2021 Amendment: Chapter 145 in (8) near end inserted reference to 15-23-708. Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

2009 Amendment: Chapter 2 in (7) near middle after "tax" inserted "lien". Amendment effective October 1, 2009.

1999 Amendment: Chapter 197 inserted (3)(a)(ii) requiring sale to be conducted pursuant to 25-13-701(1)(b); inserted (3)(a)(iii) requiring sale to be noticed as treasurer's sale; inserted (3)(b) requiring return to be signed by sheriff; in (4)(a) in first sentence at beginning deleted "For seizing and selling personal property", after "charge $25" inserted "or a fee set by the county commissioners", and after "plus" substituted language regarding cost as defined in 15-17-121 of collection of property taxes for "mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized" and substituted last sentence requiring cost to be assessed against delinquent taxpayer in addition to amounts charged under subsection (4)(b) for "The charge and other costs may be charged only when property is actually seized and offered for sale or sold"; inserted (4)(b) entitling sheriff to certain amounts provided in 7-32-2141 and 7-32-2143 as assessment against taxpayer; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 4, Ch. 197, L. 1999, provided: "[This act] applies to any levy and sale begun after September 30, 1999."

1993 Special Session Amendment: Chapter 27 in (2) substituted "15-16-119" for "15-16-113"; in (4), before "treasurer", inserted "county"; and in (9), after "clerk", inserted "and recorder". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 36 in (3) deleted former second sentence that read: "The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs"; substituted (6)(a) concerning proceeds of sale for former subsection that read: "All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds"; inserted (9) allowing cancellation of personal property taxes remaining unsatisfied after sale of personal property; and made minor changes in style.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated the 1989 amendments to this section December 31, 1993.

1989 Amendment: Inserted (8) relating to suspended or canceled delinquent property taxes under Title 15, ch. 24, part 17. Amendment effective April 25, 1989, and terminates December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Case Notes

County Tax Lien Not Restricted to Specific Property Against Which Tax Assessed: The plaintiff had designated that the proceeds of the auction of certain of his personal property should go to pay creditors. The county argued that it should be able to levy on and seize the funds for taxes owed. The Supreme Court ruled that the county could attach the proceeds even though the taxes owed had not been assessed against the property sold at the auction. Statutes providing for the seizure and sale of personal property as a means of discharging a tax lien have no application when the property seized is money. Inman v. Farmers Nat'l Co., 240 M 182, 783 P2d 1328, 46 St. Rep. 2038 (1989).

Attorney General's Opinions

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of 15-16-102 apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or this section. 42 A.G. Op. 95 (1988).

CHAPTER 18

OWNERSHIP INTERESTS IN LAND SOLD FOR TAXES

Chapter Compiler's Comments

Transition: Section 61, Ch. 587, L. 1987, provided: "(1) (a) Except as provided in subsection (1)(b), for the purpose of implementing the provisions of Title 15, chapters 17 and 18, no tax deed may be applied for or issued during the period between April 23, 1987, and July 1, 1988.

(b) A tax deed may be issued between April 23, 1987, and July 1, 1988, if the tax deed is issued for property on which property taxes are delinquent for 1982 and prior years. In such a case the tax deed is to be issued based on the procedures provided for in Title 15, chapters 17 and 18.

(2) During the period between April 23, 1987, and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in 15-18-212, for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the

purchaser or assignee of his obligation to give notice as required in 15-18-212. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in 15-18-212."

Chapter Case Notes

Tax Deed and Sale Proceedings Invalid for Lack of Jurisdiction — County's Reversionary Interest Relinquished by Settlement to Heirs of Pretax Deed Owner: Rosebud County applied for and received a tax deed pursuant to law (now repealed) and subsequently quitclaimed all but a royalty interest in the property. The Stanfords brought an action in District Court, alleging the invalidity of the tax deed and alleging that they were the owners of a royalty interest in the property. The county settled its interest in the action by relinquishing all its interests in the property. The District Court held that the tax deed was invalid but awarded the property to another party. The Supreme Court found that the tax deed was invalid under the former law because the proceedings on tax sales are in invitum. Citing King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), the court held that the failure to file an affidavit of notice of application for the tax deed, the fact that there was a recitation in the notice for application of a tax deed that the time for redemption had "long since expired" (contrary to the law), and the failure of the record to include an "affidavit of notice of tax sale" resulted in a lack of jurisdiction in the County Treasurer to issue the tax deed. The reservation of the royalty interest by the county survived the defective tax sale, and when the county relinquished all rights to its royalty interest as part of the settlement agreement, that interest reverted to the pretax sale owner. The heirs of that owner thus had a prima facie claim to the royalty interest. Stanford v. Rosebud County, 251 M 128, 822 P2d 1074, 48 St. Rep. 1124 (1991).

Attorney Fees to Intervenor — Attorney Also Retained by Title Insurance Company: Where fees related to a buyer's efforts to defend title subsequent to seller's refusal to do so, fees were recoverable against the seller despite the fact that buyer's attorney was also retained by the title insurance company that undertook the title defense of the case. McDonald v. Grassle, 228 M 25, 740 P2d 1122, 44 St. Rep. 1312 (1987).

Costs and Attorney Fees in Action Collaterally Attacking Tax Deed Procurement Action Judgment: This section, providing for costs and attorney fees in an action to procure a tax deed, does not allow them to be granted to a plaintiff bringing a collateral action to attack the judgment against her in an action to procure a tax deed. Kahle v. Smithers, 225 M 452, 733 P2d 844, 44 St. Rep. 394 (1987).

Failure of Affidavit for Service by Publication to State "Residence of the Defendant Is Unknown": In an action to procure a tax deed, an affidavit for publication stating that defendant could not be found in the State of Montana did not satisfy the requirement of former Rule 4D(5)(e), M.R.Civ.P. (now superseded). The key fact required in an affidavit for publication is that the affidavit state that the residence of defendant is unknown. The affidavit was thus insufficient, and service was insufficient to obtain jurisdiction over defendant. Therefore, she could collaterally attack the judgment against her in the action for procurement of a tax deed by bringing a separate action. It was reversible error for the lower court to grant summary judgment against her in her separate action on the ground that her case was barred by res judicata as a result of the judgment against her. Kahle v. Smithers, 225 M 452, 733 P2d 844, 44 St. Rep. 394 (1987).

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Nature of Title Conveyed: A tax deed creates a paramount title, which by its nature is not derivative and creates a new title in the nature of an independent grant from the sovereign, striking down the former owner's fee title. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Prior Recorded Reserved Mineral Rights Not Subject to Lien: Where a deed reserving coal and mineral rights was recorded after taxes on the land attached by statute but before the actual assessment of taxes and before the tax sale, the tax lien did not attach until after the recordation of the deed and thus the tax deed did not carry with it and convey the reserved coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Prior Reserved Mineral Estate Not Affected by Deed: The paramount title of a tax deed does not extinguish a vested mineral estate in the land reserved prior to any delinquent tax assessments upon the surface estate. A grantor who has reserved a mineral estate has freed himself from any subsequent tax assessment and cannot be stripped of the reserved title due to the surface owner's failure to pay taxes. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed in 698 F2d 1230 (9th Cir. 1982).

Attorney Fee: Even though defendant in a quiet title action for a tax deed had not prayed for a reasonable attorney fee she should have been allowed one as the successful party. Plaintiff was not entitled to attorney fees as "successful party" because that designation was intended to mean the party obtaining the tax deed and not the party receiving reimbursement for taxes, penalties, and interest paid. Niles v. Carbon County, 174 M 20, 568 P2d 524 (1977).

Creditors of Deceased Owner: Section 84-4150, R.C.M. 1947 (now repealed), cut off the rights of creditors of a deceased landowner unless they could bring themselves within the exceptions stated in the section, and they must look to other assets of the estate for satisfaction of their claims. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Alternate Methods of Obtaining Tax Deed: The holder of a tax sale certificate may obtain a deed through notice under 15-18-202 (now repealed) or through action pursuant to 15-18-301 (now repealed). U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Collateral Attack: Decree in favor of plaintiff, son of deceased, in action to procure tax deed could not be collaterally attacked in condemnation proceedings on the ground of defective service where it was expressly found that defendant son, and the administrator of the estate of the deceased, were the same person and that all defendants had been duly and legally served and there was no suggestion that creditors of the deceased or estate yet remained to be paid, or that final settlement of the estate would be dependent upon this asset. U.S. v. Hoerner, 157 F. Supp. 563 (D.C. Mont. 1957).

Void Assessment: When county assessed tax on minerals and mineral rights under the land but did not assess a tax on the party's right of entry for mining purposes, a tax deed based on such proceeding was void since under Art. XII, sec. 3, 1889 Mont. Const., minerals or mineral rights could not be taxed. Lehfeldt v. Adams, 130 M 395, 303 P2d 934 (1956).

Priority of Liens: Prior to the 1937 amendment, taxes assessed against personal property for general purposes and which became a lien upon lands of owner were superior to assessments to pay interest on bonds, or for other purposes in connection with the irrigation district. U.S. v. Markey, 87 F. Supp. 102 (D.C. Mont. 1947), modified in Dawson County v. Hagen, 177 F2d 186 (9th Cir. 1949).

Expiration of Period of Redemption: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since, under 15-18-202 (now repealed), the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Tax Deed as Extinguishing Special Improvement Assessments Payable Before Its Execution: A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on November 30, 1940, and was certified by the city to the County Clerk on December 7, 1940, and by the County Treasurer entered upon the tax rolls as a lien against the property, a county tax deed issued on December 23, 1940, extinguished the lien for the 1940 installment of the city special improvement assessment, because under 15-18-309 (now repealed) such assessment installment was payable before execution of the tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944), explained in U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Implied Amendment — Lien of Special Improvement Assessments: The title conveyed by a tax deed issued in 1936 pursuant to notice under 15-18-202 (now repealed) is controlled by 15-18-309 (now repealed) which impliedly amended 15-18-403 (now repealed) confining the exception to taxes as distinguished from special improvement assessments. This holding is expressly limited to special assessments made after enactment of 15-18-309 (now repealed), as against the suggestion that it is retroactive and offends against Art. XV, sec. 13, 1889 Mont. Const. (see Art. II, sec. 31, 1972 Mont. Const.). Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Waiver of Priority of General Tax Lien: While the lien of general taxes is superior to that of special assessments, the Legislature has power to waive the priority of such lien and postpone it to that of special assessments. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

New Title in Nature of Independent Grant: When landowner commenced suit to enjoin an irrigation district from assessing the land for interest on bonds of the district under former law, the bonds constituted an encumbrance upon the land within the district which was extinguished by the tax deed taken by the county, the deed creating a new title extinguishing all former titles and liens not expressly exempted from its operation. Rosebud Land & Improvement Co. v. Carterville Irr. District, 102 M 465, 58 P2d 765 (1936), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Chapter Attorney General's Opinions

Payment of Special Assessments Due Prior to Deed Issuance: Following the issuance of a tax deed to a county, the county is not responsible for payment of delinquent special assessments, accelerated under authority of 7-12-4183, due prior to issuance of the deed. 41 A.G. Op. 77 (1986).

Tax Deed Purchaser — No Recovery of Personal Property Tax Owed: The grantee under a tax deed to real property issued after foreclosure of real and personal property liens on the property acquires no right to recover the amount of personal property tax owed by the taxpayer. The taxpayer's right, title, and interest in the property are cut off by issuance of a tax deed. The taxpayer's obligation is satisfied by his forfeiture of the property. The grantee acquires only title to the property, not a right to proceed further against the taxpayer. 39 A.G. Op. 53 (1982).

Tax Deeds — Improvement District Assessments: A county acquiring title to real property by tax deed is liable for the payment of installments of special improvement assessments that become due after the execution of the tax deed. The issuance of a tax deed extinguishes the lien for installments of special improvement assessments on the property that became due before the execution of the tax deed. 29 A.G. Op. 40 (1962).

Part 1
Redemption

Part Compiler's Comments

Section Not Codified: Section 84-4132.1, R.C.M. 1947, which allowed hospitals, charitable corporations, and nonprofit associations a special redemption privilege prior to December 1, 1957, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 112, L. 1957.

Part Case Notes

Validity of Taxes and Procedures Used — Time of Sale: The plaintiffs challenged the sufficiency of the tax deed procedure used by the county to purchase subsurface rights in 1946. In 1908, landowners received patents for subsurface mineral rights on adjacent parcels in coal-rich Musselshell County. The parcels were subsequently conveyed in 1935. County taxes were not paid in 1936, at which time the County Assessor listed the taxes as delinquent. The taxes remained delinquent until the landowner redeemed the property and paid a portion of the taxes owed. The certificate of redemption describes the property redeemed and notes "surface rights only". The certificate was dated March 5, 1941. At this time, the property's subsurface rights were severed from the surface rights. On this date, the landowner conveyed his interest in the surface rights to another party. Because the subsurface rights were not redeemed in 1941 and remained delinquent until 1945 under the landowner's name, the County Treasurer issued a tax deed to the county in the 1946 for the property "less surface which has been redeemed". The redeemed property interest was conveyed in 1945 and again in 1950. A quiet title action was filed and granted in 1955 with the exception listed for Musselshell County's subsurface rights. The plaintiffs, the 1955 landowner's successor in interest, filed suit to quiet title as successor in interest to the subsurface mineral right of entry. The Supreme Court affirmed the decision of the District Court, holding that the statute of limitations barred the plaintiffs' claim, because section 2214, Revised Codes of 1935, applied since it was the applicable law at the time taxes were assessed on the real property. Section 2214 provided for a 1-year statute of limitations to challenge a tax deed unless one of two exceptions applied: either no taxes were delinquent or redemption was made from the tax sale. The court concluded that neither exception applied. To recover attorney fees, a hearing must be requested and sufficient evidence must be provided. Bergum v. Musselshell County, 2016 MT 47, 382 Mont. 322, 367 P.3d 353.

Effect of Defective Description in Notice of Application for Tax Deed: In his notice of application for a tax deed, appellant described property by reference to a nonexistent "Tract 1 in H.E.S. 735" and failed to indicate north or south for the township and east or west for the range. In this situation, the notice was held inadequate to identify the land and therefore fatally defective. Such defective notice deprived the County Treasurer of jurisdiction to issue a tax deed. Therefore, because no valid tax deed had been issued, the right of redemption had not terminated. Walters v. Kruse, 219 M 386, 712 P2d 780, 43 St. Rep. 33 (1986).

Running of Redemption Period: The redemption period began to run the day the county purchased the land by tax certificate, and the right of redemption is cut off only by the application for a tax deed. Therefore, a property owner was not prejudiced by the exercise of application for a tax deed 7 days after gaining ownership of a tax certificate for the land. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

Assignee's Right to Redeem: Occupier of land who was assignee of tax sale certificate held lien on the land under 15-17-206 (now repealed), and thus had right to redeem subsequent certificate at any time before notice and application for tax deed. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Check as "Lawful Money": Use of a check by the Small Business Administration in the redemption of tax delinquent property by the United States constituted "lawful money" under 15-18-105 (now repealed), and certificate of redemption issued to the government 4 days before defendant filed application for tax deed was valid. U.S. v. Johnston, 247 F. Supp. 707 (D.C. Mont. 1965).

Right of Cotenant on Mining Property to Redeem: Under the provisions of 70-1-311 (now repealed) and 70-19-202, where a mining company neglected to pay its taxes, a cotenant, having a right to operate the mining property and pay all expenses of the operation and account to other cotenants, had sufficient interest in patented mining claims, separately assessed to the mining company, to permit her to redeem the property from a tax sale. Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), followed in Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999).

Loss of Right to Redeem: When right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Right of Preferential Purchase: In addition to the right to redemption before the issuance of a tax deed, the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with 7-8-2303. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Period of Redemption as Expiring on Application for Tax Deed: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since under 15-18-202 (now repealed), the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Taxes Paid by Indians — Recovery by Federal Government: Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians, in paying a tax, had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however, government could not recover interest on the taxes so paid. Glacier County v. U.S., 99 F2d 733 (9th Cir. 1938).

Suit as for Debt Not Authorized: Failure of owner of realty to pay taxes levied on the realty does not ordinarily subject him to a suit as for a "debt" due within the ordinary meaning of that word. Calkins v. Smith, 106 M 453, 78 P2d 74 (1938).

Computation of Tax Due: While the assessment roll, when completed and certified by the Assessor as required by statute, may not be varied or contradicted by records made under the classification of lands act showing the full and true value of each 40-acre subdivision, the records are admissible in a mandamus proceeding to compel a County Treasurer to compute the tax due on a portion of a tract of land assessed in bulk so as to enable a redemptioner to redeem that portion from tax sale, under 15-18-103 (now repealed), for the purpose of showing that the information was available to the Treasurer from the records to enable him to make such computation. State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Constitutionality: Section 15-18-103 (now repealed), in requiring the County Treasurer, upon the request of one seeking to redeem from tax sale a portion of a tract of land on which he holds a mortgage and which portion had not been separately assessed, to compute and apportion the tax on the portion sought to be redeemed, is not unconstitutional as conferring the powers of an assessor upon the Treasurer in a special and limited class of cases (Art. V, sec. 26, 1889 Mont. Const., now Art. V, sec. 12, 1972 Mont. Const.), nor as authorizing levy and collection of taxes in any other manner than by general law (Art. XII, sec. 11, 1889 Mont. Const., now Art. VIII, sec. 1, 1972 Mont. Const.). State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Redemption by Mortgagee: When a tract of land not assessed in 40-acre divisions had been sold for taxes and the mortgagee, desiring to redeem a portion of the land, demanded of the County Treasurer that he compute and apportion the taxes delinquent upon each 40-acre tract, it was the legal duty of the Treasurer to comply with the demand and the trial court erred in refusing to compel him by Writ of Mandate to perform that duty. State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Payment by County Treasurer on Promise of Taxpayer to Pay: When a County Treasurer, on the last day on which redemption of property from tax sale could be made, on the strength of a telegram received by him from the attorneys of the delinquent owner that on that day a check covering the redemption money had been mailed in New York City, paid the amount due out of his own funds, and mailed a certificate of redemption to the attorneys, although under 15-18-105 (now repealed) redemption must be made in lawful money, there was clear violation of his official duty, and the District Court committed error in dismissing the action of the holder of the certificate of sale to the property seeking to compel the Treasurer by Writ of Mandate to issue to him a tax deed to the property. State ex rel. Bell v. McCullough, 85 M 435, 279 P 246 (1929).

Right to Redeem — Generally: The right to redeem property from tax sale is wholly statutory and the statutes relating to redemption must be liberally construed, but the person seeking to redeem must bring himself within their provisions. State ex rel. Bell v. McCullough, 85 M 435, 279 P 246 (1929). See also State ex rel. Fed. Land Bank v. Hays, 86 M 58, 282 P 32 (1929).

Notice of Amount Due: Under 15-18-102 and 15-18-104 (both now repealed), requiring a redemptioner to pay, in addition to the amount for which the property was sold, subsequent taxes paid by the purchaser, and 15-18-202 (now repealed) declaring that the notice which the purchaser must give when he applies for a tax deed must contain "the amount due", a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes for the year 1920, did not state the correct amount due and was invalid and, therefore, the deed based thereon was likewise void. Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929).

Part Attorney General's Opinions

No Tolling of Redemption Period by Part Payment: Payment of all taxes and other payments due during the redemption period is required for redemption to occur. The redemption period cannot be tolled by payment of part of the amount due. 40 A.G. Op. 15 (1983).

Part Collateral References

Property Tax Delinquencies, Tax Sales, and Tax Deeds, 1986 Interim Report, Montana Legislative Council.

15-18-111. Time for redemption — interested party.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) after "property tax lien" deleted "acquired at a tax lien sale or otherwise" and at end substituted "by the first working day in August, 3 years after attachment of the tax lien" for "within 36 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later"; and in (2) near middle after "property tax lien" deleted "acquired at a tax lien sale or otherwise" and at end substituted "by the first working day in August, 2 years after attachment of the tax lien" for "within 24 months from the date of the first day of the tax lien sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later". Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale. Amendment effective October 1, 2007.

1995 Amendment: Chapter 248 near beginning of (2) substituted "special improvement district assessments or rural special improvement district assessments" for "taxes or special assessments"; and made minor changes in style.

1989 Amendment: In (2) increased time to 24 months from 18 months.

1987 Amendment: In (1) inserted "Except as provided in subsection (2)"; and inserted (2) relating to redemption of property tax lien on property subdivided as a residential or commercial lot.

Case Notes

No Requirement of Notice of Tax Deed to Person Not Owner of Property, Occupant, or Party of Interest: Plaintiff obtained an assignment of rights, title, and interest in Armstrong's property upon payment of delinquent taxes and associated fees. After the assignment was recorded, plaintiff sought a tax deed to the property and notified Armstrong, who was the owner of record. However, Armstrong had agreed to allow Bean to operate a salvage yard on the property. Bean claimed to have made monthly payments to Armstrong, but Bean never paid taxes on the property or recorded any property interest with the county. Bean claimed that as occupant of the property, he was entitled to notice of the tax deed. The District Court disagreed, and on appeal the Supreme Court affirmed. Bean was never an owner of record and was not entitled to notice. Further, absent some interest in the property or substantial evidence, Bean could not be considered an occupant or interested party under the statutes governing tax sales of property. Legal Resources Agency, LLC v. Armstrong, 2008 MT 262, 345 M 115, 191 P3d 368 (2008).

Miscalculation of Amount Necessary to Redeem Tax Lien — No Violation of Assignee's Constitutionally Protected Property Rights — Section 1983 Claim Properly Dismissed: Shepherd held an assignment of the tax sale certificate on real property in Red Lodge. A few days before the redemption period was to expire, the owner of record redeemed the property by paying $4,407.28, but the County Treasurer unintentionally overlooked an additional $56.30 in interest that had accrued between the date that notice was given that a tax deed would be issued and the date of redemption. Shepherd then filed a complaint under 42 U.S.C. 1983, alleging that the county's failure to collect the statutorily required amount for redemption deprived Shepherd of a property interest without due process of law. Shepherd sought $250,000 in general damages, punitive damages, and attorney fees and costs. Shortly thereafter, the county tendered Shepherd $56.30 plus interest, but Shepherd rejected the money and added a negligence claim to the complaint. The District Court dismissed the section 1983 claim on grounds that Shepherd failed to state a claim upon which relief could be granted, and awarded summary judgment to the county on the negligence claim, subject to the payment of $60.73 of accumulated interest then owed to Shepherd. Shepherd appealed, but the Supreme Court affirmed. Without ruling on whether Shepherd had a property right, the Supreme Court concluded that the claim failed as a matter of law. To prevail on a section 1983 claim pursuant to Orozco v. Day, 281 M 341, 934 P2d 1009 (1997), plaintiff must establish a violation of federal constitutional or statutory rights proximately caused by the conduct of a person acting under color of state law. Shepherd alleged a violation of the federal constitutional right to due process, but the process due in this case pertained to the redemption of tax liens under Montana law, and except for the inadvertent miscalculation of interest due, that process was followed. The miscalculation was at most a ministerial error, and to equate the miscalculation with a denial of due process would trivialize the constitution and the important remedial purpose of section 1983. Because there was no denial of due process, there was no section 1983 claim, and the District Court properly dismissed Shepherd's claim pursuant to former Rule 12(b), M.R.Civ.P. (now superseded). Shepherd v. Carbon County Bd. of Comm'rs, 2002 MT 98, 309 M 391, 46 P3d 634 (2002).

Proper Deposit of Leasehold Interest Entitling Leaseholder to Notice and Right to Redeem Property Tax Lien: Section 15-18-212 requires that the purchaser or assignee of a tax sale certificate notify all persons interested in the property, including a person with properly recorded interest in the property, that a tax deed will be issued to the purchaser unless the tax lien is redeemed prior to the expiration date of the redemption period. Under 70-21-209, an acknowledged or certified instrument is considered recorded when it is deposited with the appropriate County Clerk and Recorder. In this case, an instrument reflecting plaintiffs' interest as assignee of a vendor's interest in the contract for sale of a cabin and leasehold, which constituted real property, was properly recorded at the Lewis and Clark County Clerk and Recorder's office, so plaintiffs were entitled as an interested party to notice by certified mail pursuant to 15-18-212; however, no notice was given. Plaintiffs' right to redeem the property tax lien continued indefinitely until proper notice was given; thus, a tax deed subsequently issued by the county was void for failure to comply with the notice provisions of 15-18-212. Ditto v. Kipp, 2000 MT 162, 300 M 278, 3 P3d 647, 57 St. Rep. 679 (2000). See also Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163 (1999).

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to 15-18-212. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under 15-8-307, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

Notice Required to Occupant Upon Redemption of Noncommercial Property: Wests contended that notice to the occupants of property subject to redemption was not required because the parcel in question was previously used as a railroad right-of-way and was therefore commercial property. On appeal, the Supreme Court noted that the deed that created the right-of-way was dated 1910 and that the subdivision statutes thus did not apply. Further, the railroad abandoned the right-of-way and there was no indication that the property was later used for commercial purposes. Notice to the occupant of the property was therefore required under subsection (1) of this section. Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Attorney General's Opinions

Redemption Period Not Tolled — Partial Payment of Delinquent Taxes: Partial payment of delinquent property taxes does not toll the period of redemption. The intent of this section was to give taxpayers a break on payment of delinquencies but to do so within the confines of the statutory redemption period. 42 A.G. Op. 117 (1988).

15-18-112. Redemption from property tax lien — lien on interest in property for taxes paid.

Compiler's Comments

2021 Amendment: Chapter 17 in (1)(a) after "against the property" inserted "once delinquent"; in (4) after "tax year" deleted "by a partial payment of that tax year"; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

2019 Amendment: Chapter 317 in (4)(b) at end inserted "or 15-18-220". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1)(a) near beginning substituted "subsections (1)(b) and (4)" for "subsection (4)", in middle after "property tax lien has been" substituted "assigned, the assignee" for "acquired, the purchaser", and at end inserted "on or after June 1 and prior to July 31 if the taxes have not been paid by the property owner"; inserted (1)(b) regarding property qualifying for property tax assistance program and taxes not paid by property owner; in (2) at beginning substituted "Upon the redemption of the property tax lien" for "Upon the redemption of the property from the property tax lien", after "the redemptioner shall" inserted "pay", near middle substituted "the amount of the property tax lien" for "the amount for which the property tax lien was sold", and after "penalties, interest, and costs" deleted "pay"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46, Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act].

(2) [Sections 2, 18, and 20] [15-16-102, 15-18-112, and 15-18-114] apply retroactively, within the meaning of 1-2-109, to any tax lien begun or issued prior to [the effective date of this act]." Effective March 2, 2017.

2001 Amendment: Chapter 444 inserted (3) providing that a redemptioner of a property tax lien has a lien for taxes paid on any portion of the property not owned by the redemptioner; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 7, Ch. 444, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

1989 Amendment: In (1), at beginning, inserted exception clause; in (2), before "with interest", substituted "assessed" for "paid by the purchaser", after "with interest" inserted "and penalty", and at end deleted "from the date of the payment of the taxes, penalties, interest, and costs"; inserted (3) relating to partial payment redemption for a particular tax year; and made minor change in form. Amendment effective May 22, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 704, L. 1989, provided: "A statement of intent is not required for this bill but is included to make clear that the purpose of this bill is to clarify the provisions of Senate Bill No. 162 (Chapter 587, Laws of 1987), relating to partial payments of delinquent property taxes and to the procedures governing the sale of property for delinquent taxes.

In addition, this bill defines the term "costs", clarifies how redemption proceeds are distributed, requires a person who redeems property to pay the taxes and other charges that have been assessed since the date of the sale of the tax lien, revises the method by which county tax-deed land is sold, lengthens the notification period prior to issuing a tax deed, changes the time when proof of notice must be filed, and clarifies the effect of the tax deed.

In 1987, the legislature enacted 15-16-102(5) authorizing the partial payment of delinquent property taxes. The attorney general in 42 Attorney General Opinion [42 A.G. Op. 71 (1988)] opined, however, that a partial payment made pursuant to 15-16-102(5) does not toll the redemption period. In order to redeem the property, the attorney general stated that the taxpayer had to pay all of the delinquent taxes, including penalty and interest, plus all subsequently assessed taxes.

The intent of this bill is to reverse the attorney general's opinion. It is the intent of the legislature that each tax year for which property taxes are delinquent has a separate 36- or 18-month redemption period. If a partial payment is made for a particular tax year, a tax deed may not be issued based on that tax year because the taxes for that year have been paid.

For example, assume that the 1984, 1985, 1986, 1987, and 1988 property taxes are delinquent. Assume further that a 36-month redemption period applies to the property on which the taxes have not been paid. In February 1989, the current year, as that term is used in 15-16-102(5), is the 1988 tax year for which taxes are due on November 20, 1988, and May 31, 1989. The 36-month redemption period has expired for 1984, and it will expire for the 1985 taxes in the summer of 1989. This bill contemplates that a taxpayer may pay his 1988 taxes, even though the first half is delinquent. After the 1988 taxes are paid, the taxpayer may redeem the property for the 1984 tax year by paying the 1984 taxes.

The taxpayer may still lose his property unless he pays his 1985 taxes before the tax deed is issued. Because the current year and the most delinquent year are paid, the taxpayer may redeem the property for the 1985 tax year by paying the 1985 taxes.

In 1990, the taxpayer would have to pay the 1989 taxes before he could pay the 1986 taxes to redeem the property for the 1986 tax year. Following this pattern, the taxpayer would be current on all taxes after 3 years.

As used in this statement of intent, taxes include penalty, interest, and costs."

15-18-113. Treasurer to file redemptions.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) at beginning deleted "Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person's agent to the county treasurer and refunded to the person listed as purchaser, as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214, or distributed, as provided in 15-18-114, the word "redeemed", the date, and the name of the redemptioner must be marked by the county treasurer on the tax lien sale certificate or in the record required in 15-17-214. Upon redemption", near middle after "to be filed" deleted "or recorded", and at end after "the county clerk and recorder" inserted "upon"; inserted (1)(a) regarding payment of all delinquent taxes, penalties, interest, and costs; inserted (1)(b) regarding distribution of redemption proceeds; in (2) near beginning substituted "must" for "may" and near middle substituted "The tax lien was attached to the property on.........(date of attachment of the tax lien). Tax Lien Certificate No. ..... and Assignment Certificate No. ....." for "The tax lien on the property was sold on.........(date of the tax lien sale). Tax Lien Sale Certificate No. ..... or Tax Lien Assignment No. ....."; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale; and made minor changes in style. Amendment effective October 1, 2007.

1999 Amendment: Chapter 446 in (1) inserted second sentence requiring execution of a certificate of redemption; inserted (2) setting out the form of redemption certificate; and made minor changes in style. Amendment effective April 22, 1999.

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

15-18-114. Distribution of redemption proceeds.

Compiler's Comments

2017 Amendment: Chapter 67 in (1) at beginning substituted "When the county is in possession of a tax lien that is redeemed" for "When a property tax lien for which the county is listed as purchaser is redeemed"; in (2)(a) at beginning substituted "When an assignee is in possession of a tax lien that" for "When a property tax lien for which the recorded purchaser is other than the county", near beginning substituted "the assignee on the assignment certificate provided for in 15-17-323" for "the purchaser on the tax lien sale certificate", near middle before "paid the county" substituted "assignee" for "purchaser", and near end substituted "assignee" for "purchaser other than the county"; in (2)(b)(i) after "must be made" deleted "by certified mail, return receipt requested", after "the county treasurer to the" substituted "assignee" for "purchaser", and substituted "the assignment certificate within 30 days of redemption" for "the tax lien sale certificate as provided in 15-17-212(1)(e)"; in (2)(b)(ii) substituted "assignee" for "purchaser" and substituted "give notice as provided in 7-1-2121" for "publish once a week for 2 consecutive weeks in the official newspaper of the county a notice"; in (2)(b)(ii)(A) substituted "assignee" for "purchaser" and after "named in the tax lien" deleted "sale"; in (2)(b)(ii)(C) in two places substituted "assignee" for "purchaser"; in (3) near beginning substituted "notice" for "publication" and at end substituted "the date notice is given" for "the date of publication"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46, Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act].

(2) [Sections 2, 18, and 20] [15-16-102, 15-18-112, and 15-18-114] apply retroactively, within the meaning of 1-2-109, to any tax lien begun or issued prior to [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 throughout section substituted references to tax lien sale for references to tax sale; and made minor changes in style. Amendment effective October 1, 2007.

1993 Amendment: Chapter 97 in (2)(b)(i), after "mail", inserted "return receipt requested".

1989 Amendment: In (2)(a) substituted "the county treasurer shall distribute" for "the money received from the redemption, including penalties and interest but not costs, must be distributed" and at end inserted "the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1)". Amendment effective May 22, 1989.

Case Notes

Offer of Total Amount Owing Upon Redemption of Tax Lien — Summary Dismissal of Negligence Claim Proper Absent Damages: Shepherd held an assignment of the tax sale certificate on real property in Red Lodge. A few days before the redemption period was to expire, the owner of record redeemed the property by paying $4,407.28, but the County Treasurer unintentionally overlooked an additional $56.30 in interest that had accrued between the date that notice was given that a tax deed would be issued and the date of redemption. Shepherd then filed a complaint under 42 U.S.C. 1983, alleging that the county's failure to collect the statutorily required amount for redemption deprived him of a property interest without due process of law. Shepherd sought $250,000 in general damages, punitive damages, and attorney fees and costs. Shortly thereafter, the county tendered Shepherd $56.30 plus interest, but Shepherd rejected the money and added a negligence claim to the complaint, based on the County Treasurer's improper extinguishment of the lien. The District Court summarily dismissed the negligence claim because Shepherd was offered the full amount of recovery owing under this section, plus interest, prior to litigation. Shepherd appealed, claiming that the redemption process in this section did not apply to cases in which a negligence action is brought for improperly extinguishing a lien, and that 27-1-317 should apply instead, which would allow compensation for all detriment caused by breach of an obligation not arising from a contract. The Supreme Court disagreed and affirmed the summary dismissal of the negligence claim. Regardless of the statute relied on, Shepherd was tendered all the damage caused by the County Treasurer's omission when he was offered $56.30 plus interest. Had the County Treasurer not miscalculated, that was the full additional amount Shepherd would have received. Once tendered, it was no longer owed, and without damages, there was no claim for negligence. Shepherd v. Carbon County Bd. of Comm'rs, 2002 MT 98, 309 M 391, 46 P3d 634 (2002).

Part 2
Issuing a Tax Deed

Part Compiler's Comments

Sections Not Codified:

Section 84-4153, R.C.M. 1947, which validated tax deeds issued to counties, cities, and towns prior to 1927, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 92, L. 1927.

Section 84-4160, R.C.M. 1947, which validated sales by counties of real property purchased for taxes and the deeds thereto entered into prior to March 9, 1931, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 140, L. 1931.

Section 84-4160.1, R.C.M. 1947, which validated tax deeds issued prior to March 7, 1933, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1933, as amended by sec. 1, Ch. 132, L. 1937; sec. 1, Ch. 94, L. 1939; sec. 1, Ch. 105, L. 1939; and sec. 1, Ch. 171, L. 1947.

Section 84-41-100, R.C.M. 1947, which provided that tax deeds may not be held invalid by reason of the prior failure of the County Commissioners to provide for the classification of the lands in the county as required by former law and which also validated tax deeds issued prior to July 1, 1941, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 61, L. 1941, as amended by sec. 10, Ch. 126, L. 1977.

Part Case Notes

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under 15-18-212, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party and to the current occupant. In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Standing to Challenge Tax Deed Proceeding: A person claiming title to real estate against another person who claims an adverse interest meets the criteria in 70-28-101 and has standing to bring a quiet title action. In addition, to establish standing to challenge a tax deed proceeding, the following criteria set out in Stewart v. Bd. of County Comm'rs, 175 M 197, 573 P2d 184 (1977), must be satisfied: (1) the complaining party must clearly allege past, present, or threatened injury to a property or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party. Further, no Montana statute or case law requires a complaining party to have an interest in the subject property at the time of issuance of the tax deed in order to institute a quiet title action. Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St. Rep. 305 (1996), distinguishing Bowen v. McDonald, 276 M 193, 915 P2d 201, 53 St. Rep. 343 (1996). Sanders was followed, as to prerequisites for standing generally, in In re Paternity of Vainio, 284 M 229, 943 P2d 1282, 54 St. Rep. 858 (1997).

Sufficiency of Notice:

As required by law, Moran mailed notice of pending tax deed issuance to the Robbins at the address contained in the county records of the County Clerk, stating that the redemption date expired September 20, 1992. When that letter was returned unclaimed, Moran then chose to publish notice of the pending tax deed issuance, stating that the redemption date expired October 26, 1992. Without reaching the issue of whether Moran was required to publish notice after the mailed notice was returned, the Supreme Court held that the first notice was abandoned because of the difference in redemption dates. Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993), followed in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994), and Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St. Rep. 305 (1996), and distinguished in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Applicants are not required to search records other than those searched in the records of the County Treasurer, Assessor, Classification Department, and Clerk and Recorder because to require an applicant to search other or all legal records and to be on notice of all legal publications which may affect title to the property would be onerous. Madden v. Zimmerman, 166 M 285, 532 P2d 414 (1975).

A notice of application for tax deed dated December 30, 1935, which recited that deed would be applied for on March 3, 1936, was sufficient under statute so far as record owner was concerned. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946), overruled in King v. Rosebud County, 193 M 268, 631 P2d 717, 38 St. Rep. 1145 (1981).

Under 15-18-202 (now repealed), it is not required that the name of the owner be given, and the fact that it is not addressed to anyone by name does not render it insufficient. The notice may include tracts of land belonging to more than one owner, and a published notice of application for tax deed to mining claims signed by the County Clerk, showing date of application, and describing the claims by name and survey number was sufficient, without naming the county where located, for anyone interested in ascertaining what property was involved. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Statute Not Curative of Void Tax Deed: A curative statute cannot validate a void tax deed. Hudson v. McDonald, 229 M 426, 747 P2d 221, 44 St. Rep. 2106 (1987).

Insufficient Notice of Tax Sale — County Tax Deed Void: County's tax deed was void for insufficient notice of the tax sale and failure to give notice of application for a tax deed to the owners of the property. The county had deeded the land to Swigart, reserving a 6¼% royalty interest. Swigart, using a statutory proceeding, applied for and received a deed confirming the tax deed. The confirmation deed did not mention the county's 6¼% royalty interest. The confirmation deed was void for failure to give sufficient notice to the owners who had lost the land to the county or to their successors in interest. The two original owners had each had an undivided one-half interest in the land. Plaintiff heirs of one of the original owners sued to quiet title to the county's 6¼% royalty interest and then quitclaimed to Swigart's heirs all plaintiffs' interest in the land, reserving a 6¼% royalty interest. In return, Swigart's heirs quitclaimed the 6¼% royalty interest to plaintiffs. Plaintiffs' quitclaim to Swigart's heirs did not convey or give up any claim plaintiffs had to or any interest they had in the 6¼% royalty interest. The court analyzed 10 factors relating to laches and ruled that laches barred plaintiffs' claim and that the 6¼% royalty interest was vested in the county. Anderson v. Richland County, 219 M 60, 711 P2d 784, 42 St. Rep. 1843 (1985).

Failure to Assert Royalty Interest in Tax Deed Land — Laches: A tax deed issued to the county in 1930 without affidavits setting forth the statutorily requisite statements as to notice to the owner and as to occupancy was void. The county sold the land to A.O., reserving a 6¼% royalty interest. Plaintiff children of the original owner who had lost the land for failure to pay taxes quitclaimed all their interest in the land to A.O.'s successors, reserving their claim to and interest in the 6¼% royalty claimed by the county, and in turn A.O.'s successors conveyed to plaintiffs all of the successors' interest in that royalty. Plaintiffs' conveyance cleared the title of any insufficiency in the tax deed proceedings but did not convey or give up plaintiffs' claim to the 6¼% royalty interest. Plaintiffs' redemption argument failed because they had never attempted a redemption. After analyzing nine factors relating to laches, the court ruled that laches barred plaintiffs' claim to the county's royalty interest. Richardson v. Richland County, 218 M 48, 711 P2d 777, 42 St. Rep. 1834 (1985), followed in Filler v. Richland County, 247 M 285, 806 P2d 537, 48 St. Rep. 200 (1991). (The court also stated that King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981), in which the court concluded that laches was inapplicable because laches did not commence until oil was produced and royalties earned, was incomplete in its laches analysis because the court overlooked the inchoate ownership of the royalty interest.)

Affidavit of Service Defective: Dillon mailed a notice of application for tax deed substantially in compliance with 15-18-202 (now repealed) addressed to "R.G. Mitchell, c/o Gordon L. and Elizabeth L. Long" by certified mail, with return receipt requested. Long received the mail but returned it unopened because it was addressed to Mitchell. Dillon then executed and filed an affidavit of service of notice of application for tax deed. The affidavit stated that notice was served on R.G. Mitchell and Gordon and Elizabeth Long. Notice was not served on Gordon and Elizabeth Long, and therefore the affidavit of Dillon is defective. Unless the requirements of the law in respect to such notice are complied with, a tax deed may not legally issue. Long v. Dillon, 208 M 490, 679 P2d 772, 41 St. Rep. 486 (1984), followed in Hudson v. McDonald, 229 M 426, 747 P2d 221, 44 St. Rep. 2106 (1987). Hudson was followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Errors and Omissions in Proceeding — No Jurisdiction in Treasurer: Plaintiffs were the alleged successors to J & J Enterprises in a piece of property. Taxes were delinquent on the property. The County Treasurer issued a certificate of tax sale which was eventually assigned to defendant. Plaintiffs deposited the delinquent taxes with the Clerk of Court and were granted summary judgment in their suit for redemption because of alleged errors in defendant's tax deed application procedure. Plaintiffs contended that the documents filed and the notice provided by defendant were so fatally defective as to deny the County Treasurer jurisdiction to issue the tax deed. The notice of application for tax deed overstated the amount necessary to redeem, failed to include a year in the date as to time for redemption, and gave a vague description of the property. The affidavit of notice failed to include a date, had an overly broad property description, failed to include support of proof of service, and failed to demonstrate that the information required in a mailed notice was in fact included in the notice. Defendant also neglected to state when a certified letter containing the notice was mailed. The Supreme Court held that the errors in the notices and affidavit established a prima facie showing of lack of proper notice. Defendant was precluded from relying on the presumption of 15-18-205(2) (now repealed) to enforce the tax deed. The effect of the errors was to deny the Treasurer jurisdiction to issue the deed. Edwards v. Walters, 204 M 374, 664 P2d 932, 40 St. Rep. 914 (1983), followed in Walters v. Kruse, 219 M 386, 712 P2d 780, 43 St. Rep. 33 (1986), and Hudson v. McDonald, 229 M 426, 747 P2d 221, 44 St. Rep. 2106 (1987). See also Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993).

Filing Proof of Service Mandatory and Prohibitory: The provisions of 15-18-204 (now repealed) for filing of proof of service of application for tax deed before the deed can be issued are mandatory and prohibitory, and issued tax deed was void ab initio when no proof of service of notice was filed. McGuiness v. Maynard, 202 M 484, 658 P2d 1104, 40 St. Rep. 230 (1983).

Notice — Jurisdictional in Issuing Tax Deed: Bond owned property in Yellowstone County on which delinquent taxes were due. The County Clerk mailed notice of application for a tax deed to Bond at the address given in his records. The notice was returned unclaimed. The County Clerk then published notice. On October 11, 1979, Bond transferred his interest in the property. On October 23, 1979, the County Clerk executed an affidavit and proof of service in connection with the county's application for tax deeds. On the same day the County Treasurer issued tax deeds. The county later sold the property. Bond and the party who purchased the property from him filed a complaint attacking the issuance of the tax deeds as invalid because of insufficient notice. Bond's 1979 tax statements and the deeds of October 11, 1979, all contained his proper address. The County Clerk's affidavit stated there was no post-office address for Bond in the county records, while the records of both the County Treasurer and County Assessor had his proper address. The Supreme Court upheld the summary judgment granted to Bond because under 15-18-202 (now repealed), the giving of notice is jurisdictional, and unless proper notice was given the tax deed was invalid and therefore void. Yellowstone Inv. & Dev. Corp. v. Yellowstone County, 201 M 290, 654 P2d 508, 39 St. Rep. 2111 (1982), followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Duty to Search for Information Regarding Owners: Proper notice of delinquent tax sale and application for tax deed was given where buyer mailed registered letters to those listed on the latest county tax receipt records and, upon their return marked "Moved—Not Forwardable", published the required statutory notice. Buyer was not required to search other legal records, such as the probate records, which would have given him added information relative to the owners; rather, it was the duty of the owners to keep the county taxing authorities informed of their current address. Adkins v. Redeye, 196 M 114, 639 P2d 485, 38 St. Rep. 2170 (1981).

No Jurisdiction to Issue Tax Deed: Rosebud County purchased two tracts of land at tax sales held in the late 1930's and 1940's. King, the original owner of one of the tracts, purchased both tracts from the county in 1944. The county reserved a royalty interest of 6.25% of all oil, gas, and minerals recovered from the land. In 1975 oil was discovered on the two tracts. King's personal representative and his ex-wife got a quitclaim deed from the heirs of the original owner of the second tract and brought this action against the county seeking quiet title to the county's reserved mineral interest. The court found that when the County Treasurer issued the tax deed he did not have sufficient proof of service of notice to the owners of the two tracts as required by statute. Because the Treasurer could not have known from the records in his office whether notice had been given within the statutory period, he had no authority to issue the tax deeds, and the tax deeds he did issue were void. The successors in interest of the original owners were entitled to judgment granting them quiet title to the mineral interest claimed by the county. King v. Rosebud County, 193 M 268, 631 P2d 711, 38 St. Rep. 1145 (1981).

Redemption by Owner: When the plaintiff acquired title from the former owner of record subsequent to the initiation of a quiet title action to challenge the defendant's interest, he did not have sufficient interest to redeem the property. Alden v. Johnson, 167 M 60, 535 P2d 168 (1975).

Delay in Redemption: Redeemer's delay of 58 days after receipt of notice under 15-18-202 (now repealed), or until 2 days before expiration of period, was not unreasonable and did not establish defense of laches in redeemer's mandamus suit. State ex rel. Burkhartsmeyer Bros. v. McCormick, 162 M 234, 510 P2d 266 (1973).

Publication of Notice — Proof of Publication: Assignees unable to produce proof of publication of notice of application for tax deed, who had obtained assignment of tax certificate from county after creditors had executed on judgment against debtors from whom the county had taken the property, could not quiet title as against judgment creditors, who had become owners of certificate of sale. Musgrove v. Olds, 144 M 71, 394 P2d 751 (1964).

Alternate Methods of Obtaining Tax Deed: The holder of a tax sale certificate may obtain a deed through notice under 15-18-202 (now repealed) or through action pursuant to 15-18-301 (now repealed). U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

Special Assessment by Irrigation District: When irrigation district's purported special assessments were made en bloc, not individually, the assessments were insufficient to create a lien and district was not entitled to notice of application for tax deeds under 15-18-202 (now repealed). Vail v. Custer County, 132 M 205, 315 P2d 993 (1957).

Improper Affidavit — Deed Void:

When affidavit recited that notice of application was published for 2 consecutive weeks, but did not aver that the first publication was made 60 or more days in advance of the tax deed as required by 15-18-202 (now repealed), such affidavit was defective and the tax deed fatally defective. Bentley v. Rosebud County, 230 F2d 1 (9th Cir. 1956).

Under the provisions of a prior act (section 2212, R.C.M. 1935), if the affidavit and notice of application for tax deed in the office of the County Treasurer failed to show the required facts of notice, then it was defective and failed to confer power or authority upon the County Treasurer to issue a tax deed. Perry v. Maves, 125 M 215, 233 P2d 820 (1951), followed in Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993).

When affidavit upon which the tax deed was issued was silent as to occupancy, it was insufficient to give the County Treasurer jurisdiction to issue the tax deed. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

The authority to execute the deed must be shown in and appear on the face of the affidavit. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Section 84-4159, R.C.M. 1947 (now repealed), which limited the time in which an action could have been brought to set aside a tax deed was unconstitutional, and a tax deed, void because of an improper affidavit, gave the defendant no rights under that statute. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Under 15-18-204 (now repealed) the County Treasurer has no jurisdiction to issue a tax deed until an affidavit showing that the notice of application for the deed as required by 15-18-202 (now repealed), including a statement whether or not the land is occupied, has been given. If it is silent as to occupancy the deed is void. In determining the sufficiency of the tax title proceedings, the records alone can be considered, and defects or omissions may not be corrected or supplied by anything dehors the record. Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Finding That Land "Unoccupied": Evidence was sufficient to show that the land was unoccupied when the Sheriff went there and found that the land had not been cultivated and no buildings of any kind were upon it. Shumaker v. Tracy, 126 M 477, 253 P2d 1053 (1953), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Service of Notice — Compliance With Statute:

Where the address of the record owner was known, and the Sheriff, as shown by his affidavit of service, sent by registered mail the notice of tax application to the record owner, service of such notice complied with 15-18-202 (now repealed) and no publication in a newspaper was required. Shumaker v. Tracy, 126 M 477, 253 P2d 1053 (1953), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

The giving of notice is jurisdictional and when the requirements were not complied with but, on the contrary, were practically disregarded, the deed issued was void. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Provisions similar in character to those contained in 15-18-202 and 15-18-204 (both now repealed) are a limitation on the power of the Treasurer to issue a tax deed and render void any deed issued without statutory compliance. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Necessity of Affidavit:

Without affidavit that shows whether the land is occupied or unoccupied the Treasurer is wholly lacking in power and authority to issue the deed under 15-18-204 (now repealed). Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Under former law, the County Treasurer was without authority to issue a tax deed unless the applicant has shown by his affidavit that, where the property is unoccupied, he posted notice of application therefor in a conspicuous place upon the property as required by 15-18-202 (now repealed) and section 2122, R.C.M. 1921 (now repealed), the affidavit constituting the basis upon which the Treasurer acts. Gallash v. Willis, 90 M 148, 300 P 569 (1931).

The affidavit is the basis on which the Treasurer is to act, and the conditions from which his power to issue the deed arises must appear by the affidavit. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Necessity of Notice:

The validity of the tax deed depends upon compliance with the statute authorizing its issuance and a tax deed is void when the notice required by the statute is not given. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949), followed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Until notice is given, the true owner is never foreclosed from challenging the tax proceedings for the lack of notice. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Treasurer's Knowledge of Service Insufficient: The fact of service of notice or the Treasurer's knowledge of service otherwise than through the affidavit is wholly insufficient to invest him with jurisdiction to issue the tax deed. Mitchell v. Garfield County, 123 M 115, 208 P2d 497 (1949); Ross v. First Trust & Sav. Bank, 123 M 81, 208 P2d 490 (1949); Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Nature of Right of Redemption: The right of redemption granted by 15-18-202 (now repealed) prior to the giving of notice is a vested property right of which the legal owner cannot be legally deprived except by the giving of notice. Lowery v. Garfield County, 122 M 571, 208 P2d 478 (1949).

Loss of Right to Redeem: When right of redemption is not exercised before issuance of tax deed, the right of redemption is lost. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Preferential Right to Purchase: In addition to the right to redemption before the issuance of a tax deed the law gives the former owner a preferential right to purchase the property from the county after the issuance of a tax deed by complying with 7-8-2303. Beckman Bros. v. Weir, 120 M 305, 184 P2d 347 (1947).

Effect of Deed — Statutory Presumption: In action to quiet title based on a tax deed, where record established that a duly certified copy of tax deed was admitted in evidence, that it contained a recital that necessary notice of application for tax deed had been given, that such notice had been given, and that the deed was duly acknowledged and recorded, such a showing, aided by the statutory presumptions of regularity, entitled plaintiff to judgment, notwithstanding failure of record to show whether County Clerk made and filed affidavit of proof of giving notice of application for tax deed. Cavitt v. Seirson, 119 M 437, 175 P2d 767 (1946).

Proof of Notice:

An affidavit filed by County Clerk in County Treasurer's office showing that he deposited in United States post office an envelope containing a copy of notice of application for tax deed, by registered mail, postage prepaid, addressed to record owner of the land, was sufficient proof to justify County Treasurer in issuing tax deed. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946), overruled in King v. Rosebud County, 193 M 268, 631 P2d 717, 38 St. Rep. 1145 (1981).

Under former law, a tax deed was not even prima facie evidence that the holder of the certificate had, 30 days before applying for such deed, given the written notice in the manner required by 15-18-202 and 15-18-204 (both now repealed), prior to the 1917 amendment of the latter, of his intention to make such application. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

The reception of tax deeds in evidence, without proof of the fact that the holder of the certificates of purchase gave the 30-day notice of his intention to apply for the deeds under 15-18-202 (now repealed), prior to 1917 amendment, was error. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

When Publication of Notice Permissible:

Section 15-18-202 (now repealed) requires publication of notice of application for tax deed only in case post-office address of record owner, mortgagee, or assignee be unknown. Milne v. Leiphart, 119 M 263, 174 P2d 805 (1946).

Whether publication of notice of application for tax deed to real property is permissible under 15-18-202 (now repealed) depends not upon whether the owner of the property in question is known or unknown, or whether it is assessed to known or unknown owners, but upon whether the address of the owner is known, this being so whether the owner be known by name or unknown, the proceeding being in rem. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

Service of Notice — Occupant of Land:

A party challenging tax deed on the ground that as occupant of the property he was entitled to notice of expiration of redemption period, had the burden to establish that he was the person occupying the property and entitled to notice under 15-18-202 (now repealed) and a person who had discontinued paying rent after 3-year lease, maintained no fences for more than 10 years and at time county made application for tax deed land was uninclosed, where everyone, including plaintiff and neighbors, ran livestock, is no occupant entitled to notice. Van Voast v. Blaine County, 118 M 375, 167 P2d 563 (1946), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

Whether a person is entitled to notice of application for tax deed as a "person occupying the land" does not depend upon right of occupancy, but whether the use made of the land constituted actual occupancy. Evidence held not to establish plaintiff's occupancy so as to require that notice be given of application for deed. Van Voast v. Blaine County, 118 M 395, 167 P2d 572 (1946), distinguished in Spain-Morrow Ranch, Inc. v. West, 264 M 441, 872 P2d 330, 51 St. Rep. 363 (1994).

The fact that registered return receipts of notice of application for tax deed addressed to a corporation owner of the land held by the county under tax sale certificate were signed by the agent of the corporation, who was also an occupant, did not show service on him personally as occupant but merely showed knowledge in him aliunde the record, which, under the rule that the records alone can be considered and defects or omissions may not be corrected or supplied by anything dehors the record, was insufficient as a substitute for the statutory service upon him as an occupant required by 15-18-202 (now repealed). Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

When Period of Redemption Expires: Section 15-18-101 (now repealed) provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed". Section 15-18-309 (now repealed) mentions "the date of the expiration of the period for redemption", but since under 15-18-202 (now repealed) the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in 15-18-309 (now repealed) is the time of the application for tax deed. Hartman v. Nimmack, 116 M 392, 154 P2d 279 (1944).

Deed Void Without Affidavit:

The validity of a tax deed depends upon compliance with the statute authorizing its issuance. Hence, a deed issued without the purchaser having filed an affidavit showing that notice of application had been given as required by 15-18-204 (now repealed) was unauthorized and therefore void. B. Kesselheim, Inc. v. Cocklin, 116 M 150, 148 P2d 945 (1944).

The affidavit, required by 15-18-204 (now repealed) to be filed by a purchaser of property at a delinquent tax sale who asks for a tax deed, must be in strict compliance with the statute, and must, among other things, show whether the property was occupied or not, and if occupied, that the person upon whom the notice was served was at the time occupying it. Harrington v. McLean, 70 M 51, 223 P 912 (1924).

Tax Deed Not Derived From Fee: A tax deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation. It is not derived from the fee but is antagonistic to it, and there is no privity between the holder of the one and the holder of the other. Since the statute relating to tax sales involves confiscation of property in ex parte proceedings, due process necessitates a strict compliance with the provisions of 15-18-202 (now repealed). Hence it may not be contended that a tax deed is good as to a served owner, though not good as to an unserved occupant. Jensen Livestock Co. v. Custer County, 113 M 285, 124 P2d 1013 (1942).

Defects Cured by Legislative Validation — Flagrant Defects: Although Ch. 132, L. 1937, cures defects or mistakes in a notice of application for tax deed given pursuant to 15-18-202 (now repealed) so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of that section in that behalf. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Effect of Curative Statutes on Defective Notice:

Though Ch. 132, L. 1937 cures defects or mistakes in a notice of application for tax deed so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of 15-18-202 (now repealed) in that behalf. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Since the Legislature could not, in violation of the Due Process of Law Clause of the Constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by 15-18-202 (now repealed), contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by Ch. 94 and 105, L. 1939, was without merit. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

A defective notice cannot be overcome by a validation statute. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Purpose: The purpose of 15-18-202 (now repealed) is to warn the owner of the property and others interested, of the impending issuance of the deed and the termination of the right of redemption, coincident therewith. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Defects in Amount Cured by Validating Statute: The appellant was in error where he contended that notice of application for tax deed was fatally defective in that it recited that the amount due for taxes, penalties, etc., was computed at a date 7 days later than the date of the notice, since the defect was one of those cured by Ch. 94, L. 1939, validating tax deeds issued prior thereto. Stoican v. Washburn, 112 M 603, 120 P2d 426 (1941).

Effect of Legislative Validation on Failure to Give Notice: Since the Legislature could not, in violation of the Due Process of Law Clause of the Constitution, have done away with the necessity of giving notice of an application for tax deed prescribed by 15-18-202 (now repealed), the contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by 84-4160.1, R.C.M. 1947 (not codified), as amended by Ch. 105 and Ch. 94, L. 1939, was without merit. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

Waiver of Irregularity: When a tax deed was invalid for failure to give the owner the statutory notice of application for a tax deed, the owner could not be held to have waived his right to question the validity of the deed nor acquiesced in the taking of his property by being represented at the county's public auction sale by an agent who bid on it, because he had no rights to waive by bidding on the property. Kerr v. Small, 112 M 490, 117 P2d 271 (1941).

Constitutionality of Legislative Validation: Curative or validating statutes, such as Ch. 79, L. 1933, validating tax deeds issued with errors stating the amount due for taxes, interest, and penalty in the notice of application for tax deed, did not violate Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, 1972 Mont. Const.), relative to due process of law. Howard v. Newlon, 112 M 189, 114 P2d 272 (1941).

Extension of Time for Redemption: When notice of tax sale and of application for tax deed did not comply with statute, the time for redemption was extended indefinitely. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Posting Notice Under Former Law:

Under section 3895, Political Code of Montana 1895, as amended by Ch. 79, L. 1905, when tax sale purchaser of mining property merely posted notice of sale on land, without serving notice upon owners residing in the county, his title was invalid because of a jurisdictional defect in the procedure required to obtain a tax title. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Posting of notice for 29 days did not comply with the provisions of section 3895, Political Code of Montana 1895, as amended by Ch. 79, L. 1905, requiring posting of notice 30 days before expiration of time for redemption. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

An affidavit which did not show that notice was posted in a conspicuous place did not show compliance with statute governing notice. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Prerequisites to Reception of Tax Deed in Evidence: A prerequisite to the reception in evidence of a tax deed is that it must be accompanied by the affidavit and notice of application for a tax deed. Fariss v. Anaconda Copper Min. Co., 31 F. Supp. 571 (D.C. Mont. 1940).

Action In Rem: In effect, an application for tax deed is an action in rem, to which all persons interested in the property involved are parties defendant, thus under the law in effect at the time of the decision, and the holder of a tax sale certificate can use this informal in rem method of procedure or can take the more formal method of bringing an action in the District Court under 15-18-301 (now repealed), et seq. State ex rel. Freebourn v. Yellowstone County, 108 M 21, 88 P2d 6 (1939).

Title Conveyed by Tax Deed: The quantum of title conveyed by a tax deed issued in 1936 pursuant to 15-18-202 (now repealed) is governed by 15-18-309 (now repealed) which applies equally to tax deeds issued upon notice under 15-18-202 (now repealed) and to tax deeds issued after suit under 15-18-301 (now repealed), et seq. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

State Lands Not Subject to Tax Deed Proceedings: State lands are not the subject of tax deed proceedings, for the reason that the welfare of the entire State and its citizens is involved, and that valuable rights of the people might be lost thereby through malfeasance or nonfeasance of state officers or employees. State ex rel. Freebourn v. Yellowstone County, 108 M 21, 88 P2d 6 (1939).

Implied Power to Install Tract Index: In view of the provisions of 15-18-202 through 15-18-204 (all repealed), and the powers conferred upon the County Commissioners in Title 7, a Board of County Commissioners may authorize the installation and maintenance of a tract index in the office of the County Clerk for information on lands sold for taxes and facilitating application for tax deeds, under their implied powers. Ransom v. Pingel, 104 M 119, 65 P2d 616 (1937).

Posting of Notice Under Former Law: Under former law, the County Treasurer was without authority to issue a tax deed unless the applicant showed by his affidavit that where the property was unoccupied, he posted notice of application for a tax deed in a conspicuous place upon the property as required by 15-18-202 and 15-18-204 (both now repealed), prior to 1917 amendment, the affidavit constituting the basis upon which the Treasurer acts. Gallash v. Willis, 90 M 148, 300 P 569 (1931).

Deed as Prima Facie Evidence of Notice:

Under 15-18-205 (now repealed) a tax deed is prima facie evidence that proper notice of application for the deed was served or posted as required by law. Richardson v. Lloyd, 90 M 127, 300 P 254 (1931).

Under former law, a tax deed was not prima facie evidence that the notice requirements had been fulfilled. Horsky v. McKennan, 53 M 50, 162 P 376 (1916); Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Proceeding Under Former Law to Compel Application for Tax Deed: When the holders of practically an entire issue of irrigation district bonds brought an action to compel County Commissioners to apply for tax deeds to lands embraced in the district and bought by the county at delinquent tax sale, to enable the county to sell them and apply the proceeds to the payment of interest delinquent on the bonds, the County Commissioners could be required to direct the County Clerk to apply to the County Treasurer for tax deeds as the provision of 15-18-203 (now repealed), prior to 1933 amendment, to the effect that the Board of County Commissioners may at any time, after time for redemption of property sold on tax sale bought by the county, considered proper, order the County Clerk to apply for the tax deeds, was mandatory, and the Board was without discretion in the matter. State ex rel. Malott v. Bd. of County Comm'rs, 86 M 595, 285 P 932 (1930).

Amount Due and Required to Be Paid: The purpose of notice required by 15-18-202 (now repealed) to be given by the purchaser of real property on delinquent tax sale prior to application for tax deed is, inter alia, to advise the owner of the amount he must pay in case he desires to redeem and therefore, the amount must be stated correctly. Hence, where a county in its notice to an owner included in the total amount of taxes due those unlawfully levied for 3 years, the notice stated the amount due incorrectly and the court properly enjoined the County Treasurer from issuing a tax deed to the purchaser. Hinz v. Musselshell County, 82 M 502, 267 P 1113 (1928), explained in Superior Coal Co. v. Musselshell County, 98 M 501, 41 P2d 14 (1935). See also Shubat v. Glacier County, 93 M 160, 18 P2d 614 (1932); Morse v. Kroger, 87 M 54, 285 P 185 (1930); and Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929). But see Stoican v. Washburn, 112 M 603, 120 P2d 426 (1941).

Necessity of Notice — Application to County: The provision of 15-18-202 (now repealed) (prior to 1917 amendment) requiring the purchaser of property sold for delinquent taxes to serve upon the owner or occupant the written notice specified, 30 days before applying for the deed, was as binding upon a county as it is upon an individual. Harrington v. McLean, 70 M 51, 223 P 912 (1924), distinguished in Cavitt v. Seirson, 119 M 437, 175 P2d 767 (1946). See also Small v. Hull, 96 M 525, 32 P2d 4 (1934); Shubat v. Glacier County, 93 M 160, 18 P2d 614 (1932); and Hinz v. Musselshell County, 82 M 502, 267 P 1113 (1928).

Deed Void on Face — County as Bidder: When a tax deed showed on its face that it was void because the county was a competitive bidder at the sale, a grantee of the county could not rely upon the presumption under the prior wording of 15-18-205 (now repealed) that official duty had been regularly performed, or that the property was sold as prescribed by law. Rush v. Lewis & Clark County, 37 M 240, 95 P 836 (1908), affirming 36 M 566, 93 P 943 (1908).

Part Attorney General's Opinions

County Not Required to Take Tax Deed — Property Under Tax Sale Certificate: A county is not required under 15-18-203 (now repealed) to take a tax deed to subdivision property it holds under a tax sale certificate if the rights of the county to property struck off pursuant to 15-17-207 (now repealed) are not assigned. 41 A.G. Op. 77 (1986).

15-18-211. Tax deed — fee.

Compiler's Comments

2019 Amendment: Chapter 317 in (1) inserted reference to 15-18-219; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1) after "shall grant the" substituted "assignee" for "purchaser", after "required in a tax lien" deleted "sale", after "certificate under 15-17-212" inserted "and an assignment certificate under 15-17-323", and after "full legal description" deleted "and a statement that the property tax lien was not redeemed during the redemption period provided in 15-18-111"; in (2)(a) after "county treasurer shall" substituted "charge the assignee $25 for making the deed" for "charge the purchaser $25", after "giving the notice or assisting" deleted "another purchaser or", and after "the notice required in 15-18-212" deleted "for making the deed, which"; in (2)(b) substituted "If the tax deed is issued to" for "If the purchaser is"; in (3) at beginning after "If" deleted "the purchaser is the county and"; in (4) substituted "Deeds issued to assignees or the county" for "Deeds issued to purchasers" and substituted "the county is issued the tax deed" for "the county is the purchaser and subsequent tax deed holder"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in (1) in second sentence substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

Case Notes

Tax Deed Sales — Homestead Exemption Statutes Inapplicable: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. The defendant moved to vacate the judgment, claiming her property was exempt from execution or forced sale under the homestead laws. On appeal, the Supreme Court held that the District Court did not err by granting summary judgment to the plaintiff because the homestead exemption statutes do not apply to property tax lien or property tax deed sales. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

Full Legal Property Description Not Required in Notice That Tax Deed May Be Issued: Appellant contended that because the county did not include a full legal property description in a notice that a tax deed may be issued, the tax deed itself was void. This section requires that the tax deed contain the full legal description, but 15-18-212 requires that the notice that a tax deed may be issued contain a description of the property on which the taxes are or were delinquent, and the description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214 (now repealed). Therefore, the description of property in a notice that a tax deed may be issued need not include the full legal description of the property unless, pursuant to 15-18-212(6)(b), the full legal description was used on the tax sale certificate or in the record described in 15-17-214(2)(b) (now repealed). Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Hudson v. McDonald, 229 M 426, 747 P2d 221 (1987), and Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). (See changes to process for sale of a tax lien and issuance of a tax deed in Ch. 67, L. 2017.)

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by this section, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Attorney General's Opinions

Special Assessment Lien Created Prior to Issuance of Tax Deed Extinguished by Granting of Deed: If either a county or a municipality takes a tax deed to property pursuant to this section, the granting of the tax deed extinguishes the lien created by any special assessment against the property that becomes payable prior to the issuance of the deed but leaves unaffected any lien created by a special assessment that first becomes payable after issuance of the deed. 43 A.G. Op. 38 (1989).

15-18-212. Notice — proof of notice — penalty for failure to notify.

Compiler's Comments

2021 Amendment: Chapter 17 in (3)(a) in last sentence after "obligation" substituted "must" for "may"; inserted (8) requiring the sheriff, the county treasurer, or a designee to make reasonable attempts to personally deliver a copy of a notice to the owner-occupant of the property; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

2019 Amendment: Chapter 317 in (1)(b) near beginning inserted "other than property provided for in 15-18-219(1)(b)". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendments — Composite Section: Chapter 14 in (4)(a) after "listed on a" substituted "litigation guarantee" for "property title guarantee"; inserted (4)(a)(iii) concerning listing of identities and addresses of parties of record; in (4)(b) in middle substituted "litigation guarantee" for "title guarantee"; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 67 in (1) at beginning substituted "Between May 1 and May 30 of the year in which the redemption period expires" for "Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111"; in (1)(a) after "for each property for which" substituted "the county attached a tax lien and has not assigned the tax lien" for "there has been issued to the county a tax lien sale certificate or for which the county is otherwise listed as the purchaser or assignee", substituted "treasurer" for "clerk and recorder", and after "subsection (4)" deleted "and the current occupant of the property, if any"; in (1)(b) after "for each property for which" substituted "the county attached a tax lien and assigned the tax lien pursuant to 15-17-323" for "there has been issued a tax lien sale certificate to a purchaser other than the county or for which an assignment has been made", substituted "the assignee" for "the purchaser or assignee, as appropriate", after "subsection (4)" deleted "if any", and after "issued to the" deleted "purchaser or"; in (2)(a) near beginning after "if the county" substituted "is the possessor of the tax lien" for "is the purchaser", near middle after "direct the county treasurer to issue a tax deed, the county" substituted "treasurer" for "clerk and recorder", and after "subsection (4)" deleted "and the current occupant, if any"; in (3)(a) at beginning deleted "If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk and recorder as required in subsection (8)", after "shall notify the" deleted "purchaser or", after "subsection (1)(b)" inserted "between January 1 and January 31 of the year in which the redemption period expires", after "return receipt requested, to the" deleted "purchaser or", and at end substituted "the assignment certificate provided for in 15-17-323" for "the tax lien sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323"; in (3)(b) at beginning after "If" deleted "within 120 days after the county treasurer mails the notice of obligation the purchaser or", near end of first sentence after "property tax lien evidenced by the" substituted "tax lien certificate and the assignment certificate" for "tax lien sale certificate or the assignment", and near end after "the county treasurer shall file" deleted "or record"; in (4)(a) after "subsections (1) and (2) must be" inserted "in the form required by 15-18-215 and be"; in (5) substituted current text for "In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the party for whom the address is unknown;

(b) a statement that the address of the party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the party's rights in the property may be in jeopardy"; deleted former (6) that read: "(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax lien sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax lien sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed"; in (6) after "amount of interest and costs" deleted "provided for in subsection (6)(e)"; in (7) after "Proof of notice" substituted "must be given as provided in 15-18-216 and" for "in whatever manner given", in second sentence substituted "An assignee must file proof of notice" for "If the purchaser or assignee is other than the county, the proof of notice must be filed", and substituted "If the county is the possessor of the tax lien" for "If the purchaser or assignee is the county"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 411 in (1)(a) and (1)(b) near middle after "shall notify" substituted "the parties as required in subsection (4)" for "all persons considered interested parties in the property"; in (2)(a) near end of first sentence after "provide notification to" substituted "the parties as required in subsection (4)" for "all interested parties"; in (4)(a) near middle of introductory clause after "return receipt requested, to" deleted "each interested party and" and at end inserted reference to each party listed on a property title guarantee; inserted (4)(a)(i) and (4)(a)(ii) concerning guarantee; in (4)(b) near beginning after "for each" deleted "interested" and near middle inserted "or in the title guarantee"; in (5)(a), (5)(b), and (5)(d) deleted "interested" before reference to party; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 7 throughout section after "county clerk" inserted "and recorder"; inserted (7) regarding accrual and calculation of interest and costs paid for redemption; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 110 throughout section substituted references to tax lien sale for references to tax sale; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 7, L. 2007, provided: "[This act] applies to a redemption for which penalties, interest, and costs are paid for after October 1, 2007."

1999 Amendment: Chapter 446 in (3)(b) inserted second sentence requiring filing or recording of a notice of cancellation of a property tax lien. Amendment effective April 22, 1999.

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

1993 Amendment: Chapter 97 in second sentence of (3)(a) and first sentence of (4), after "mail", inserted "return receipt requested"; and made minor changes in style.

1991 Amendment: In (3)(a), at end of first sentence, substituted "notify the purchaser or assignee of his obligation to give notice under subsection (1)(b)" for "proceed to give notice in the manner provided in subsection (1)(a)" and inserted second sentence regarding notice by certified mail; substituted (3)(b) regarding cancellation of lien upon failure of purchaser or assignee to give notice for former (3)(b) and (3)(c) that read: "(b) Notice given under this subsection (3) must be given not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of $500 plus all actual costs of notification incurred by the county proceeding under this subsection (3)"; in (4) and (6) changed subsection references; and in third sentence of (7), after "county", deleted "or if the county treasurer is required to give notice pursuant to subsection (3)".

Applicability: Section 2, Ch. 181, L. 1991, provided: "[Section 1] [15-18-212] applies to all real property tax liens that have not been redeemed on October 1, 1991, or that attach after October 1, 1991."

1989 Amendments: Chapter 83 in (7), near end of first sentence, substituted "within 30 days" for "not less than 30 days". (Amendment by Ch. 704, L. 1989, rendered this amendment ineffectual.)

Chapter 704 in (2)(a), near end, in (3)(b), and near middle of (5) increased maximum period from 90 days to 120 days; in middle of (5) substituted "commence publishing" for "publish"; in

(7), before "with the county clerk", deleted "by the county clerk, county treasurer, purchaser, or assignee, as appropriate", after "with the county clerk" deleted "not less than 30 days following the mailing or publication of the notice", and inserted second and third sentences relating to when purchaser is other than the county and when purchaser is the county; and made minor changes in phraseology. Amendment effective May 22, 1989.

Case Notes

Tax Deed Sent to Wrong Address Constituted Failure to Provide Notice — Summary Judgment Reversed. Wells Fargo Bank, N.A. v. Zinvest, LLC, 2022 MT 224, 410 Mont. 436, 519 P.3d 1251.

Tax Deed Voided by Failure to Notify: Under this section, a purchaser must notify all parties listed on the property title guarantee, excluding utilities, of the possibility that a tax deed will be issued unless the tax lien is redeemed. Failure to obtain the mandatory property title guarantee and provide adequate notice renders a tax deed void. Hansen Trust v. Ward, 2015 MT 131, 379 Mont. 161, 349 P.3d 500.

Notice of Tax Deed Required for Both Interested Party and Current Occupant: Plaintiff was assigned tax sale certificates after taxes on property owned by one of the defendants were not paid. Plaintiff then sought to quiet title, naming the owner and other parties as defendants. Later plaintiff learned that another person also occupied the property, and that person was added to the complaint. The District Court granted plaintiff summary judgment after concluding that notice was not required to be given to the nonowner occupant prior to issuance of the tax deed. Defendants appealed and the Supreme Court reversed. Notice of issuance of a tax deed is required for both an interested party (see 2009 amendment) and a current occupant under 15-18-212, and failure to provide notice to both parties rendered the county tax deed void. Certain v. Tonn, 2009 MT 330, 353 M 21, 220 P3d 384 (2009). See also Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004).

No Requirement of Notice of Tax Deed to Person Not Owner of Property, Occupant, or Party of Interest: Plaintiff obtained an assignment of rights, title, and interest in Armstrong's property upon payment of delinquent taxes and associated fees. After the assignment was recorded, plaintiff sought a tax deed to the property and notified Armstrong, who was the owner of record. However, Armstrong had agreed to allow Bean to operate a salvage yard on the property. Bean claimed to have made monthly payments to Armstrong, but Bean never paid taxes on the property or recorded any property interest with the county. Bean claimed that as occupant of the property, he was entitled to notice of the tax deed. The District Court disagreed, and on appeal the Supreme Court affirmed. Bean was never an owner of record and was not entitled to notice. Further, absent some interest in the property or substantial evidence, Bean could not be considered an occupant or interested party under the statutes governing tax sales of property. (See 2009 amendments.) Legal Resources Agency, LLC v. Armstrong, 2008 MT 262, 345 M 115, 191 P3d 368 (2008).

Sufficient Notice Required for Issuance of Tax Deed: Procedures for obtaining a tax deed require strict statutory compliance, including newspaper publication and personal service or notice mailed to the owner of the real property. Constructive notice by publication that property may be lost by tax deed is legally insufficient unless accompanied by personal service or notice mailed to the owner's address contained in the county records. If the legal notice requirements are not met, the County Treasurer may not legally issue a tax deed, and a tax deed issued without the required proof of notice is void. In determining the sufficiency of tax deed proceedings, the record alone is considered, and the County Treasurer must ascertain from filed documents whether the required notice has been given. When the statutory requirements are not strictly followed, due process rights are abridged. Showell v. Brosten, 2008 MT 261, 345 M 108, 189 P3d 1210 (2008).

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under this section, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party and to the current occupant (see 2009 amendment). In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Proper Deposit of Leasehold Interest Entitling Leaseholder to Notice and Right to Redeem Property Tax Lien: This section requires that the purchaser or assignee of a tax sale certificate notify all persons interested in the property (see 2009 amendment), including a person with properly recorded interest in the property, that a tax deed will be issued to the purchaser unless the tax lien is redeemed prior to the expiration date of the redemption period. Under 70-21-209, an acknowledged or certified instrument is considered recorded when it is deposited with the appropriate County Clerk and Recorder. In this case, an instrument reflecting plaintiffs' interest as assignee of a vendor's interest in the contract for sale of a cabin and leasehold, which constituted real property, was properly recorded at the Lewis and Clark County Clerk and Recorder's office, so plaintiffs were entitled as an interested party to notice by certified mail pursuant to this section; however, no notice was given. Plaintiffs' right to redeem the property tax lien continued indefinitely until proper notice was given; thus, a tax deed subsequently issued by the county was void for failure to comply with the notice provisions of this section. Ditto v. Kipp, 2000 MT 162, 300 M 278, 3 P3d 647, 57 St. Rep. 679 (2000). See also Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163 (1999).

Failure to Provide Co-Owner Notice of Issuance of Tax Deed — No County Jurisdiction to Issue Tax Deed: Kneedler was owner of a one-half undivided interest in a parcel of property. The co-owners failed to pay their portion of the property taxes, so the county sent them a notice of tax delinquency, but the notice was not sent to Kneedler. A tax sale was held, and the county purchased the tax lien against the co-owners, but the county's tax sale certificate was never assigned. Taxes on the property remained delinquent, so the County Commission directed that a tax deed be issued to the county for the co-owners' one-half interest in the property. Notice of the impending tax deed was sent to the co-owners, but not to Kneedler. Following sale of the county's interest to another party, Kneedler filed an action challenging the validity of the county's tax deed for failure to provide Kneedler with proper notice pursuant to this section. The District Court found that Kneedler lacked standing because she did not qualify as an interested party or as a current occupant of the property and granted summary judgment to the county, dismissing Kneedler's complaint with prejudice. Applying Dudley v. Higgins, 141 M 140, 375 P2d 689 (1962), the Supreme Court held that Kneedler was an interested party with the right to redeem property subject to a tax lien, even though the individual property interests were assessed separately for tax purposes. Further, nothing in the statutes permits or authorizes a county to tax an undivided interest in a jointly owned piece of property separately from the interests of the other cotenants because under 15-8-307, the general rule is that land be assessed in parcels. This form of assessment infringes upon the rights normally afforded to tenants of jointly owned property, including the cotenants' right to pay taxes before they become delinquent. Thus, the District Court erred in granting summary judgment to the county because as co-owner, Kneedler was entitled to notice of the issuance of the tax deed and Kneedler's right of redemption continued indefinitely until proper notice was given. Failure to provide notice deprived the county of jurisdiction to issue a tax deed and rendered the tax deed void. (See 2009 amendment.) Kneedler v. League Wide, Inc., 1999 MT 80, 294 M 101, 979 P2d 163, 56 St. Rep. 334 (1999). See also Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28 (1998).

Full Legal Property Description Not Required in Notice That Tax Deed May Be Issued: Appellant contended that because the county did not include a full legal property description in a notice that a tax deed may be issued, the tax deed itself was void. Section 15-18-211 requires that the tax deed contain the full legal description, but this section requires that the notice that a tax deed may be issued contain a description of the property on which the taxes are or were delinquent, and the description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214 (now repealed). Therefore, the description of property in a notice that a tax deed may be issued need not include the full legal description of the property unless, pursuant to subsection (6)(b) of this section full legal description was used on the tax sale certificate or in the record described in 15-17-214(2)(b) (now repealed). Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Hudson v. McDonald, 229 M 426, 747 P2d 221 (1987), and Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998). (See changes to process for sale of a tax lien and issuance of a tax deed in Ch. 67, L. 2017.)

Mailing of Multiple Tax Notices in Same Envelope Allowed: The County Clerk and Recorder mailed seven tax notices that a tax deed may be issued in the same envelope. Appellant contended that the language in subsection (4) of this section, referring to mailing of a "notice", required that each tax notice be mailed separately. However, under 1-2-105, the singular includes the plural in statutory construction. Therefore, multiple notices of the issuance of a tax deed may be placed in the same envelope for mailing. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998).

No Requirement That Tax Notice Include Identical Information as Tax Deed: There is no statutory requirement that the taxes, penalties, interest, and costs set forth in a notice that a tax deed may be issued must be identical to those set forth in the tax deed itself. Additional interest and costs will accrue between the date of issuance of the notice and the date of issuance of the tax deed, so it is inevitable that the information will differ between the notice and the deed. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties (see 2009 amendment) at their addresses of record in the office of the County Clerk in accordance with this section, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Defects in Tax Notice Not Cured by Publishing Notice: This section sets forth the strict statutory requirements for a notice of an intended issuance of a tax deed to real property. One notice requirement is that, in disclosing the amount of taxes due, a separate listing must be made of the delinquent taxes, penalties, costs, and interest that must be paid for the lien to be liquidated. If the notice requirements are not complied with, a County Treasurer may not legally issue a tax deed. In this case, discrepancies and defects in the notice were fatal to the legality of the tax deed proceeding and could not be cured by publishing notice required by 15-18-413. Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996), discussed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Failure to File Proof of Notice — Tax Deed Not to Issue: Although filing of an affidavit is no longer required to satisfy the proof of notice requirement, the reasoning behind the requirement that proof of notice be filed remains clear. The giving of notice is jurisdictional, and unless the statutory requirement that proof of notice is filed with the County Clerk is met, a tax deed may not issue. Proof of notice must be filed within 30 days after the mailing or publication of the notice. Moran v. Robbin, 261 M 478, 863 P2d 395, 50 St. Rep. 1417 (1993), followed in Sanders v. Yellowstone County, 276 M 116, 915 P2d 196, 53 St. Rep. 305 (1996).

15-18-213. Form of tax deed — prima facie evidence.

Compiler's Comments

2019 Amendment: Chapter 317 in (1) in two places substituted "assignee or assignee's agent, high bidder or high bidder's agent" for "assignee, the assignee's agent" and after "to required parties in accordance with 15-18-212" substituted "or 15-18-219 that the issuance or auction of a tax deed" for "that the issuance of a tax deed"; in (2)(e) after "tax deed issuance" inserted "or auction"; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1) after "must be made" deleted "in substance", in third parenthetical substituted "name of assignee, the assignee's agent, or county that is the possessor of the tax lien" for "name of purchaser, the purchaser's agent, or assignee", in third "Whereas" clause after "the payment of the taxes" inserted "was", after "attached" inserted "by .... (name of county)", substituted "assigned" for "sold", substituted "if applicable, name of assignee" for "name of purchaser or the purchaser's agent or assignee", in fourth "Whereas" clause after "a tax lien" deleted "sale", after "issued and filed" deleted "or the sale otherwise recorded", and near end substituted "name of assignee or the assignee's agent or county that is the possessor of the tax lien" for "name of purchaser or the purchaser's agent or assignee"; in (2) after "A tax deed executed in" deleted "substantially"; in (2)(d) after "notice of" inserted "the pending attachment of a", after "tax lien" deleted "sale", and substituted "the tax lien was attached" for "a property tax lien was sold"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 411 in (1) in fifth "Whereas" clause substituted "required parties" for "interested parties". Amendment effective October 1, 2009.

2007 Amendment: Chapter 110 in (1) in form and in (2)(d) substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

1993 Amendment: Chapter 97 in (1), in fifth "Whereas" clause before "notice", deleted "not less than 60 days or more than 90 days prior to this date" and after "parties" inserted "in accordance with 15-18-212" and inserted sixth "Whereas" clause concerning nonredemption; and made minor changes in style.

Case Notes

No Requirement That Tax Notice Include Identical Information as Tax Deed: There is no statutory requirement that the taxes, penalties, interest, and costs set forth in a notice that a tax deed may be issued must be identical to those set forth in the tax deed itself. Additional interest and costs will accrue between the date of issuance of the notice and the date of issuance of the tax deed, so it is inevitable that the information will differ between the notice and the deed. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998), distinguishing Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

15-18-214. Effect of deed.

Compiler's Comments

2019 Amendment: Chapter 317 in (1) near end of introductory clause substituted "date of the tax deed" for "date of the expiration of the redemption period, free and clear of all liens and encumbrances"; and in (2) at end substituted "the date on which a tax deed was issued" for "the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1) at beginning inserted "Subject to 15-18-411 and 15-18-413"; in (1)(a)(i) substituted "a subsequent property tax lien is attached" for "a property tax lien attaches subsequent to the tax lien sale"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in (1)(a)(i) substituted "tax lien sale" for "tax sale"; and made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: In (1)(c), after "when", deleted "an interest in". Amendment effective May 22, 1989.

Case Notes

Tax Deed Sales — Homestead Exemption Statutes Inapplicable: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. The defendant moved to vacate the judgment, claiming her property was exempt from execution or forced sale under the homestead laws. On appeal, the Supreme Court held that the District Court did not err by granting summary judgment to the plaintiff because the homestead exemption statutes do not apply to property tax lien or property tax deed sales. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

Attorney General's Opinions

Application of Sale Proceeds to Delinquent Special Improvement District Assessments: A County Treasurer may not require delinquent special improvement district assessments to be paid in addition to the sale price of tax deed land because when a tax deed is issued, special assessment liens that were due and payable at that time are extinguished. However, the County Treasurer must apply the sale proceeds of the land to delinquent assessments, as provided in 7-8-2306. 45 A.G. Op. 24 (1994).

City Assessments to Be Included and Prorated as Part of Allocation Received From Tax Sale: There is no correlation between the method of distribution of tax sale proceeds outlined in 7-8-2306 and the effect of a tax deed in this section. When a city has not requested and received assignment of a county's right to tax sale property, the city assessments must be included and prorated as part of the allocation of money received from a sale of county tax deed land under 7-8-2306. 45 A.G. Op. 2 (1993).

Special Assessment Lien Created Prior to Issuance of Tax Deed Extinguished by Granting of Deed: If either a county or a municipality takes a tax deed to property pursuant to 15-18-211, the granting of the tax deed extinguishes the lien created by any special assessment against the property that becomes payable prior to the issuance of the deed but leaves unaffected any lien created by a special assessment that first becomes payable after issuance of the deed. 43 A.G. Op. 38 (1989).

15-18-215. Form of notice that tax deed may issue.

Compiler's Comments

2021 Amendment: Chapter 17 in (1) in form text in paragraph 6 after "paragraph 5" inserted "plus additional interest and costs", in paragraph 7 at end after "60 days" inserted "of the tax deed application date", and in paragraph 8 at end substituted "the legal titleholder of record" for "interested parties" and deleted former last sentence that read: "A notarized claim for surplus funds must be filed with the county treasurer within 30 days of the auction"; in (2) in form text in paragraph 6 after "paragraph 5" inserted "plus additional interest and costs" and at end of form text inserted "IF YOU DO NOT RESPOND TO THIS NOTICE, YOU WILL LOSE YOUR PROPERTY"; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

2019 Amendment: Chapter 317 in (1) in two places substituted "15-18-219" for "15-18-212", at end of introductory clause inserted "for property provided for in 15-18-219(1)(b)", in form text after "period expires, a tax deed" substituted "auction will be held within 60 days" for "may be issued to the assignee or county that is the possessor of the tax lien on the day following the date that the redemption period expires", after "8." inserted clause regarding surplus funds, and near end substituted "pending tax deed auction" for "pending tax deed issuance"; inserted (2) regarding notice given pursuant to 15-18-212; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in second sentence substituted "must" for "may", inserted "IF YOU DO NOT RESPOND TO THIS NOTICE, YOU WILL LOSE YOUR PROPERTY", in third notice paragraph after "property tax lien was attached" deleted "as the result of a tax lien sale held", deleted former fourth notice paragraph that read: "The property tax lien was purchased at a tax lien sale on .... by .... (Name) .... (Address)", in fourth notice paragraph after "was subsequently assigned to ...." inserted "(if applicable)"; in seventh notice paragraph near beginning after "date the redemption period expires" deleted "or on or prior to the date on which the county treasurer will otherwise issue a tax deed", after "a tax deed may be issued to the" substituted "assignee or county that is the possessor of the tax lien" for "purchaser", after "redemption period expires" deleted "or on the date the county treasurer will otherwise issue a tax deed", at end inserted "IF YOU DO NOT RESPOND TO THIS NOTICE, YOU WILL LOSE YOUR PROPERTY"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 in two places substituted "tax lien sale" for "tax sale". Amendment effective October 1, 2007.

15-18-216. Form of proof of notice.

Compiler's Comments

2021 Amendment: Chapter 17 in form text after paragraph 3 inserted date and signature lines. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

2019 Amendment: Chapter 317 at beginning substituted "Sections 15-18-212 and 15-18-219 require" for "Section 15-18-212 requires" and near middle after "as required by 15-18-212" inserted "or 15-18-219". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in second sentence substituted "must" for "may", in first notice paragraph substituted "Notice That a Tax Deed May Be Issued" for "Notice of Issuance of Tax Deed"; in third notice paragraph after "Notice was given" deleted "to parties with unknown addresses", substituted "publishing in the newspaper as required by 7-1-2121" for "publishing in the official newspaper of the county", inserted "or posting in the three public places designated by the governing body, which are ...., ..., and ....", and at end revised form (see 2017 Session Law for text); and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 411 in proof of notice in paragraph 1 near middle substituted "parties, as required by 15-18-212" for "interested parties, as that term is defined in section 15-18-111(3)" and in paragraph 3 near beginning before "parties" deleted "interested". Amendment effective October 1, 2009.

Case Notes

Failure to Notify Current Occupant That Tax Deed May Issue — Quiet Title Deed Properly Voided: Under 15-18-212, notice that a tax deed will be issued unless a property tax lien is redeemed must be made to each interested party (see 2009 amendment) and to the current occupant. In this case, defendant knew that plaintiff was the current occupant and knew where plaintiff was located but simply did not provide the requisite notice. Additionally, because plaintiff did not receive adequate notice, the county was without jurisdiction to issue defendant a quiet title decree. Every essential and material step of the tax deed statutes must be strictly followed. Thus, the District Court correctly voided defendant's quiet title decree and granted summary judgment to plaintiff because no genuine issue of material fact existed. Gentry Mont. Enterprises, Inc. v. McDonald, 2004 MT 322, 324 M 67, 101 P3d 767 (2004), following Moran v. Robbin, 261 M 478, 863 P2d 395 (1993).

Use of Form in Issuing Proof of Notice Not Mandatory: This section provides a form to follow in issuing the proof of notice for issuance of a tax deed, but use of that form is not mandatory. Thus, a proof of notice that was acknowledged by the County Clerk and Recorder, rather than subscribed and sworn to, was held to comply with statutory requirements. Boyes v. Eddie, 1998 MT 311, 292 M 152, 970 P2d 91, 55 St. Rep. 1282 (1998).

15-18-217. Form of cancellation.

Compiler's Comments

2021 Amendment: Chapter 17 in form text in first paragraph substituted dotted line for the full legal description of property for former text that read: "See legal description attached as exhibit "A", Tax Receipt No.", in second paragraph after "15-18-212(3)(a)" inserted "and 15-18-219(6)(a)", and in third paragraph at end substituted "15-18-219(6)" for "15-18-219(5)"; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

2019 Amendment: Chapter 317 in two places inserted "and 15-18-219" and after "in accordance with 15-18-212(7)" inserted "or 15-18-219(5)". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 near beginning after "The notice of cancellation" inserted "of an assignment", after "required by 15-18-212" substituted "must" for "of a tax lien as evidenced by a tax lien sale certificate or assignment may", in two places substituted "(name of the assignee or assignee's agent)" for "(name of the purchaser or the purchaser's agent or assignee)", after "(address)" substituted "purchased a tax lien assignment (assignment certificate no.) for "purchased a tax lien (tax lien sale certificate no. or tax lien assignment no.)"; in second notice paragraph inserted "of the notification obligation and", after "will be canceled if the" substituted "assignee" for "purchaser", and after "comply with provisions of 15-18-212" deleted "within 120 days from .... (date of mailing of certified letter)"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendments — Composite Section: Chapter 7 in third paragraph of form at end substituted "15-18-212(8)" for "15-18-212(7)". Amendment effective October 1, 2007.

Chapter 110 in two places substituted "tax lien sale" for "tax sale". Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 7, L. 2007, provided: "[This act] applies to a redemption for which penalties, interest, and costs are paid for after October 1, 2007."

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

15-18-218. Charge not allowed for filings or recordings made by county treasurer.

Compiler's Comments

2017 Amendment: Chapter 67 substituted "tax lien certificates, assignment certificates" for "tax lien assignments, tax lien sale certificates"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2007 Amendment: Chapter 110 near middle substituted "tax lien sale" for "tax sale". Amendment effective October 1, 2007.

Effective Date — Applicability: Section 6, Ch. 446, L. 1999, provided: "[This act] is effective on passage and approval [approved April 22, 1999] and applies to filings, recordings, or redemptions occurring after [the effective date of this act]."

15-18-219. Application for tax deed for residential property — fee — notice.

Compiler's Comments

2021 Amendment: Chapter 17 in (1)(b) in introductory clause after "dwelling" inserted "that is currently occupied by the legal titleholder of record"; deleted former (2)(d) that read: "(d) the cost of filing the notice of a tax deed application"; in (3)(a) after "application" deleted "which constitutes notice of the pendency of the tax deed application with respect to the property and remains effective for 1 year from the date of the filing"; in (3)(b) in middle of first sentence substituted "tax deed auction" for "tax deed sale" and in last sentence after "sale" inserted "at auction"; in (3)(c) substituted "shall file a redemption certificate, which releases" for "shall file a release of"; in (4)(a) at beginning substituted "Between May 1 and May 30 of the year in which the redemption period expires, an assignee applying for a tax deed" for "Prior to applying for a tax deed, the assignee"; in (4)(b) after "must" deleted "be in the form required by 15-18-215(1) and after "requested" inserted text requiring that notice be in the form required by 15-18-215 and as provided in 7-1-2121; inserted (5) regarding total amount of interest and costs that must be paid for redemption; inserted (6)(a) providing requirements for the county treasurer to provide a notice of obligation to an assignee; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

Effective Date: Section 19, Ch. 317, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

15-18-220. Sale at public auction — notice of auction — cancellation of assignment for unsuccessful auction.

Compiler's Comments

2021 Amendment: Chapter 17 inserted (2)(a)(iii) concerning tax deed fees and recording fees; in (3)(a) at end of first sentence after "bid" inserted "plus auction costs incurred by the county treasurer"; in (3)(b) in first sentence in two places substituted "assignee" for "tax deed applicant" and after "treasurer" inserted "auction costs and", inserted last sentence providing for a notice of cancellation if an assignee does not make full payment, and deleted former last sentence that read: "The amounts paid with the tax deed application must be subtracted from the deposit required in subsection (3)(a)"; in (3)(c) substituted current text concerning payment by a high bidder who is not the assignee for former text that read: "If full payment of the purchase price and recording fees is not made within 24 hours of the sale, excluding weekends and legal holidays, the county treasurer shall cancel all bids, notice the auction as provided in subsection (5), and pay costs of the resale from the deposit. Any funds remaining from the deposit must be applied to the opening bid"; inserted (3)(d) concerning if there are no bidders at the auction; deleted former (5) that read: "(5) If the sale is cancelled for any reason or if the buyer fails to make full payment within the time required, the county treasurer shall, within 30 days after the buyer's nonpayment or cancellation of the sale, notice the sale as provided in subsection (1). The sale must be held within 30 days of the date of the notice. The opening bid provided for in subsection (2) must be increased by the cost of giving notice and additional county treasurer's fees"; and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

Effective Date: Section 19, Ch. 317, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

15-18-221. Distribution of tax deed auction proceeds.

Compiler's Comments

2021 Amendment: Chapter 17 in (2) in introductory clause substituted references to assignee for reference to applicant for the tax deed; in (2)(a) in middle substituted "tax lien" for "tax deed"; in (2)(b) after "15-18-219(2)" deleted "plus interest at the rate of 1.5% per month for the period from the month after the date of the application for the tax deed through the month of the sale"; in (3) substituted current text regarding distribution of surplus funds for former text that read: "If the county treasurer does not receive claims for surplus funds within the 30-day claim period, as required under subsection (4), there is a conclusive presumption that the legal titleholder of record described is entitled to the surplus funds. The county treasurer shall process the surplus funds regardless of whether the legal titleholder is a resident of the state or not. The surplus funds are considered to be unclaimed property if not claimed within 5 years as provided in 70-9-803(1)(q)"; deleted former (3), (4), and (5) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

Effective Date: Section 19, Ch. 317, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

15-18-225. Form of cancellation — unsuccessful auction.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 139, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 13, Ch. 17, L. 2021, provided: "[This act] is effective on passage and approval." Approved February 23, 2021.

Applicability: Section 14, Ch. 17, L. 2021, provided: "[This act] applies to tax liens for which the redemption period expires on or after [the effective date of this act]." Effective February 23, 2021.

Saving Clause: Section 12, Ch. 17, L. 2021, was a saving clause.

Part 4

Quiet Title

Part Compiler's Comments

Sections Not Codified: Section 84-4143, R.C.M. 1947, which provided that Ch. 65, L. 1933 is not to be construed as an amendment or modification of 84-4161, R.C.M. 1947 (15-18-403, now repealed), was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 65, L. 1933.

Section 84-41-102, R.C.M. 1947, which provided that Ch. 33, Ex. L. 1933 did not amend or modify sections 84-4140 through 84-4143, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 33, Ex. L. 1933.

Part Case Notes

Strict Compliance With Tax Sale Statutes Required — Noncompliance Held Violation of Due Process — Insufficient Reasons to Justify Deviation From Statutes — County Deprived of Jurisdiction to Issue Tax Deed: After Isern's property was sold for taxes by Missoula County, Isern attempted to redeem the property, but the county refused to accept payment. Isern challenged the sale of his property, but the District Court upheld the sale, explaining that irregularities in the county's sale process were "minor clerical errors" or "nonsubstantive deviations" from statutory requirements. The Supreme Court held that failure to prepare a list of delinquent properties in accordance with 15-16-301, failure to publish or post a notice of the sale in compliance with 15-17-122, failure to prepare a tax sale certificate in accordance with 15-17-212 (renumbered 15-17-125) or to follow the alternative procedure under 15-17-214 (now repealed), failure to give notice of the pending issue of a tax deed to interested parties at their addresses of record in the office of the County Clerk in accordance with 15-18-212, and failure to give the full legal description of the property on the tax deed, as required by 15-18-211, violated Isern's right to due process and voided the tax deed. In making its ruling, the Supreme Court held that the facts that the offices of County Treasurer and Clerk and Recorder had been combined in Missoula County and that there had been electronic advances in recordkeeping were insufficient reasons to justify deviation from the statutory requirements for property tax sales and issuance of tax sale deeds. The Supreme Court also noted that Isern's new address in Spokane, Washington, had been received by the County Assessor's office several months before the tax sale and that Isern's new address could therefore easily have been obtained by the County Clerk and Recorder by simply walking across the hall to the County Assessor's office. Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Federal Statute of Limitations Barring Administrative Suit for Tax Refund: The Supreme Court cited applicable federal law in holding that the 2-year federal statute of limitations barred the bringing of an administrative suit for a refund of taxes 10 years after notice of a tax deficiency was sent. Absent any facts or legitimate contentions to the contrary, the District Court's order granting partial summary judgment quieting title was affirmed. Getter v. Beckman, 236 M 377, 769 P2d 714, 46 St. Rep. 440 (1989).

Jury Trial Not Mandatory in Quiet Title Action: Because quiet title actions are actions in equity, a District Court may impanel an advisory jury but is not required to do so. Getter v. Beckman, 236 M 377, 769 P2d 714, 46 St. Rep. 440 (1989).

Notice Void for Vagueness: McDonald purchased a ranch worth $1 million for $4,085.79. A tax deed was issued and notice was published. The notice, however, contained an abbreviated description prepared by and for the use of the County Tax Assessor. The description did not indicate in which portion of a large tract of land the ranch was located. The Supreme Court held that the description was too vague to adequately identify the land in question. Since the description is void for vagueness, McDonald failed to meet the requirements of 15-18-403 (now repealed). The District Court was directed to cancel the tax deed. Yetter v. Gallatin County, 198 M 243, 645 P2d 941, 39 St. Rep. 905 (1982).

Prior Recorded Reserved Mineral Rights Not Subject to Lien: Where a deed reserving coal and mineral rights was recorded after taxes on the land attached by statute but before the actual assessment of taxes and before the tax sale, the tax lien did not attach until after the recordation of the deed and thus the tax deed did not carry with it and convey the reserved coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Prior Reserved Mineral Estate Not Affected by Deed: The paramount title of a tax deed does not extinguish a vested mineral estate in the land reserved prior to any delinquent tax assessments upon the surface estate. A grantor who has reserved a mineral estate has freed himself from any subsequent tax assessment and cannot be stripped of the reserved title due to the surface owner's failure to pay taxes. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Application of Rules of Civil Procedure — Notice of Entry of Decree: Since 15-18-401 (now repealed) takes precedence over former Rule 77(d) (now superseded) pursuant to former Rule 81, M.R.Civ.P. (now superseded), defendants were not entitled to notice of entry of quiet title decree in favor of petitioner where defendant, after hearing on order to show cause, failed to post the required bond. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Notice of Order Requiring Deposit: When defendants in action to quiet title had notice through their attorney that if they did not deposit certain sum with court, decree would be entered against them, and they did not pay, court's order quieting title in plaintiffs was upheld. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Presumption of Posting of Notice:

Mere fact that affidavit of posting of notice was not in court file did not overcome presumption that notice was posted since 26-1-602 states that an official shall be presumed to have regularly performed his duty. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

In action to quiet title defendant's attorney's failure to find affidavit of posting in file was not enough to override rebuttable presumption in favor of posting by Clerk in routine and regular manner. Rosen v. Midkiff, 164 M 116, 519 P2d 416 (1974).

Encumbrances:

A tax deed conveys absolute title free from all encumbrances and free of any and all claims of defendants to quiet title actions. U.S. v. Christensen, 218 F. Supp. 722 (D.C. Mont. 1963).

A tax deed extinguishes all encumbrances including oil leases and assignments of royalty interests. Rist v. Toole County, 117 M 426, 159 P2d 340 (1945).

Under former law making bonds issued by an irrigation district a lien upon all lands in the district, created a lien which constituted an encumbrance against them within the meaning of the term "encumbrance" as used in 15-18-403 (now repealed). State ex rel. Malott v. Bd. of County Comm'rs, 89 M 37, 296 P 1 (1930). See also Stanley v. Jeffries, 86 M 114, 284 P 134 (1929); Richardson v. Lloyd, 90 M 127, 300 P 254 (1931).

Under the provisions of 15-18-403 (now repealed) prior to its implied amendment by Ch. 100, L. 1929, it was imperative that the tax deed in question extinguished the lien of special improvement assessments, as it did all contract liens, and even prior tax liens. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

A tax deed extinguishes all former liens not expressly exempted from its operation. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Motion to Vacate Deposit Order Barred by Laches: When order was entered in conformity with opinion of Supreme Court, requiring plaintiff to pay to defendant certain sum and reciting that if plaintiff refused to deposit sum by specified date, judgment would be entered for defendant quieting title in him and motion of plaintiff to vacate such order was not brought on for hearing for more than 12 years after it was made, laches of plaintiff barred relief. State ex rel. Johnstone v. District Court, 132 M 377, 319 P2d 957 (1957).

Order Requiring Deposit: Section 15-18-402 (now repealed), requiring the court upon hearing to fix the amount of taxes, interest, penalties, and money spent in improving the property and requiring a deposit of such amount, does not authorize the court to postpone such determination and merely requires a bond be deposited to cover the amount. The court's duty is to determine the amount necessary for plaintiff to deposit in court and then fix the time for its payment. State ex rel. Johnson v. District Court, 130 M 103, 295 P2d 1042 (1956).

Void Tax Deed — Effect of Statute of Limitations: When tax deed proceedings were void for jurisdictional defects, the provisions of section 2214, R.C.M. 1921 (now repealed), requiring an action to set aside or annul a tax deed to be brought within 2 years from date of issuance of deed, did not apply. Miller v. Murphy, 119 M 393, 175 P2d 182 (1946).

Affidavit to Conform to Statute: Under 15-18-401 (now repealed) authorizing the holder of the tax title, upon filing of an affidavit, to obtain an order commanding the true owner to deposit taxes, interest and penalties, the affidavit is jurisdictional and must set forth the matters required by the statute. Glacier County v. Frisbee, 117 M 578, 164 P2d 171 (1945).

Nature of Title Conveyed:

A tax deed is not derivative but creates a new title in the nature of an independent grant from the sovereignty and strikes down the former owner's fee title. Rist v. Toole County, 117 M 426, 159 P2d 340 (1945), followed in Collier v. Kincheloe, 2008 MT 100, 342 M 314, 180 P3d 1157 (2008); see also Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

By the enactment of 15-18-403 (now repealed), providing that a tax deed conveys absolute title "free from all encumbrances except the lien for taxes which may have attached subsequent to the sale", a new title in the nature of an independent grant from the sovereignty is created, extinguishing all former titles and liens not expressly exempted from its operation. State ex rel. Great Falls v. Jeffries, 83 M 111, 270 P 638 (1928), explained in Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Defense of Exemption From Tax Levies and Sale: In an action to quiet title brought by purchaser of Indian land acquired by the county under tax deed, where trust patent issued to half-blood Indian allottee had been changed at his request to fee simple patent, and defense was based on the ground that the lands were exempt from state tax levies and sale upon nonpayment of the state tax levies, and no question of redemption was raised by the pleadings, it was not necessary to pass upon the question of sufficiency of evidence to make a case under 15-18-401 and 15-18-402 (both now repealed). Chatterton v. Lukin, 116 M 419, 154 P2d 798 (1944).

Appeal of Findings Showing Allowances of Costs: When, in an action to quiet title to property acquired by tax deed brought by its former owner, the court required deposit made up of various items claimed by defendant without showing how the amount was arrived at, including the entire amount of taxes levied on the land after purchase from the county instead of only a one-fifth interest paid under contract of sale before commencement of the action, and there was no request for specific findings showing allowances and deductions nor exceptions taken to its findings, the Supreme Court on appeal will not disturb them. Sanborn v. Lewis & Clark County, 113 M 1, 120 P2d 567 (1942).

Effect of Misnomer:

The fact that a tax deed to real property erroneously recited that the property had been assessed to the wife of the owner whereas it had been assessed to her deceased husband, was no more than a clerical error insufficient to affect the validity of the deed. Sutter v. Scudder, 110 M 390, 103 P2d 303 (1940).

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership affects the sale to render it void or voidable, that type of mistake being in the nature of an informality or irregularity only. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913). However, see Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Attack on Tax Deed Not Collateral Attack: Though the rule against collateral attack is the same in an action where the validity of a tax deed is called in question as in the case of attack on a judgment, where the purpose of a proceeding is to secure an interpretation to be given a tax deed because of apparently conflicting provisions of statutes as to the extent of title conveyed, there is no infraction of the rule. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Deposit Not Required by Cities: The deposit required by 15-18-401 and 15-18-402 (both now repealed) is in the nature of security, and a city is exempt from the provisions of them under 25-1-402, exempting municipalities from the provisions of any statute requiring parties in civil suits to post security, and therefore need not make such deposit as defendant in a quiet title action as a condition precedent to its right to appear and assert its lien for special improvement assessments payable after execution of tax deed. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

Implied Amendment — Lien of Special Improvement Assessments:

Since 15-18-309 (now repealed) applies equally to tax deeds issued after notice under 15-18-202 (now repealed) and those issued after court action under 15-18-301 (now repealed), 15-18-403 (now repealed) was impliedly amended by 15-18-309 (now repealed) so that any tax deed issued after its enactment is subject to the lien of special improvement assessments levied thereafter. Cascade County v. Weaver, 108 M 1, 90 P2d 164 (1939).

On the theory that 15-18-403 (now repealed), providing in effect that a tax deed cuts off all prior tax liens, was impliedly amended by sec. 9, Ch. 100, L. 1929 (15-18-309, now repealed) declaring that such a deed shall be subject to the lien of any special or local improvements payable after the execution of the deed, the operation of the amendment is prospective, not retroactive. State ex rel. Billings v. Osten, 91 M 76, 5 P2d 562 (1931), distinguished in Blackford v. Judith Basin County, 109 M 578, 98 P2d 872 (1940).

Easement Not Extinguished by Tax Deed: Since the negative easement created in favor of a townsite company by the restriction inserted in its deeds to lots sold by it prohibiting the sale of liquor upon the premises was appurtenant to its other lots and was taxable as such, a tax deed to the servient tenement—a lot sold under the restriction—though creating a new title free from all encumbrances, did not extinguish the easement but remained subject to it. NW. Improvement Co. v. Lowry, 104 M 289, 66 P2d 792 (1937).

Restrictions in Deeds: Restrictions in deeds as to uses to which the property conveyed may not be put with the provision that if the grantee or his heirs or assigns shall at any time breach the condition, the conveyance shall be void and the premises shall at once revert to the grantor, are valid. Injunction lies to restrain a violation of a covenant against any such use. NW. Improvement Co. v. Lowry, 104 M 289, 66 P2d 792 (1937).

Motion to Quash Because of Illegality of Tax: In an action to quiet title to lands allotted to an Indian but sold for delinquent taxes, where purchaser secured an order to show cause why owner should not deposit in court the taxes paid with penalty and interest, and on return day owner, through a motion to quash, attacked both tax and tax proceedings, and order was issued without hearing, the District Court erred in not hearing the order and in not hearing the plaintiff on the question of the legality of the tax. The motion to quash in a very imperfect manner called the attention of the court to the fact that the plaintiff wished to be heard and wished to challenge the legality of the tax. State ex rel. Jensen v. District Court, 103 M 461, 64 P2d 835 (1936).

Owner to Show Cause by Affidavit or Oral Testimony: When required to show cause why he should not be required to pay all taxes, interest and penalties, owner, under 15-18-401 and 15-18-402 (both now repealed) may show cause either by affidavit or by oral testimony. State ex rel. Jensen v. District Court, 103 M 461, 64 P2d 835 (1936).

Former Statute of Limitations Unconstitutional: The provision of section 2214, R.C.M. 1921 (now repealed), that an owner of realty sold for delinquent taxes may not maintain an action to set aside a tax deed as irregular or void unless commenced within 1 year from date of its issuance, amounted to a taking of his property, without due process of law, where the affidavit required by 15-18-204 (now repealed) showed upon its face that notice of application for the deed had never been served upon the owner, though the deed recited that this had been done. Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Tax Deed Not Conclusive Evidence:

Under former law (Ch. 85, L. 1927), a provision providing that a duly executed tax deed was conclusive evidence of all tax proceedings up to the execution of the deed did not prevent owner in an action to quiet title from showing that notice of the application for tax deed was not served upon him as required by 15-18-202 (now repealed), such requirement being jurisdictional. Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Under former law, the clause of 15-18-401 and 15-18-402 (both now repealed), as amended by Ch. 85, L. 1927, making a tax deed conclusive evidence of all proceedings leading up to its execution, referred to acts and proceedings required at the hands of the officers charged with duties in relation to assessment and taxation, and not to something necessary to be done by the applicant for the deed. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

Tender of Taxes and Costs — No Waiver of Right to Attack Deed: Defendant, in an action by a county to quiet title to real property acquired by tax deed, did not waive his right to attack the deed on the ground that the notice of application for deed did not correctly set out the amount due to bring about redemption, by his tender of a larger amount than that due, made pursuant to an order of court under 15-18-401 through 15-18-403 (all repealed), requiring a deposit as a condition precedent to his right to be heard. Glacier County v. Halvorson Mercantile Co., 93 M 520, 19 P2d 648 (1933).

Amount of Deposit When Land Sold Under Installment Contract: All a purchaser of land from the county at tax sale, on attack of the deed by the original owner, may, under 15-18-401 and 15-18-402 (both now repealed) demand as a deposit from that owner prior to trial is that which he has paid to the county, with interest, and which he has reasonably expended in preserving and improving the property, to be paid to the purchaser in case the deed be set aside, the plaintiff, in that event, being then required to pay to the county the balance of the taxes, penalty, and interest due over and above what had been paid by the purchaser. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933). See also Small v. Hull, 96 M 525, 32 P2d 4 (1934).

Challenge of Order — Default in Making Deposit: Plaintiff in an action to set aside a tax deed may refuse to make the deposit authorized by 15-18-401 and 15-18-402 (both now repealed) where the order requiring it to be made embraces improper items, and raise the question on appeal from the judgment entered for default in making it. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Constitutionality — Deposit When Tax Land Purchased on Installments: Sections 15-18-401 and 15-18-402 (both now repealed) and Ch. 162, L. 1929 (now repealed but see 7-8-2304 for a similar provision), insofar as they purported to authorize a county to relinquish to the purchaser of lands at tax sale the amount of delinquent taxes, interest, and penalty, required by order of court to be deposited by the original owner as a condition precedent to his right to maintain an action to set aside the tax deed, if the deed be set aside even though purchase had been made by installments and the entire amount had not been paid, were in conflict with Art. V, sec. 39, 1889 Mont. Const. (see Art. VIII, sec. 3, 1972 Mont. Const.) which prohibited the release by the state or a subdivision of the state of an obligation due it, and to that extent was invalid. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Cost Bill: An order, requiring plaintiff in an action to set aside a tax deed to deposit in court the money authorized by 15-18-401 and 15-18-402 (both now repealed) as a condition precedent to his right to maintain the action, is not the equivalent of a rendition of judgment and therefore the successful defendant was not required to serve his cost bill within 5 days after notice of the order. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Deposit Not Required Except on Demand — Installment Sale: When a county, defendant in an action to set aside a tax deed, made no demand under 15-18-401 (now repealed), that plaintiff deposit the taxes, interest, etc., due it, in advance of trial, the court erred in including the total amount in an order made pursuant to a demand by its codefendant, purchaser from the county who was purchasing the deed on installments. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Rights of County When Land Sold Under Installment Contract: Failure of a county, made codefendant in an action to set aside a tax deed, to appear and demand that plaintiff as a condition to his right to maintain the action make a deposit of taxes, interest, and penalty due, did not result in a remission thereof, contrary to Art. V, sec. 39, 1889 Mont. Const. (see Art. VIII, sec. 3, 1972 Mont. Const.), the trial court, on retrial, having power to protect the rights of the county in that behalf. Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Application to Action to Enjoin Issuance of Tax Deed: Sections 15-18-401 and 15-18-402 (both now repealed), authorizing the District Court to order one seeking to set aside a tax deed or the quieting of title to real property acquired by tax sale, to make a deposit of accrued taxes, interest, and penalties as a condition precedent to his right to maintain the action, apply to a proceeding to enjoin issuance of a tax deed. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Constitutionality in General: In view of the fact that the statutory proceedings for a sale of property for delinquent taxes are primarily designed as a means for collecting the tax against it, 15-18-401 and 15-18-402 (both now repealed), requiring a deposit of taxes, etc., preliminary to action to set aside a tax deed, are not invalid under Art. XV, sec. 13, 1889 Mont. Const. (see Art. II, sec. 31, 1972 Mont. Const.) as destructive of vested rights, in that it imposes obligations with respect to a past transaction which were not required at the time the property was sold for taxes. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Constitutionality — Sufficiency of Title: The amendment of 15-18-401 (now repealed) by Ch. 85, L. 1927, did not offend the requirements of Art. V. sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.), relative to the contents of the title of an act, in that the provision for a deposit of taxes, interest, and penalties was germane to the matters expressed in the title, and therefore sufficient to meet the constitutional requirement. State ex rel. Souders v. District Court, 92 M 272, 12 P2d 852 (1932).

Application of Former Limitation on Actions: While Ch. 85, L. 1927 (15-18-401 through 15-18-403, all repealed), is entitled "An act for the validating of tax sales and deeds heretofore or hereafter made", etc., it merely prohibited an attack upon a tax deed for a defect in tax proceedings or tax sales after the expiration of 1 year subsequent to its issuance, and therefore had no effect upon a deed attacked in a suit instituted within the year. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Stipulation as to Deposit: A stipulation between the parties to an action to annul a tax deed to the effect that the party attacking its validity need not deposit in court, as a condition precedent to his right to maintain the action, the sums required by 15-18-401 and 15-18-402 (both now repealed) to be paid to the purchaser in case the deed be held invalid, is tantamount to a compliance with the requirement, the purchaser thereby waiving immediate deposit and the claimant agreeing to pay when called upon to do so if decree should go for him. Glacier County v. Schlinski, 90 M 136, 300 P 270 (1931).

Appeal Not Allowed From Order Relating to Deposit: Under 15-18-401 and 15-18-402 (both now repealed) plaintiff, in an action to set aside a tax deed, is required to deposit in court the amounts required by those sections before being permitted to maintain his action. If there is any question raised as to the amount so to be deposited, the court has jurisdiction to fix the amount after hearing on order to show cause. No appeal lies from such an order. The order is reviewable on appeal from the judgment in the main action to set aside the tax deed, and the owner (redemptioner) is not estopped from contesting the correctness of the order by making the deposit as fixed by the court, to enable him to maintain his action. Tilden v. Chouteau County, 85 M 398, 279 P 231 (1929). See also Shull v. Lewis & Clark County, 93 M 408, 19 P2d 901 (1933).

Void Tax Deed: As 15-18-401 and 15-18-402 (both now repealed) presuppose the issuance of a valid instrument, a tax deed, which is void on its face and therefore not a deed but a nullity, does not come within the purview of their provisions. Lindeman v. Pinson, 54 M 466, 171 P 271 (1918); Horsky v. McKennan, 53 M 50, 162 P 376 (1916).

Title of Action: When the sole aim of an action is to do away with a tax deed as a claim of title adverse to the plaintiff, it is an action "to set aside or annul" a tax deed so as to make the provision of 15-18-401 and 15-18-402 (both now repealed) applicable, even though it may be termed one to quiet title. Cullen v. W. Mtg. & Warranty Title Co., 47 M 513, 134 P 302 (1913).

15-18-411. Action to quiet title to tax deed — notice.

Compiler's Comments

2019 Amendment: Chapter 317 in (1)(a) near middle inserted "or the recipient or purchaser of a tax deed pursuant to 15-18-211 or 15-18-220". Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1)(a) after "to determine the rights of" substituted "an assignee" for "a purchaser" and after "acquired through tax proceedings or a" substituted "tax lien assignment, the assignee" for "tax lien sale, the purchaser"; in (1)(c)(i) after "for the use of the" substituted "assignee" for "purchaser"; in (1)(c)(i)(B) after "paid by the" substituted "assignee" for "purchaser", after "the date of the" substituted "attachment of the tax lien" for "tax lien sale", and before "possession" substituted "assignee's" for "purchaser's"; deleted former (3)(b)(i) and (3)(b)(ii) that read: "(i) publishing the order once in the official newspaper of the county;

(ii) posting the order in three public places in the county at least 10 days prior to the hearing; and"; in (3)(b) after "giving a copy" inserted "of the order"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46, Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 2 in (1)(a) near end of introductory clause and in (1)(c)(i)(B) near beginning after "tax" inserted "lien". Amendment effective October 1, 2009.

2005 Amendment: Chapter 375 in (3)(a) at end substituted "whose name and address are reasonably ascertainable" for "who is, at that time, known to be in the state of Montana"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: At beginning of (1)(c) inserted exception clause; inserted (1)(d) providing that a deposit may not be required of an indigent owner; and made minor change in style.

Case Notes

Scope of Action — Available Regardless of Whether Petitioner in Possession of Tax Deed: The assignee of a tax lien filed for a writ of mandate to require the county treasurer to issue him a tax deed after the treasurer allowed the delinquent owner to redeem the property even though the redemption period had expired. The assignee argued that 15-18-411 was not available to him because the tax deed had not yet been issued. The Supreme Court found that 15-18-411 applies even in the absence of a tax deed because the statute contemplates an action either to quiet title to a tax deed or to determine the rights of a purchaser to real property claimed to have been acquired through tax proceedings or a tax lien sale. Because a quiet title action would provide a speedy and adequate remedy in the ordinary course of law, a writ of mandate was not an available remedy. O'Brien v. Krantz, 2018 MT 191, 392 Mont. 265, 423 P.3d 572.

Strict Compliance With Statutes Governing Tax Deeds: The defendant trust acquired tax deeds to three tracts of real property after the plaintiff taxpayer failed to pay the property taxes. The defendant and the plaintiff filed quiet title claim actions to determine the validity of the tax deeds. The plaintiff submitted a memorandum from the county treasurer admitting that she had failed to provide the County Clerk and Recorder a report of all persons and property owing taxes, including 13 additional examples of failure to comply with the tax deed statutes, because she had relied on records provided by the county. Therefore, the plaintiff argued that the county and the trust had failed to comply with several statutes and that the tax deed was void. The District Court's first order granted summary judgment to the plaintiff declaring the tax deeds void, and the second order addressed calculation of the final redemption amount to be paid to the defendant. The defendant appealed. The Supreme Court affirmed, holding that Montana law requires strict compliance with statutes governing tax deeds. Johnson v. Wayne S. Hansen Trust, 2016 MT 46A, 382 Mont. 312, 369 P.3d 998.

Redemption Amount — Additional Costs Not Required by State Law Discretionary: After a tax deed was declared void, the purchaser was entitled to a redemption amount consisting of the deposit provided by the true owner, plus interest and any additional taxes paid on the property; however, the District Court had the discretion to deny the purchaser additional costs, such as filing fees, publication, property insurance, trust administrative expenses, and attorney fees, because these costs are not required by state law. Hansen Trust v. Ward, 2015 MT 131, 379 Mont. 161, 349 P.3d 500.

Deposit Required of Defendant in Tax Deed Proceeding Unconstitutional When Applied to Indigents: The defendant in a tax deed proceeding was an inmate in an out-of-state prison. He was financially unable to make the statutorily required deposit and was therefore barred by law from defending the taking of his property in the court proceeding. The Supreme Court held that the deposit had a rational basis in that it helped relieve the congested court system, but when applied to indigents, it deprived them of their right to a hearing and was therefore an unconstitutional denial of due process. Ball v. Gee, 243 M 406, 795 P2d 82, 47 St. Rep. 1196 (1990).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985 (predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

15-18-412. Procedure in tax deed quiet title action.

Compiler's Comments

2019 Amendment: Chapter 317 in (2)(a) near middle inserted "or the recipient or purchaser of a tax deed pursuant to 15-18-211 or 15-18-220" and near end after "the assignee" inserted "or the recipient or purchaser of a tax deed"; in (3), (4), and (5) after "possessor of the tax lien" substituted "the assignee, or the recipient or purchaser of the tax deed" for "or the assignee"; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (2)(a) after "against the state" substituted "a county that is the possessor of the tax lien, or an assignee" for "or purchaser" and after "the title of the" substituted "county or the assignee" for "purchaser"; in (3) at end substituted "county that is the possessor of the tax lien or the assignee" for "purchaser"; in (4) after "the title of the" substituted "county that is the possessor of the tax lien or the assignee" for "purchaser"; in (5) after "In any action brought by a" substituted "county that is the possessor of the tax lien or the assignee" for "purchaser"; and made minor changes in style. Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

1993 Special Session Amendment: Chapter 27 in (7), near middle of first sentence after "order", substituted "the department" for "any assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Near beginning of (2)(a) inserted reference to subsection (2)(c); inserted (2)(c) providing that a deposit is not required if the true owner is found by the court to be indigent; and made minor change in style.

Case Notes

Tax Deed Issued — Assessment Dispute — Statutory Requirements: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. On appeal, the defendant claimed that she reported an assessment dispute to the county tax assessor's office, and she argued that the county should not have issued a tax deed while her assessment was being contested. The Supreme Court held that she had not established that she had filed a written application for reduction in valuation under 15-15-102, she did not make her objection prior to the tax lien sale under 15-17-124, and she did not seek exemption from the deposit requirement after the quiet title action had been filed. Thus, the defendant had waived defects in the proceedings, and her claims were barred. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

Redemption Amount — Additional Costs Not Required by State Law Discretionary: After a tax deed was declared void, the purchaser was entitled to a redemption amount consisting of the deposit provided by the true owner, plus interest and any additional taxes paid on the property; however, the District Court had the discretion to deny the purchaser additional costs, such as filing fees, publication, property insurance, trust administrative expenses, and attorney fees, because these costs are not required by state law. Hansen Trust v. Ward, 2015 MT 131, 379 Mont. 161, 349 P.3d 500.

Tax Deed Void for Failure to Provide Adequate Notice: While clarifying previous holdings in Stewart and Bowen regarding the standing requirements to challenge a tax deed, the Supreme Court ruled that because the giving of notice to the owner of property by the tax deed applicant is a critical element of obtaining a tax deed, the failure to provide adequate notice deprived the county of jurisdiction to issue a deed and that the Homeowners' Association, brought into the action as a party defendant, did not need to demonstrate standing to sue to be allowed to appear and defend claims asserted. Mont. Earth Resources Ltd. Partnership v. N. Blaine Estates, Inc., 1998 MT 254, 291 M 216, 967 P2d 376, 55 St. Rep. 1047 (1998).

Deposit Required of Defendant in Tax Deed Proceeding Unconstitutional When Applied to Indigents: The defendant in a tax deed proceeding was an inmate in an out-of-state prison. He was financially unable to make the statutorily required deposit and was therefore barred by law from defending the taking of his property in the court proceeding. The Supreme Court held that the deposit had a rational basis in that it helped relieve the congested court system, but when applied to indigents, it deprived them of their right to a hearing and was therefore an unconstitutional denial of due process. Ball v. Gee, 243 M 406, 795 P2d 82, 47 St. Rep. 1196 (1990).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985 (predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

15-18-413. Title conveyed by deed — defects.

Compiler's Comments

2019 Amendment: Chapter 317 in (1) after "attachment of the tax lien" inserted "or pursuant to 15-18-220" and at end substituted "the date of issuance of the deed" for "3 years following the date of attachment of the tax lien"; in (4) at end substituted "issuance of the tax deed" for "expiration of the redemption period described in 15-18-111"; in (5)(a) near beginning inserted reference to 15-18-220 and near middle inserted "pursuant to 15-18-211"; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 20, Ch. 317, L. 2019, provided: "[This act] applies to tax liens attached or assigned on or after [the effective date of this act]." Effective May 7, 2019.

Saving Clause: Section 18, Ch. 317, L. 2019, was a saving clause.

2017 Amendment: Chapter 67 in (1) in middle substituted "applicable attachment of the tax lien" for "applicable tax lien sale" and at end substituted "the date of attachment of the tax lien" for "the date of sale of the property interest at the tax lien sale"; in (2)(b) after "the tax deed" substituted "tax lien attachment" for "tax lien sale"; in (3) at end substituted "15-18-214(1)" for "15-18-214(1)(a) through (1)(c)"; and in (5)(a) after "the date of the" substituted "attachment of the tax lien" for "sale of the property interest at the applicable tax lien sale", substituted "the grantee may give notice" for "the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice", and after ""Notice of Claim of a Tax Title"" inserted "as provided in 7-1-2121". Amendment effective March 2, 2017.

Applicability: Section 46(1), Ch. 67, L. 2017, provided: "(1) [This act] applies to tax delinquencies that begin on or after [the effective date of this act]." Effective March 2, 2017.

2009 Amendment: Chapter 2 in (1) in two places, in (2)(b) near beginning, and in (5)(a) near middle after "tax" inserted "lien". Amendment effective October 1, 2009.

1997 Amendment: Chapter 407 in (5)(a), at beginning, inserted "Subject to subsection (5)(b)"; in (5)(a)(v), after "demand is made that the", substituted "true owner" for "person assessed or taxed", after "within 30 days after" inserted "the later of service or", before "the county treasurer" deleted "the claimant or to", near end, after "the county treasurer" inserted "to redeem the property", and before "bring a suit" inserted "the true owner may"; inserted (5)(b) requiring service of notice on taxpayer; deleted former (6) that read: "(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice"; in (6), in first sentence at beginning, inserted "Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have been complied with and" and in second sentence, near middle after "defects or omissions", deleted "or total failure to observe" and after "property for taxes" deleted "and the giving of notices"; adjusted subsection references; and made minor changes in style. Amendment effective April 28, 1997.

Preamble: The preamble attached to Ch. 407, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in Tax Lien Services v. Hall, 53 St. Rep. 614 (1996), that actual notice of a tax sale is required for taxpayers whose names and addresses are reasonably ascertainable."

Case Notes

Strict Compliance With Statutes Governing Tax Deeds: The defendant trust acquired tax deeds to three tracts of real property after the plaintiff taxpayer failed to pay the property taxes. The defendant and the plaintiff filed quiet title claim actions to determine the validity of the tax deeds. The plaintiff submitted a memorandum from the county treasurer admitting that she had failed to provide the County Clerk and Recorder a report of all persons and property owing taxes, including 13 additional examples of failure to comply with the tax deed statutes, because she had relied on records provided by the county. Therefore, the plaintiff argued that the county and the trust had failed to comply with several statutes and that the tax deed was void. The District Court's first order granted summary judgment to the plaintiff declaring the tax deeds void, and the second order addressed calculation of the final redemption amount to be paid to the defendant. The defendant appealed. The Supreme Court affirmed, holding that Montana law requires strict compliance with statutes governing tax deeds. Johnson v. Wayne S. Hansen Trust, 2016 MT 46A, 382 Mont. 312, 369 P.3d 998.

Tax Deed Sales — Homestead Exemption Statutes Inapplicable: After the defendant recorded a declaration of homestead for her property, she failed to pay real property taxes on it, and the county sold a tax lien on the property to the plaintiff. After the plaintiff adhered to the statutory requirements for a tax deed, the District Court entered default judgment against the defendant and entered a decree of quiet title. The defendant moved to vacate the judgment, claiming her property was exempt from execution or forced sale under the homestead laws. On appeal, the

Supreme Court held that the District Court did not err by granting summary judgment to the plaintiff because the homestead exemption statutes do not apply to property tax lien or property tax deed sales. RN & DB, LLC v. Stewart, 2015 MT 327, 381 Mont. 429, 362 P.3d 61.

Defects in Tax Notice Not Cured by Publishing Notice: Section 15-18-212 sets forth the strict statutory requirements for a notice of an intended issuance of a tax deed to real property. One notice requirement is that, in disclosing the amount of taxes due, a separate listing must be made of the delinquent taxes, penalties, costs, and interest that must be paid for the lien to be liquidated. If the notice requirements are not complied with, a County Treasurer may not legally issue a tax deed. In this case, discrepancies and defects in the notice were fatal to the legality of the tax deed proceeding and could not be cured by publishing notice required by this section. (Chapter 407, L. 1997, was, as stated in the preamble, enacted in reaction to this case.) Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996), discussed in Isern v. Summerfield, 1998 MT 45, 287 M 461, 956 P2d 28, 55 St. Rep. 177 (1998).

Section Unconstitutional — Actual Rather Than Constructive Notice Required Prior to Proceeding Against Known Property Owner: This section essentially provides a delinquent taxpayer with a right of redemption and a right to bring a quiet title action. Both rights are property interests protected under the due process clause of the 14th amendment to the U.S. Constitution. When the identity of the property owner is known or is readily ascertainable, actual rather than constructive notice is required prior to a proceeding that will adversely affect the liberty or property interests of the property owner. Therefore, this section is unconstitutional under the 14th amendment to the extent that it deprives a delinquent taxpayer, whose name and address are reasonably ascertainable, of repurchase or quiet title action filing rights if those rights are not exercised within 30 days of the first publication of notice. (Chapter 407, L. 1997, was, as stated in the preamble, enacted in reaction to this case.) Tax Lien Serv. v. Hall, 277 M 126, 919 P2d 396, 53 St. Rep. 614 (1996).

Allowable Costs of Preserving and Improving Property — Period of Purchaser's Possession: Plaintiffs in an action to quiet title granted through a tax deed claimed costs pursuant to 15-18-401, MCA 1985 (predecessor to 15-18-411, MCA 1987), of new kitchen cabinets and appliances, new flooring, new bathroom fixtures, and certain legal costs as part of their cost of preserving and improving property. Defendant failed to deposit the costs as required by the court, and although he did submit a required answer to a show cause order, the District Court did not consider the answer filed because no filing fee accompanied it. The Supreme Court held plaintiffs had no right to claim some of the costs and that under 15-18-401(1)(a)(ii), MCA 1985 (predecessor to 15-18-411, MCA 1987), they could only claim costs incurred after 3 years from the tax sale. The court further indicated a purchaser at a tax sale without more has no right of possession to the real property until 3 years after the tax sale. Ball v. Gee, 234 M 140, 761 P2d 830, 45 St. Rep. 1794 (1988).

CHAPTER 23
CENTRALLY ASSESSED PROPERTY

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Chapter Attorney General's Opinions

Supplemental Assessments Against Banks — Confidentiality: Article II, sec. 9, Mont. Const., does not require the Department of Revenue to release any information to the public regarding supplemental assessments issued against Montana banks as a result of an examination of those banks pursuant to 15-1-301. 35 A.G. Op. 59 (1974).

Chapter Collateral References

Study of Taxation of Centrally Assessed and Utility Property, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Administrative Rules

Title 42, chapter 22, subchapter 1, ARM Centrally assessed companies.
ARM 42.22.111 Valuation method.
ARM 42.22.113 Market indicator.
ARM 42.22.122 Apportionment procedure.

Part Case Notes

Inclusion of Tax Deferrals in Stock and Debt Indicator: The State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) found that a tax deferral account was a true liability. The District Court reversed after finding the account was merely an accounting device that reflected value owed on the books but could not be included under ARM 42.22.113, because it was neither an instrument traded on the financial market nor a true liability as required by the regulation. The Supreme Court reversed the decision as an incorrect substitution of the trial court's judgment for that of STAB on a question of fact, holding that the District Court should not have interpreted the Department's regulation so narrowly as to frustrate the mandate for finding market value. Further, use of the words "outstanding debt" in the regulation was sufficiently comprehensive to include an account that must serve to offset the loss of depreciation deductions that may be experienced in the future. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Valuation of Company Townsite Property Based on Assessment by Local Appraiser: In the process of calculating value of a company's holdings in Montana, the Department of Revenue properly used the property value assessed by the Department's local County Assessor in valuing the company's townsite property. The Department persuasively argued that 15-7-111 through 15-7-114 provide the exclusive methods for valuing residential property. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Valuation of Construction Work in Progress Outside Traditional Indicators — No Abuse of Discretion: To determine the value of Puget Sound Power and Light Company (Puget), the Department of Revenue added 40% of the cost indicator, 50% of the income indicator, and 10% of the stock and debt indicator to arrive at an assessed value. The Department then added the market value of Puget's construction work in progress (CWIP) to calculate total value, and the aggregate figure was then multiplied by an agreed percentage to determine the value of Puget's property in Montana. The District Court concluded the Department abused its discretion by failing to integrate the value of CWIP into the three unit value indicators and that the separate treatment for CWIP was erroneous. The Supreme Court found that under ARM 42.22.111, the Department had explicit authority to combine the unit and summation methods of valuation, noting that credible testimony indicated that capitalization of CWIP was too speculative to render an accurate figure for use in the income indicator and that valuation outside the three indicators was a better way to approximate market value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

Value of Construction Work in Progress but Not Expected to Go Into Service Reflected in Market Value of Stock and Debt — Indicator to Include Property at Market Value: The District Court properly affirmed a State Tax Appeal Board (now Montana Tax Appeal Board) decision that the stock and debt indicator should not be adjusted to reflect the amount of construction work in progress (CWIP) not expected to go into service. Evidence disclosed that the reduction in value of CWIP as a result of CWIP not expected to go into service was already reflected in the market value of stock and debt. The court also correctly concluded that the stock and debt indicator should indicate property at its market value, rather than its cost value. Puget Sound Power & Light Co. v. Dept. of Revenue, 232 M 314, 761 P2d 336, 45 St. Rep. 1078 (1988).

15-23-101. Properties centrally assessed — valuation cycles.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 234, L. 2023, in (1)(b)(iii) at end after "69-13-101" deleted "or a pipeline carrier as defined in 49 U.S.C. 15102(2)". Amendment effective April 24, 2023.

Section 7, Ch. 424, L. 2023, in (1) at end after "centrally assess" deleted "each year"; inserted (2) regarding centrally assessed property beginning January 1, 2024; inserted (2)(a) regarding annual central assessment; inserted (2)(b) regarding central assessment every 2 years in odd-numbered years, including telegraph, telephone, and microwave property, allocations of centrally assessed telecommunication services companies, and property described in (1)(b)(ii), (1)(b)(iii), (1)(b)(v), and (1)(b)(vi); inserted (2)(c) regarding central assessment every 2 years in even-numbered years, including electric power or transmission lines property, property described in (1)(b)(iv) and (1)(c), and property that is not provided for in (2)(a) or (2)(b); and made minor changes in style. Amendment effective October 1, 2023.

Applicability — Retroactive Applicability: Section 6, Ch. 234, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022."

Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

Transition: Section 10, Ch. 424, L. 2023, provided: "There is a transition year resulting from the change from an annual valuation cycle to a 2-year valuation cycle for certain centrally assessed property. For the property provided for in 15-23-101(2)(b), the tax year 2023 values must be used for tax year 2024, with adjustment for any acquisitions or dispositions of property occurring between January 1, 2023, and December 31, 2023."

2017 Amendment: Chapter 438 inserted (2)(f) concerning dedicated communications infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

Applicability: Section 7, Ch. 438, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Preamble: The preamble attached to Ch. 438, L. 2017, provided: "WHEREAS, no large-scale commercial data centers currently operate in Montana; and

WHEREAS, Montana's current property tax classes and assessment methodologies prevent large data center operators from locating in Montana due to valuation uncertainty and noncompetitive tax rates; and

WHEREAS, Montana needs to create a new property tax class and valuation certainty while expanding existing abatements and incentives to allow local governments in Montana to compete against locations outside Montana for data center investment."

2013 Amendment: Chapter 396 in (2)(e) substituted "15-6-138(5)" for "15-6-138(6)". Amendment effective May 6, 2013.

Saving Clause: Section 8, Ch. 396, L. 2013, was a saving clause.

Applicability: Section 10, Ch. 396, L. 2013, provided: "[This act] applies to property tax years beginning after December 31, 2013."

2011 Amendment: Chapter 411 in (2)(e) at end substituted "15-6-138(6)" for "15-6-138(5)". Amendment effective July 1, 2011.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 487 in (2)(b) substituted current text for "natural gas or oil pipelines"; inserted (2)(c) through (2)(e) concerning common carrier pipelines, natural gas distribution utilities, and gas gathering facilities; and made minor changes in style. Amendment effective May 10, 2009.

Retroactive Applicability: Section 6, Ch. 487, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the property tax year beginning after December 31, 2008."

2005 Amendment: Chapter 559 in (4) inserted exception clause. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

2001 Amendment: Chapter 7 in (2) near end substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendments — Composite Section: Chapter 531 in (1) at beginning substituted "the railroad transportation property" for "the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property"; and made minor changes in style. Amendment effective April 30, 1999.

Chapter 583 at beginning of (1) after "the" deleted "franchise"; and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1997 Amendment: Chapter 42 in (4), after "proceeds of mines", deleted "and of oil and gas wells"; and made minor changes in style. Amendment effective March 12, 1997.

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (1) inserted reference to railroad car companies.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Department Directed to Amend Rule: Section 1, Ch. 660, L. 1985, provided: "The Department of Revenue shall amend Rule 42.22.112, Administrative Rules of Montana, to read:

"42.22.112 COST INDICATOR (1) The cost indicator of value shall be derived from information contained in the company's report to the department, report to a regulatory agency, property descriptions submitted to the department, and any other reliable source of information. The department will include the cost of all operating properties which are taxable under Montana law. This includes properties both within and without the state.

(2) The type of cost used may be one of the following:

(a) replacement;

(b) replacement less depreciation;

(c) reproduction;

(d) reproduction less depreciation;

(e) historical (original); and

(f) historical less depreciation.

(3) The choice of cost shall depend upon which type best reflects market value of the property at the time of valuation. For taxable periods beginning after December 31, 1985, the cost indicator for railroads, airlines, and other federally protected taxpayers shall be treated consistent with federal law.""

1983 Amendment: Inserted (6) that reads: "property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12".

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

1981 Amendment: Added the language pertaining to property of public agencies to the end of (2).

Composite of 1981 Amendment and Effective Date: Section 4, Ch. 478, L. 1981, provided: "This act is not effective until congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy." The Code Commissioner has composited this effective date with the substantive amendment made by sec. 3, Ch. 478, L. 1981, in subsection (2). In the composite the Code Commissioner has substituted "if" for "This act is not effective until" to reflect the substance of the effective date within the code section.

Subsection Not Codified: Subsection (1) of section 84-708.1, R.C.M. 1947, which required the department to centrally assess certain property, was not codified in the MCA because it is redundant with 15-23-101. This clause has not been repealed and is still valid law. Citation may be made to sec. 53, Ch. 405, L. 1973, as amended by sec. 1, Ch. 465, L. 1975; sec. 9, Ch. 98, L. 1977; and sec. 53, Ch. 566, L. 1977.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.102 Assessment of centrally assessed property.

ARM 42.22.114 Income indicator.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

Case Notes

Central Assessment of Statewide Telecommunications Network: A telecommunications company that owns cable within several counties and leases cable across county lines challenged central assessment on the grounds that the company does not qualify for central assessment and that the company's treatment violates equal protection under the Montana Constitution. The District Court ruled against the company and the Supreme Court affirmed on appeal. The Supreme Court explained that central assessment was appropriate because the company operated a functionally integrated network over a wide area and enjoyed a unity of use and management. The Supreme Court explained that the company failed to establish that it was unequally treated to a similarly situated party. Vision Net, Inc. v. St., 2019 MT 205, 397 Mont. 118, 447 P.3d 1034.

Interpretation of Terms "Scheduled Airline Company" and "Regularly Scheduled Flights" — Interlocutory Adjudication: The Department of Revenue informed the respondent, an aviation company, that the company would be centrally assessed. The respondent requested reclassification, which was denied by the Department. The Department filed an interlocutory appeal with the District Court seeking an adjudication of the meaning of the terms "scheduled airline company" and "regularly scheduled flights" for Montana property tax purposes. Following the issuance of the District Court's order interpreting the terms, the respondent appealed to the Supreme Court. The Supreme Court affirmed the District Court's interpretation with a slight modification of the term "regularly scheduled flights" as "those which follow an interval according to timetable and location predefined by the carrier and which fly regardless of whether there are passengers or freight to be carried". Dept. of Revenue v. Alpine Aviation, Inc., 2016 MT 283, 385 Mont. 282, 384 P.3d 1035.

Remanded Case Cannot Serve as Issue Preclusion — Tax Challenge: The plaintiff, an oil and gas exploration and production company, challenged the state's property tax assessment. In Omimex I, the Supreme Court remanded, finding that the company did not operate a major distribution system in the state. The Supreme Court did not address the District Court's findings that the plaintiff operated a single and continuous property under 15-23-101. The Legislature subsequently amended several tax statutes, and the state assessed the property accordingly. The plaintiff sued again. The District Court found that issue preclusion prevented the plaintiff from challenging the prior finding of a single and continuous property. On appeal, the Supreme Court held that issue preclusion did not apply because the first case was remanded, the issues were not identical, the issues addressed separate tax years, and the plaintiff appropriately appealed the determinations. Omimex Canada, Ltd. v. St., 2015 MT 102, 378 Mont. 490, 346 P.3d 1125.

Cable Company Properly Subjected to Central Assessment — Single and Continuous Network Operated in 20 Counties: The Department of Revenue's decision to reclassify a cable company's property from class eight local assessment to class thirteen central assessment was upheld by the Supreme Court. After the Supreme Court concluded that the company met the definition of a centrally assessed telecommunications services company under 15-6-156, it proceeded to analyze whether it qualified for central assessment. The Supreme Court reasoned that a company must operate single and continuous property in more than one county to qualify for central assessment under 15-23-101, in addition to having property that is functionally integrated over a wide area with a unity of use and management. Given the cable company's single and continuous network in 20 Montana counties, unity in billing, centralized management, and the single transmission line used to deliver three services, the cable company was properly subjected to central assessment. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

Classification of Natural Gas Company Property as Class Eight Absent Major State Distribution System: Plaintiff, a resource development corporation, owned numerous gas and oil wells and pipelines in several counties on property that extended into several counties and into Canada. The property was centrally assessed, classified as class nine property, and taxed at 12%. Plaintiff contended that its properties should be locally assessed, classified as class eight property, and taxed at 3%. The District Court upheld central assessment and class nine classification, but on appeal the Supreme Court reversed. Plaintiff did not have a major distribution system in this state as required for taxation as class nine property under 15-6-141. Rather, plaintiff's properties were manifestly designed to accumulate natural gas from many wells to central points where the gas was commingled and delivered to a single buyer for final distribution to consumers. Therefore, whether plaintiff's properties were centrally or locally assessed, absent a major state distribution system, they should have been classified as class eight property under 15-6-138 and taxed at 3%. (See 2009 amendment.) Omimex Canada, Ltd. v. St., 2008 MT 403, 347 M 176, 201 P3d 3 (2008).

No Error in Appraising Fair Market Value of Electric Generation Assets Differently When Owned by Different Utilities — Equal Protection Constitutionality of Unit Method of Property Valuation Affirmed: Defendant utility company appealed a District Court decision regarding the equality of the state's tax assessments, claiming that the state deprived the utility of equal protection by failing to properly equalize defendant's property tax burden with other comparable electric generation facilities in Montana. The Department of Revenue explained that the relatively higher appraisal values of defendant's properties arose from the fact that the different companies had different total market values as a unit, so their individual properties also had different market values despite the fact that the individual properties might be physically similar. The Supreme Court noted that the unit method of valuation was held to pass constitutional equal protection scrutiny in W. Union Tel. Co. v. St. Bd. of Equalization, 91 M 310, 7 P2d 551 (1932), and the court declined to revisit the issue of the constitutionality of the method itself. The court held that there is nothing constitutionally significant in the bare fact that the Department of Revenue appraises the fair market value of the same electric generation assets differently when those assets are owned by different utilities. The basic rule of equal protection is that persons that are similarly situated with respect to a legitimate governmental purpose of law must receive like treatment. The first prerequisite of a meritorious equal protection claim is that the state had adopted a classification that affects two or more similarly situated groups in an unequal manner. Here, the District Court's determination that defendant failed to establish that the state's use of the unit method of valuation deprived defendant of equal protection was affirmed. Dept. of Revenue v. PPL Mont., LLC, 2007 MT 310, 340 M 124, 172 P3d 1241 (2007).

Specific Provisions Concerning Mine Net Proceeds Taxes to Supersede General Ownership Provision of Tax Law: The respondent owned a limestone quarry and for 3 years filed returns showing a negative value for its mine net proceeds tax. The Department of Revenue subsequently audited the respondent's books and revised its assessment based on arriving at a higher figure than the respondent had reported. The respondent argued that under the provisions of 15-8-601, it was not liable for the revised assessment because it no longer owned the quarry. The Supreme Court stated that the respondent's argument would lead to an absurd result in that a mine owner could report a zero value for its mine net proceeds, sell its property, and be exempt from taxation following an audit of the true result. The court held that the specific provisions of the statutes relating to mine net proceeds taxes must supersede any repugnancy in the ownership provisions of 15-8-601. Dept. of Revenue v. Kaiser Cement Corp., 245 M 502, 803 P2d 1061, 47 St. Rep. 2221 (1990).

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

15-23-102. Independent appraisal option.

Compiler's Comments

2021 Amendment: Chapter 142 in (2) at end substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2013 Amendment: Chapter 419 in (2) after "department" substituted "are subject to mediation under 15-1-212 and" for "pursuant to 15-1-211". Amendment effective May 6, 2013.

1999 Amendment: Chapter 36 substituted (2) providing that department decisions may be taken to the state tax appeal board for former (2) that read: "(2) (a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.

(b) Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment.

(c) Appeals from the final decision may be taken to the state tax appeal board." Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1983 Amendments: Chapter 253 enacted (1) relating to independent appraisers.

Chapter 526, in (2)(a), after "owner" inserted "and any purchaser under contract for deed".

Administrative Rules

ARM 42.2.510 Review of statement of account notices.

ARM 42.2.511 Review of centrally assessed property appraisals.

ARM 42.2.613 Definitions.

ARM 42.22.115 Notification.

ARM 42.25.1103 Valuation of net proceeds tax on miscellaneous mines.

Attorney General's Opinions

Tax Appeals on Centrally Assessed Property: A County Tax Appeal Board does not have jurisdiction to hear appeals of taxes on centrally assessed property. 41 A.G. Op. 31 (1985).

15-23-103. Due date of reports and returns — extensions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Transition: Section 10, Ch. 424, L. 2023, provided: "There is a transition year resulting from the change from an annual valuation cycle to a 2-year valuation cycle for certain centrally assessed property. For the property provided for in 15-23-101(2)(b), the tax year 2023 values must be used for tax year 2024, with adjustment for any acquisitions or dispositions of property occurring between January 1, 2023, and December 31, 2023."

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

1995 Amendments: Chapter 397 in (3) inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 451 in (1), after "subsection (2)", deleted "and 15-23-602". Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendment: Chapter 506 in (1) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (2) inserted reference to 15-23-212.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: In (3) inserted reference to 15-23-516; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near middle of (3) inserted reference to 15-23-515; and made minor change in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1983 Amendment: In (1), inserted proviso at beginning of subsection, after "15-23-502" deleted "15-23-602"; and inserted (2) relating to oil or gas pipeline returns; amendment applicable to reports or returns filed after December 31, 1982.

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-104. Failure to file — estimate by department — penalty.

Compiler's Comments

2013 Amendment: Chapter 419 in (1) in fourth sentence at end inserted "and mediation under 15-1-212". Amendment effective May 6, 2013.

1995 Amendment: Chapter 451 in (1), in fifth sentence near middle after "pursuant to parts 5", substituted "7 and" for "through"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 in (1), in seventh sentence after "department", deleted "will also inform its agents in the counties of the delinquency, and, except as provided in subsection (2), the agents" and inserted last sentence concerning notice to and collection by County Treasurer; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, near end of (1) inserted exception clause; and inserted (2) concerning delinquencies under 15-23-212.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car

companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

1991 Amendment: At end of fourth sentence substituted "15-1-211" for "15-8-601".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1985 Amendment: Inserted third sentence that reads: "In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303"; and in fifth sentence, after "assessment", inserted "pursuant to parts 5 through 8 of this chapter" and after "estimated value", inserted "or imputed value".

1983 Amendment: In first sentence, after "return" changed "under" to "within the time established in", and after "15-23-103" deleted "by March 31"; amendment applicable to reports or returns filed after December 31, 1982.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

15-23-105. Apportionment among counties.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in first sentence inserted "other than railroad car company property".

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Statement of Intent: The statement of intent adopted with HB 643 (Ch. 686, L. 1979) provided: "Section 5 of House Bill 643 requires the department of revenue to apportion the value of certain centrally assessed property among the counties in which such property is located. This apportionment shall be made on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot be apportioned on either of these bases, then the department may adopt such other method or basis of apportionment as may be just or proper. It is the intent of the legislature that apportionments made under this act shall substantially correspond with the location of such property."

Administrative Rules

ARM 42.22.122 Apportionment procedure.

Case Notes

Apportionment Among Counties: Under 15-23-303, prior to its amendment in 1977, apportionment meant the process by which the State Board of Equalization (duty now performed by Department of Revenue) spread out the total value of a system among the counties through which the system passed. Yellowstone Pipe Line Co. v. St. Bd. of Equalization, 138 M 603, 358 P2d 61 (1960).

15-23-106. Report to the counties.

Compiler's Comments

1995 Amendments: Chapter 397 in (1)(d) inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 451 in (1)(d), after "royalties from mines", deleted "and oil and gas wells" and after "15-23-518" deleted "15-23-603, and 15-23-605"; and made minor changes in style. Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 in introductory clause of (1) substituted "prepare for" for "transmit to its agent in"; and substituted (2) concerning entry of reported values in property tax record for former language that read: "The agent of the department shall enter the assessed values transmitted in the assessment book in a manner prescribed by the department." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in (1)(d) inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In (1)(d) inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near end of (1)(d) inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment: In (1)(b) substituted "15-23-303" for "15-23-302".

1981 Amendment: Added the last phrase in (1)(c) requiring that 90% of the value of property be stated separately when a state airport is involved.

15-23-107. Amended assessment.

Compiler's Comments

1999 Amendment: Chapter 36 near middle after "15-23-102" deleted "(2)". Amendment effective February 24, 1999.

Applicability: Section 6, Ch. 36, L. 1999, provided: "[This act] applies to disputes arising with the department after June 30, 1999."

1993 Special Session Amendment: Chapter 27 at end substituted "enter the revision in the property tax record for each applicable county" for "transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located"; and deleted second sentence that read: "The revision shall be immediately entered in the assessment book." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.2.510 Review of statement of account notices.
ARM 42.2.511 Review of centrally assessed property appraisals.
ARM 42.2.613 Definitions.

15-23-108. Rulemaking authority.

Compiler's Comments

Department Directed to Amend Rule: For direction in sec. 1, Ch. 660, L. 1985, to Department of Revenue to amend rule, see Compiler's Comments to 15-23-101.

Administrative Rules

ARM 42.2.511 Review of centrally assessed property appraisals.
Title 42, chapter 22, ARM Centrally assessed property.
Title 42, chapter 25, ARM Natural resource taxes.
Title 42, chapter 25, subchapter 11, ARM Net proceeds tax on miscellaneous mines.

15-23-115. Interest.

Compiler's Comments

1995 Amendments: Chapter 397 inserted "15-23-518". Amendment effective April 12, 1995.

Chapter 451 after "15-23-518" deleted "15-23-602". Amendment effective January 1, 1996.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 27 after "15-23-802" deleted "the department shall inform its agents at the county level of the determination"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 506 in first sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In first sentence inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: Near beginning of first sentence inserted reference to 15-23-515. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-23-116. Statute of limitations.

Compiler's Comments

2005 Amendment: Chapter 536 inserted (2) providing that a refund or credit may not be allowed or paid unless the taxpayer has paid the tax under protest, except as provided in subsection (3); in (3) at beginning substituted "If the department determines that the taxpayer has made an overpayment, the department shall refund or credit the overpayment if the overpayment was discovered within" for "No refund or credit may be allowed or paid with respect to the year for which a return is filed after" and at end after "return" deleted "or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended"; and made minor changes in style. Amendment effective April 28, 2005.

Part 2
Railroads

Part Collateral References

From Liquor Stores to Burlington Northern Railroad: Issues Before the Revenue Oversight Committee, 1986 Interim Report, Montana Legislative Council.

Montana's Property Tax and the 4-R Act and Other Revenue Oversight Issues, 1984 Interim Report, Montana Legislative Council.

15-23-203. Definitions relating to taxes.

Compiler's Comments

Effective Date: Section 6, Ch. 531, L. 1999, provided that this section is effective April 30, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

15-23-204. Assessment of railroads.

Compiler's Comments

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, inserted (21) concerning railroad cars.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.105 Reporting requirements.
ARM 42.22.106 Additional reporting requirements for centrally assessed railroads.
ARM 42.22.122 Apportionment procedure.

Case Notes

Unitary Method Upheld: The unitary system, as applied by Department, was correctly imposed upon railroad running a spur line. Nonoperating property was mistakenly expressed in book value when it should have been expressed in fair market value. Dept. of Revenue v. Soo Lines, Inc., 172 M 1, 560 P2d 512 (1977).

15-23-205. Assessment — how made.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 531 substituted language in (1) through (6) regarding assessing and valuing railroad property and systems for former (1) that read: "(1) The department must assess the franchise, roadway, roadbed, rails, rolling stock, and all other operating properties of all railroads operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using the same. Assessment must be made to the person owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department." Amendment effective April 30, 1999.

Chapter 583 in first sentence in (1) before "roadway" deleted "franchise" (amendment rendered void by amendment by Ch. 531); and made minor changes in style. Amendment effective May 10, 1999.

Retroactive Applicability: Section 7, Ch. 531, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

1985 Amendment: In (2) substituted "the department shall determine the percentage rate "R" provided for in 15-6-145" for "the department may modify the percentage multiplier provided for in 15-6-141". Amendment effective January 1, 1986.

Preamble: The preamble to Ch. 743, L. 1985, provided: "WHEREAS, the federal government has granted special consideration to certain types of property with respect to property taxation; and

WHEREAS, the Legislature and the people of the State of Montana desire to be in full compliance with all federal law; and

WHEREAS, there have been questions in the past regarding the validity of Montana's property tax classification laws with respect to federal law granting special consideration to certain types of property; and

WHEREAS, state tax policy is best determined by the state's primary policymaking body, which is the Legislature; and

WHEREAS, the Legislature wishes to retain as much as possible the sovereignty guaranteed to the state by the 10th amendment to the Constitution of the United States; and

WHEREAS, the 48th Legislature of the State of Montana adopted House Joint Resolution 31, requiring a study of Montana's property tax classification system; and

WHEREAS, the Revenue Oversight Committee has examined Montana's property tax system; and

WHEREAS, that examination causes the Revenue Oversight Committee to recommend a revision of Montana's property tax classification system."

Severability Clause: Section 11, Ch. 743, L. 1985, was a severability clause.

1981 Amendment: Inserted (2) that reads: "In determining the taxable value of railroad property, the department may modify the percentage multiplier provided for in 15-6-141 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Statement of Intent: The statement of intent attached to HB 92 (Ch. 367, L. 1981) provided: "The intent of this bill is to allow the department to comply with the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended. This act places restrictions on the property taxation of railroads by state and local governments. Basically, the local taxing jurisdictions may not tax railroads at a higher tax rate than that levied on commercial and industrial property in general (49 USC section 11503). This bill provides a mechanism to the department of revenue to adjust the percentage multiplier for converting market value to taxable value for railroad property. It is intended that the department may adjust the multiplier, if necessary, to achieve compliance with the federal requirements.

In making the adjustment the department may take into account both:

(1) differing percentages, as provided by statute, between various classes of property; and

(2) differences in the determination of market value between commercial and industrial property on one hand and railroad property on the other, if any such differences exist.

The language chosen is selected to afford the department reasonable latitude in developing a method of adjusting the multiplier."

Administrative Rules

ARM 42.22.110 Deductions for intangible personal property.

ARM 42.22.121 Allocation procedure.

Case Notes

Salvage Value as Measure: The Supreme Court rejected a method whereby the salvage value of rails, ties, and roadbed would be used to determine value when use of property was not abandoned. Dept. of Revenue v. Soo Lines, Inc., 172 M 1, 560 P2d 512 (1977).

15-23-211. Definitions.

Compiler's Comments

1997 Amendment: Chapter 16 in definition of average levy substituted "95% of the average statewide mill levy for" for "average statewide rate of taxation on". Amendment effective February 11, 1997, and terminates December 31, 2002.

Effective Date — Retroactive Applicability: Section 2, Ch. 16, L. 1997, provided: "[This act] is effective on passage and approval [approved February 11, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1995."

Termination: Section 3, Ch. 16, L. 1997, provided: "[This act] terminates December 31, 2002."

1993 Amendment: Chapter 532 in definition of average levy, after "means the", inserted "average statewide" and after "taxation" substituted "on commercial and industrial property" for "determined under 15-24-103". Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 2, Ch. 532, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990." Approved April 24, 1993.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.
ARM 42.22.102 Centrally assessed property.
ARM 42.22.121 Allocation procedure.
ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

15-23-212. Annual report.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 424, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 11, Ch. 424, L. 2023, provided: "[This act] applies to property tax years beginning January 1, 2024."

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-213. Assessment — allocation — taxable value.

Compiler's Comments

1992 Statement of Intent: The statement of intent attached to Ch. 10, Sp. L. July 1992, provided: "The intent of [this act] is to ensure that the taxation of property belonging to railroad car companies is within the requirements of the Railroad Revitalization and Regulatory Reform Act of 1976."

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Administrative Rules

ARM 42.22.121 Allocation procedure.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

15-23-214. Determination of tax — payment — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (3) at end substituted "as provided in 15-1-216" for "under that section"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

15-23-215. Deposit of taxes.

Compiler's Comments

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

15-23-216. Lien — collection actions.

Compiler's Comments

Transition: Section 13, Ch. 10, Sp. L. July 1992, provided: "(1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55, for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13] [15-23-211 through 15-23-216 and this section], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13] [15-23-211 through 15-23-216 and this section]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked."

Effective Date — Retroactive Applicability: Section 17, Ch. 10, Sp. L. July 1992, provided: "[This act] is effective on passage and approval [approved August 6, 1992] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 18, Ch. 10, Sp. L. July 1992, provided that sec. 13, Ch. 10, Sp. L. July 1992, an uncodified transition section, terminates January 1, 1994.

Part 3
Public Utilities

Part Case Notes

Relationship to Other Statutes:

This act (Ch. 49, L. 1919) does not repeal existing statutes on the subject of assessment, but is to be treated as a supplement to them. The various sections of the act, and of existing acts, are, therefore, in pari materia, and are to be construed together. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

This act (Ch. 41, L. 1919) does not affect 15-8-111, and that section is to be considered in connection with it. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Power to Assess Discretionary — Review by Courts: Since the State Board of Equalization (duty now performed by Department of Revenue) was an agency created by the constitution, with well-defined powers, discretionary in character, and this act (Ch. 49, L. 1919) does not attempt to direct the Board as to the method or means to be pursued by it in arriving at the actual value of the property of electric power corporations, the Supreme Court cannot, by Writ of Mandate, interfere and direct the Board how to make the assessment; so long as it is not guilty of fraud, and does not adopt a fundamentally wrong principle of assessment, the Supreme Court cannot interpose, or substitute its judgment for that of such Board. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Part Collateral References

Study of Taxation of Centrally Assessed and Utility Property, Final Report of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2018).

15-23-301. Officers of certain public utility companies to furnish statement to department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 234, L. 2023. Amendment effective April 24, 2023.

Retroactive Applicability: Section 6, Ch. 234, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2022."

2009 Amendment: Chapter 487 near middle of introductory sentence after "natural gas" substituted "distribution utility, a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or any" for "pipeline, oil pipeline"; and made minor changes in style. Amendment effective May 10, 2009.

Retroactive Applicability: Section 6, Ch. 487, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the property tax year beginning after December 31, 2008."

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-303. Assessment of property — apportionment to counties.

Compiler's Comments

1999 Amendment: Chapter 583 after "franchises" deleted "granted by the United States"; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 13, Ch. 583, L. 1999, was a saving clause.

Effective Date — Applicability: Section 14, Ch. 583, L. 1999, provided: "[This act] is effective on passage and approval [approved May 10, 1999] and [sections 1 through 7 and 11 through 13] [15-6-218, 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, and 15-8-407] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] [15-23-101, 15-23-202 (renumbered 15-23-205), and 15-23-303] apply to property tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.22.110 Deductions for intangible personal property.

ARM 42.22.121 Allocation procedure.

Case Notes

Actual Value: This section does not establish an arbitrary rule of assessment, but only requires that the total value of the plant and property, wherever situated, shall be taken into consideration in determining the actual cash value for taxation of that portion of the plant and property situated within this state. St. v. St. Bd. of Equalization, 56 M 413, 185 P 708 (1919).

Part 4
Airlines

Part Compiler's Comments

Section Not Codified: Section 84-6409, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 9, Ch. 249, L. 1955.

Part Administrative Rules

Title 42, chapter 22, subchapter 1, ARM Centrally assessed companies.

Part Case Notes

Regularly Scheduled Flights — Timetables Determined by Customer — Not Subject to Central Assessment: Because the customer determined the routine timetable of flights rather than the airline, the airline did not perform "regularly scheduled flights" required for central assessment. Richland Aviation, Inc. v. St., 2017 MT 122, 387 Mont. 409, 394 P.3d 1198.

15-23-401. Definitions.

Compiler's Comments

2017 Amendment: Chapter 191 inserted definition of regularly scheduled flight; and made minor changes in style. Amendment effective April 13, 2017.

1999 Amendment: Chapter 140 inserted definitions of newly acquired aircraft and newly acquired equipment; and made minor changes in style. Amendment effective March 23, 1999.

Retroactive Applicability: Section 4, Ch. 140, L. 1999, provided "[This act] applies retroactively, within the meaning of 1-2-109, to newly acquired aircraft and equipment acquired after December 31, 1996, and to property tax years beginning after December 31, 1998."

Administrative Rules

ARM 42.22.101 Definitions.

Case Notes

Interpretation of Terms "Scheduled Airline Company" and "Regularly Scheduled Flights" — Interlocutory Adjudication: The Department of Revenue informed the respondent, an aviation company, that the company would be centrally assessed. The respondent requested reclassification, which was denied by the Department. The Department filed an interlocutory appeal with the District Court seeking an adjudication of the meaning of the terms "scheduled airline company" and "regularly scheduled flights" for Montana property tax purposes. Following the issuance of the District Court's order interpreting the terms, the respondent appealed to the Supreme Court. The Supreme Court affirmed the District Court's interpretation with a slight modification of the term "regularly scheduled flights" as "those which follow an interval according to timetable and location predefined by the carrier and which fly regardless of whether there are passengers or freight to be carried". Dept. of Revenue v. Alpine Aviation, Inc., 2016 MT 283, 385 Mont. 282, 384 P.3d 1035.

15-23-402. Report by airline company.

Administrative Rules

ARM 42.22.105 Reporting requirements.

15-23-403. Determination of value — exception for new aircraft and supporting equipment — nonoperating property — notice.

Compiler's Comments

2017 Amendment: Chapter 191 inserted (3) concerning nonoperating property; and made minor changes in style. Amendment effective April 13, 2017.

1999 Amendment: Chapter 140 in (2) substituted "newly acquired aircraft and newly acquired equipment" for "new aircraft acquired and new equipment acquired"; and made minor changes in style. Amendment effective March 23, 1999.

Retroactive Applicability: Section 4, Ch. 140, L. 1999, provided "[This act] applies retroactively, within the meaning of 1-2-109, to newly acquired aircraft and equipment acquired after December 31, 1996, and to property tax years beginning after December 31, 1998."

1987 Amendment: At beginning of second sentence of (1), relating to ascertainment of valuation, inserted exception clause; inserted (2) creating valuation exception; in (3), relating to notice of assessment, after "assessment", inserted "as provided in subsection (1) or (2)"; and made minor changes in phraseology.

Applicability: Section 3, Ch. 520, L. 1987, provided: "This act applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 1986." The retroactivity applies to taxable valuation of new aircraft and supporting equipment acquired by certain scheduled airlines, which was added as an exception by subsection (2) of sec. 1.

Administrative Rules

ARM 42.22.105 Reporting requirements.
ARM 42.22.112 Cost indicator.
ARM 42.22.115 Notification.

Case Notes

Assessment to Be Based on Aircraft Used in This State: Under former statute providing that Board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. W. Air Lines, Inc., v. Michunovich, 149 M 347, 428 P2d 3 (1967), certiorari denied in Michunovich v. W. Air Lines, Inc., 389 US 952, 19 L Ed 2d 363, 88 S Ct 336 (1967).

Part 5
Mines Net Proceeds

Part Compiler's Comments

Effective Date — Applicability: Section 2, Ch. 349, L. 1987, provided: "This act is effective on passage and approval and applies only to settlement proceeds received during calendar year 1993." Effective April 6, 1987.

Proceeds From Settlement of Disputed Taxes: Section 1, Ch. 349, L. 1987, provided: "Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement. (1) Proceeds received by a municipality or county in settlement of an alleged tax obligation arising under the mines net proceeds tax in Title 15, chapter 23, part 5, or the metal mines gross proceeds tax in Title 15, chapter 23, part 8, do not constitute the payment of delinquent taxes or money arising from the taxation of property if all of the following conditions are met:

(a) there are no entries in the county's assessment book reflecting the disputed valuations;

(b) the proceeds are not apportioned to previous tax years in which the department through revised assessment determined taxes were owing;

(c) the payment schedule differs from that applicable to mines net proceeds and metal mines gross proceeds taxes with respect to time of payment;

(d) the settlement agreement provides for penalty and interest provisions that differ from relevant statutory provisions; and

(e) the county and the taxpayer are given the discretion to modify the time and amount of payments.

(2) After all mandatory distributions have been made to state and local taxing jurisdictions, remaining settlement proceeds satisfying all the conditions set forth in subsection (1) may be:

(a) allocated to a school district building fund established under 20-9-508; or

(b) used to provide additional security for bonds issued under Title 90, chapter 5, part 1, for financing of projects for local government facilities, including schools and local port authorities."

Part Administrative Rules

Title 42, chapter 25, subchapter 11, ARM Net proceeds tax on miscellaneous mines.

Part Attorney General's Opinions

Special Improvement District Assessed Valuation Option — Inclusion: Oil and gas net proceeds and royalty interests should not be included within the assessed value of land benefited from a rural special improvement district for purposes of assessment of costs under 7-12-2151. 42 A.G. Op. 5 (1987).

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

15-23-501. Taxation of mines.

Compiler's Comments

2005 Amendment: Chapter 559 in (1) in second sentence after "machinery" inserted "equipment, and other personal property", after "mining" deleted "and all property and surface improvements upon", and inserted exception clause and inserted third sentence related to surface improvements taxed as other improvements; inserted (2) related to bentonite; and made minor changes in style. Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

Administrative Rules

ARM 42.25.1101 Net proceeds tax on miscellaneous mines — definitions.

Case Notes

Not Applicable Past Beneficiation Stage: The net proceeds tax does not apply to talc once it is past the beneficiation stage. The value of the mining product to be taxed is determined after initial processing of raw talc and the value should not include manufacturing processes which further refine talc for use in sophisticated products. Pfizer, Inc. v. Madison County, 161 M 261, 505 P2d 399 (1973).

Operation of One or More Mines: The considerations of paramount importance in determining whether an operation constitutes one mine, or more than one, are ownership, location, integration of mining system, and single management. U.S. Gypsum Co. v. Schreiner, 135 M 312, 340 P2d 548 (1959).

Injunction Restraining Collection — Indian Land: When in 1936 the Supreme Court granted an injunction to an oil and gas company "forever" restraining and enjoining the State Board of Equalization (duty now performed by Department of Revenue) from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the Board in 1941 believing that a later decision of the Supreme Court of the United States superseded and overruled the former decision and took steps to collect the taxes, the oil company should have proceeded under 3-1-501 instead of instituting a new proceeding, which was properly dismissed. Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 224, 114 P2d 521 (1941).

Undeveloped Mine: Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions of the lands sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Reservation of Right to Explore and Mine: When lands were sold by a railroad company, rights reserved in the deeds to that use of the surface of the land as may be necessary for the exploration, mining, and carrying away of the coal that may be found below, are a valuable interest in the land itself and are property subject to taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Taxation of Net Proceeds:

Under the 1889 Montana Constitution and this section, the net proceeds of all mines and mining claims are taxable the same as other personal property, and the Assessor need not follow up the mine proceeds, the tax being a lien on the mine itself until paid. Tong v. Maher, 45 M 142, 122 P 279 (1912).

Under this section which is a reiteration of Art. XII, sec. 3, 1889 Mont. Const., the annual net proceeds of coal mines are liable to taxation "as other personal property". Mont. Coal & Coke Co. v. Livingston, 21 M 59, 52 P 780 (1898).

Burden of Proof When Claiming Exemption: One claiming an exemption from taxation has the burden of showing that he is entitled to it; but in an action under this section prior to its amendment in 1979, to enjoin the collection of taxes upon a ditch used solely in connection with placer mining operations, and therefore not subject to taxation, the burden was upon the State to show that the ditch has a value independent of the placer mining claim, so as to render it liable to taxation. Hale v. Jefferson County, 39 M 137, 101 P 973 (1909).

Machinery and Improvements: Machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are properly assessed as personal property. Birney v. Warren, 28 M 64, 72 P 293 (1903).

15-23-502. Net proceeds tax — statement of yield.

Compiler's Comments

2005 Amendment: Chapter 559 in introductory clause in first sentence after "vermiculite" deleted "bentonite" and in exception clause before "coal" inserted "bentonite". Amendment effective April 28, 2005.

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

1995 Amendment: Chapter 397 near end of introductory clause inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506, in third sentence of introductory clause inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 695 near end of introductory clause inserted reference to 15-23-516. Amendment effective April 27, 1991.

Chapter 700 in (1), near middle of first sentence after "coal", inserted "travertine, building stone". Amendment effective April 26, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Section 3, Ch. 700, L. 1991, provided: "[This act] is effective on passage and approval [approved April 26, 1991] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

Termination: Section 4, Ch. 700, L. 1991, provided: "[This act] terminates December 31, 1993."

1989 Amendment: At beginning of last sentence of introductory language inserted exception clause referring to 15-23-515; and made minor change in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment — Applicability: Inserted (15) that reads: "cost of mine reclamation". Applicable to taxable years beginning after December 31, 1985 (sec. 4, Ch. 623, L. 1985).

1983 Amendment: In (3), after "ore" deleted "barrels of petroleum, cubic feet of natural gas"; in (4) after "that is," deleted "barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other"; in (12) after "workers' compensation insurance" inserted "boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process"; inserted (13) relating to welfare and retirement fund payments; and inserted (14) relating to costs for safety testing, security, and other tests and services.

Earlier Enactments: Earlier acts were sections 1047 to 1050, Revised Statutes 1879; reenacted sections 1791 to 1794, Fifth Division Compiled Statutes 1887; sections 50 to 57, pp. 93 to 95, L. 1891; reenacted sections 3760 to 3768, Political Code 1895; reenacted sections 2563 to 2571, R.C.M. 1907.

Administrative Rules

ARM 42.22.105 Reporting requirements.
ARM 42.25.1102 Net proceeds tax return.
ARM 42.25.1104 Mining versus nonmining processes.
ARM 42.25.1105 Computation of gross value.
ARM 42.25.1119 Special deductions.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Only Direct Costs and Expenses of Mineral Extraction Deductible: Section 15-23-503 does not allow the deduction of all mining-related costs necessary to the mining operation. What may be properly deducted from net proceeds is construed restrictively; therefore, only the direct costs and expenses of extracting the mineral are deductible. General overhead, office expenses, and administrative expenses are indirect costs and are not deductible regardless of the accounting system employed by the taxpayer. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989). See also Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924), and Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Net Proceeds Tax Applies to Fluorspar Removed From Tailings: Fluorspar removed from tailings on land owned by Darby Spar is subject to the net proceeds tax despite the fact that 15-6-131 does not contain a reference to "dump or tailings". The reason for this discrepancy in the statutes is found in Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945). The decision in that case noted the absence of references to "dump or tailings" in holding they were not subject to the tax. The next Legislature specifically included those words in what is now 15-23-502. The Legislature clearly intended to impose the net proceeds tax on the yield from disposed tailings, and for 40 years that is what the Department of Revenue has done by administrative rule. Darby Spar, Ltd. v. Dept. of Revenue, 217 M 376, 705 P2d 111, 42 St. Rep. 1262 (1985).

Determination of Gross Value: In the determination of the valuation of the net proceeds of mines for the purpose of taxation, the bonus or premium paid by the federal government should be included in the "gross value" of the product which is the basis for the computation of the tax. Minerals Eng'r Co. v. Greene, 131 M 119, 308 P2d 977 (1957), overruling Klies v. Linnane, 117 M 59, 156 P2d 183 (1945).

Tailings Dump: Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence prior to the 1947 amendment of this section proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine". Foreman v. Beaverhead County, 117 M 557, 161 P2d 524 (1945).

State's Power to Tax Production Under Lease of Trust Patent Indian Land:

The State Board of Equalization (duty now performed by Department of Revenue) is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 101 M 268, 54 P2d 117 (1936), with exception of the royalty owner's net proceeds tax, for the reason that the federal Supreme Court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941).

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax. British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed, 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936).

Indian Royalty Interests Exempt: Royalty interests accruing to a Blackfeet Indian from an oil and gas lease on reservation lands allotted to and held by him under trust patent are not subject to state taxation under the royalty owner's net proceeds tax. Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941); 101 M 268, 54 P2d 117 (1936).

Nature of Tax: Oil and gas in place is land, and a tax on the income of the oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for the tax in absence of contractual obligation to the contrary. N. Pac. Ry. v. Gas Dev. Co., 103 M 214, 62 P2d 204 (1936).

Nonresident Royalty Holder: The fact that the owner of a royalty interest in an oil well made taxable under sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), was a nonresident of the state did not render him immune from payment of a tax on the royalty. The tax imposed upon the royalty as a part of the net proceeds is in lieu of the ad valorem tax on the oil in the ground as a part of the realty and is not a personal property tax that depends upon the residence of the owner. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Definition of Royalties: The consideration for certain assignments of rights in oil lands consisting of an agreement to convey to the assignees "as royalty payable in cash" 20% of all oil produced from the premises, constituted "royalties" within the meaning of this section and sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed). Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Constitutionality: This section, as amended in 1927, and section 2096.2, R.C.M. 1935 (now repealed), are not unconstitutional as impairing the obligation of a contract when applied to royalty accruing under a contract executed before the enactment of the sections. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Construction of "Royalty" Contracts: Within the meaning of this section and sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), the question whether payments required to be made to the lessee of oil lands by the oil well operator were "royalties", the provisions of the instrument calling for the payments must be construed for what they really are, regardless of designation in the contract. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Nature of Royalty Interest: The owner of a royalty interest in an oil well made taxable under this part is the owner of property within the meaning of Art. XII, sec. 17, 1889 Mont. Const., which is taxable and assessable to the owner of such interest as net proceeds of mines under Art. XII, sec. 3, 1889 Mont. Const. regardless of the form of the lease under which the royalty is reserved. Byrne v. Fulton Oil Co., 85 M 329, 278 P 514 (1929).

Liability for Tax:

When several persons own separate divisible interests in a mine or oil well the interest of each is property taxable to each under the statute providing for taxation of net proceeds of mines. (Distinguishing instant case from N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925), containing language intimating that statute contemplates assessment to but one person.) Homestake Exploration Corp. v. Schoregge, 81 M 604, 264 P 388 (1928).

Under this part the lessee of a (coal) mine, i.e., the person engaging in mining, and not the owner, is the proper party to whom net proceeds are assessable. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Mine Rental: A tax cannot lawfully be levied against a person for property he does not own, and since property in the shape of net proceeds of a mine belongs to the lessee and not to the owner of it and the statute contemplates but one assessment of the proceeds and that to the lessee, it was error to assess to the owner, as part of the net proceeds of the mine, the rental received by him from the lessee. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Assessment of Net Proceeds of Mines: The Legislature could properly add powers additional to those specifically conferred by Art. XII, sec. 15, 1889 Mont. Const., upon the State Board of Equalization (now Department of Revenue), as it did by Ch. 237, L. 1921, by imposing upon the Board the duty to assess net proceeds of mines. Butte & Superior Min. Co. v. McIntyre, 71 M 254, 229 P 730 (1924).

No Deduction for Taxes and Fire Insurance Premiums: Taxes and fire insurance premiums, (prior to the amendment of this section), paid upon milling and reduction works owned and operated by a mining company in connection with its mining operations are not deductible as a part of the cost of extracting the minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344-2355, R.C.M. 1921 (now repealed), construed in the light of the provisions of this part relating to the taxation of mines and net proceeds. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

Allowable Deductions: The State Board of Equalization (now Department of Revenue) is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by this part; in it is lodged no discretion to permit deductions from the gross proceeds other than those specifically provided for, or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the Board to follow the law. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

Assessment by County Assessor: By the enactment of Ch. 237, L. 1921, making net proceeds of mines assessable by the State Board of Equalization (now Department of Revenue) and repealing sections 2563-2571, R.C.M. 1907, under which the duty of assessing such proceeds had been placed upon the county taxing officers, a County Assessor was without authority after the approval of Chapter 237 to assess net mine proceeds, and mandamus did not lie to compel him to obey an order of the County Board of Equalization (now County Assessor) that he do so. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

15-23-503. Net proceeds — how computed.

Compiler's Comments

1995 Amendment: Chapter 397 in introductory clause of (1) inserted reference to 15-23-518; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in second sentence inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: In (1), near end of introductory clause, inserted reference to 15-23-516. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: In (1), at beginning of last sentence in introductory language, inserted exception clause; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

1985 Amendment — Applicability: In (1)(h) inserted "for the cost of reclamation at the site of the mine". Applicable to taxable years beginning after December 31, 1985 (sec. 4, Ch. 623, L. 1985).

1983 Amendment: In (1)(g), substituted "all moneys expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502" for "all moneys expended for fire insurance and workers' compensation insurance and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees."; and inserted (1)(h) relating to costs for safety testing, security, and other tests and services.

Administrative Rules

ARM 42.25.1103 Valuation.
ARM 42.25.1104 Mining versus nonmining processes.
ARM 42.25.1105 Computation of gross value.
ARM 42.25.1112 Expenses related to machinery.
ARM 42.25.1113 Labor costs.
ARM 42.25.1114 Cost of improvements and repairs.
ARM 42.25.1115 Cost of milling, smelter, and reduction works.
ARM 42.25.1116 Transportation expenses.
ARM 42.25.1117 Marketing, administrative, and other operational costs.
ARM 42.25.1118 General treatment of deductions.
ARM 42.25.1119 Special deductions.

Case Notes

Only Direct Costs and Expenses of Mineral Extraction Deductible: This section does not allow the deduction of all mining-related costs necessary to the mining operation. What may be properly deducted from net proceeds is construed restrictively; therefore, only the direct costs and expenses of extracting the mineral are deductible. General overhead, office expenses, and administrative expenses are indirect costs and are not deductible regardless of the accounting system employed by the taxpayer. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989). See also Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924), and Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Value Added From Operations Beyond Point of Beneficiation Not Included in Value of Net Proceeds: Following the limitations set out in Pfizer, Inc. v. Madison County, 161 M 261, 505 P2d 399 (1973), the Supreme Court held that the net proceeds tax applies only to the mining stage of an operation. Once the mineral passes the beneficiation, or premanufacturing, phase of the mining process, the tax no longer applies. Value added to the mineral from operations undertaken beyond the point of beneficiation is not included in the value of net proceeds; therefore, deductions from such operations are not allowed. W.R. Grace & Co. v. Dept. of Revenue, 238 M 439, 779 P2d 470, 46 St. Rep. 1399 (1989).

Allocation Formula: When taxpayer calculated deductions for cost of marketing and conversion into money by an allocation formula, rather than a cost accounting basis, it failed to meet the test of definiteness and uniformity. Taxpayer failed to allocate actual costs incurred in mining when determining net proceeds. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Taxes Not Deductible: Absent specific statutory language characterizing taxes as a deductible item, a taxpayer is not entitled to a deduction for taxes paid in the preceding year in determining its net proceeds of mines tax. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Post-Beneficiation Deduction Disallowed: Taxpayer's allocation formula was rejected because it failed to meet the tests of definiteness and uniformity contemplated by this section. The formula contemplated expenses incurred outside the state and after the beneficiation stage of the manufacture of talc. Cyprus Mines Corp. v. Madison County, 172 M 116, 560 P2d 1342 (1977).

Deduction for Expansion of Mining Operation: When the evidence as to ownership, location, integration of mining system, and single management pointed to one mining operation for the purpose of net proceeds taxation, extension of operations to a second ridge of two parallel ridges did not constitute opening of second mine and expenditures for the extension were tax deductible in connection with the first operation. U.S. Gypsum Co. v. Schreiner, 135 M 312, 340 P2d 548 (1959).

Determination of Gross Product: When producer received price of $63 a ton from General Services Administration while market price was only $35 a ton, the difference between the market price and the price received is not to be considered a government bonus or subsidy since the producer was free to sell to anyone and the entire price was to be included in determining the value of the gross product. Minerals Eng'r Co. v. Greene, 131 M 119, 308 P2d 977 (1957), overruling Klies v. Linnane, 117 M 59, 156 P2d 183 (1945).

Deduction for Employer's Health and Welfare Fund Contribution: Under this section, money paid by the employer to the union's health and welfare fund pursuant to a collective bargaining agreement is deductible as money expended for necessary labor, since under the N.L.R.A. the employees could strike to enforce such payments and therefore they are as necessary in order to obtain labor as agreeing and paying of a scale of wages. Brophy Coal Co. v. Matthews, 125 M 212, 233 P2d 397 (1951).

Deduction for Fire Insurance Premiums: Prior to amendment, this section did not allow a deduction for fire insurance premiums paid. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

No Deduction for Taxes: Taxes paid on milling and reduction works owned and operated by a mining company in connection with its mining operation are not deductible as a part of the cost of extracting minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344 through 2355, R.C.M. 1921 (now repealed), construed in the light of the provisions of this part relating to the taxation of mines and net proceeds. Anaconda Copper Min. Co. v. Junod, 71 M 132, 227 P 1001 (1924).

Allowable Deductions — Mandamus: The State Board of Equalization (now Department of Revenue) is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by Ch. 237, L. 1921; in it is lodged no discretion to permit deductions other than those specifically provided for or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the Board to follow the law. State ex rel. Bourquin v. St. Bd. of Equalization, 67 M 340, 215 P 667 (1923).

15-23-505. Assessment of royalties.

Administrative Rules

ARM 42.25.1111 Treatment of royalties.

Case Notes

Constitutionality: The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302, R.C.M. 1947 (since repealed) did not of itself contravene Art. XII, sec. 1 and 11, 1889 Mont. Const. (see Art. VIII, sec. 1 and 4, 1972 Mont. Const.). New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Profit or Loss in Operation of Mine Immaterial: It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Money Paid Under Option to Purchase as Royalties: Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns that were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can, by no contract between them, make royalties exempt from taxation by the expedient of calling them either purchase money or payments upon the lessor's corporate indebtedness. They are royalties between the lessor and the lessee, and the state, which is not party to the agreement, is not bound by it. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

15-23-507. Taxation and payment on royalty interests.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, substituted "computing" for "transmitting", after "shall also" substituted "determine" for "transmit", and after "schedules" deleted "to the county assessor"; at beginning of second sentence substituted "The department" for "Thereupon the county assessor"; at beginning of third sentence inserted "Upon furnishing the tax roll"; in fourth sentence substituted "department" for "county assessor" and "tax record" for "personal property assessment book"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.25.1111 Treatment of royalties.

Case Notes

Constitutionality:

The fact that a lessor's percentages of the net smelter returns paid under its lease are net proceeds as to it and taxable as royalties and hence classified as class one of sections 84-301 and 84-302, R.C.M. 1947 (now repealed) did not of itself contravene Art. XII, sec. 1 and 11, 1889 Mont. Const. (see Art. VIII, sec. 1 and 4, 1972 Mont. Const.). New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Since Ch. 140, L. 1927 (now repealed), making royalty interest taxable, applied to all such interests in mining property, it was not unconstitutional as discriminatory. Byrne v. Fulton Oil Co., 85 M 329, 278 P 514 (1929).

Profit or Loss in Operation of Mine Immaterial: It does not matter whether the mine is operated at a profit or at a loss by the operator, so far as the royalty holder is concerned. He must pay on the royalty yielded to him whether the operator of the mine operated it at a loss or not. Nor does it matter whether the operator deducted the royalties in making up its return for the computation of its net proceeds. The taxing authorities are required to tax the lessor's net smelter returns for what they are, not for what the parties may do with them. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Money Paid Under Option to Purchase as Royalties: Under a lease and option to purchase whereby the lessor was to get a percentage of net smelter returns which were to be credited as purchase money, such payments were nevertheless royalties, although they were credited after receipt as purchase money. The lessor and the lessee can by no contract between them make royalties exempt from taxation by the expedient of calling them either purchase money or payments upon the lessor's corporate indebtedness. They are royalties between the lessor and the lessee, and the state, which is no party to the agreement, is not bound by it. New Silver Bell Min. Co. v. Lewis & Clark County, 129 M 269, 284 P2d 1012 (1955).

Not Retroactive: Chapter 140, L. 1927 (now repealed), making royalty interests in mines and oil wells taxable and ordaining that the act should become effective as of January 1, 1927, was not retroactive, not expressly being made so, and therefore did not include royalties accruing prior to January 1, 1927. Byrne v. Fulton Oil Co., 85 M 329, 278 P2d 514 (1951), distinguished in Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934); Anderson v. Sunburst Oil & Ref. Co., 89 M 175, 296 P 1108 (1931); Forbes v. Mid-Northern Oil Co., 90 M 297, 2 P2d 1018 (1931).

15-23-515. Net proceeds for talc — statement — value.

Compiler's Comments

1991 Amendment: In (2)(a)(ii), after "first quarter of", inserted "the year previous to". Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-23-516. Net proceeds for vermiculite — statement — value.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

15-23-517. Net proceeds for limestone — statement — value.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-23-518. Net proceeds for industrial garnets and byproducts — statement — value — exemption.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section is effective on passage and approval (approved April 12, 1995) and applies retroactively to production years beginning after December 31, 1994.

15-23-521. Examination of records by department.

Compiler's Comments

1995 Amendment: Chapter 397 at end inserted "or 15-23-518"; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 at end inserted "15-23-517"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendment: At end inserted reference to 15-23-516; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: At end of second sentence inserted reference to 15-23-515; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Part 7
Coal Gross Proceeds

Part Compiler's Comments

Study of 1989 and 1990 Special Session Amendments: Section 5(1), Ch. 3, Sp. L. May 1990, provided: "Revenue oversight study — reports by department of revenue. (1) The revenue oversight committee shall study the new methods of taxing coal, oil, and natural gas production that were mandated by House Bill No. 28, Special Laws of June 1989, and amended by [this act]. The committee shall report its findings to the 52nd legislature."

Severability: Section 17, Ch. 525, L. 1975 read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Part Administrative Rules

Title 42, chapter 25, subchapter 5, ARM Gross proceeds tax on coal production.

Part Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid because the statutes did not classify those properties as required by 15-6-101 and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by 15-6-101. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of State Coal Taxes to Crow Coal — Crow Cases:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Taxation and Tax Sale of Minerals in Place: Since minerals in place are corporeal, they are not taxable. Therefore, a tax lien could not be assessed against or attached to coal and mineral rights in property sold with a reservation of coal and mineral rights in grantors, and a tax sale could not sell and a tax deed could not convey the coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

The Black Book, Raney, 43 Pub. Land & Resources L. Rev. 303 (2020).

History of the Coal Tax, Towe, 43 Pub. Land & Resources L. Rev. 271 (2020).

The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

15-23-701. Reporting gross yield from coal.

Compiler's Comments

2009 Amendment: Chapter 433 deleted former (2) that read: "(2) Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under this section"; and made minor changes in style. Amendment effective May 4, 2009.

Applicability: Section 6, Ch. 433, L. 2009, provided: "[This act] applies to coal mined after June 30, 2009."

1987 Amendment: At end of (1)(d), relating to gross yield, deleted reference to subsection (1) of 15-35-102.

Administrative Rules

ARM 42.22.105 Reporting requirements.

Title 42, chapter 25, subchapter 5, ARM Gross proceeds tax on coal production.

Case Notes

Apportionment of Tax From Coal Mine Spanning Two Counties Proper: Musselshell County filed an action against Yellowstone County for a declaratory judgment that the Department of Revenue improperly allocated a portion of the tax collected on coal from the Signal Peak mine, which spans both counties. Musselshell County argued that while coal is extracted from both counties, the coal is shipped only from Musselshell County and that the Department was required to adopt rules under the Montana Administrative Procedure Act to correctly apportion the proceeds. The Supreme Court held that the Legislature intended the coal gross proceeds to be apportioned between the counties in which the mine is located and that the Department was not required to adopt an administrative rule before apportioning the proceeds. Musselshell County v. Yellowstone County, 2012 MT 292, 367 Mont. 350, 291 P.3d 579.

15-23-702. Entry of gross proceeds in property tax record.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted present text concerning entry of valuation of gross proceeds of coal mines in property tax record for former text that read: "On or before July 1 each year, the department shall transmit to the county assessor of each county in which coal mines are situated the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Administrative Rules

ARM 42.25.511 Determination of contract sales price.

ARM 42.25.512 Imputed valuation.

ARM 42.25.513 Taxable valuation.

ARM 42.25.514 Right to audit.

Case Notes

Apportionment of Tax From Coal Mine Spanning Two Counties Proper: Musselshell County filed an action against Yellowstone County for a declaratory judgment that the Department of Revenue improperly allocated a portion of the tax collected on coal from the Signal Peak mine, which spans both counties. Musselshell County argued that while coal is extracted from both counties, the coal is shipped only from Musselshell County and that the Department was required to adopt rules under the Montana Administrative Procedure Act to correctly apportion the proceeds. The Supreme Court held that the Legislature intended the coal gross proceeds to be apportioned between the counties in which the mine is located and that the Department was not required to adopt an administrative rule before apportioning the proceeds. Musselshell County v. Yellowstone County, 2012 MT 292, 367 Mont. 350, 291 P.3d 579.

Assessable to Mine Operator: Under former law, the lessee of a (coal) mine, i.e., the person engaged in mining, and not the owner, was the proper party to whom net proceeds were assessable. N. Pac. Ry. v. Musselshell County, 74 M 81, 238 P 872 (1925).

Undeveloped Mine: Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions thereof sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Reservation of Right to Explore and Mine: When lands were sold by a railroad company, rights reserved in the deeds to such use of the surface of the land as may be necessary for the exploration, mining, and carrying away of the coal that may be found below, are a valuable interest in the land itself and as such, property subject to taxation. N. Pac. Ry. v. Musselshell County, 54 M 96, 169 P 53 (1917).

Taxation of Coal Net Proceeds: Under 15-23-501, which is a reiteration of Art. XII, sec. 3, 1889 Mont. Const., the annual net proceeds of coal mines are liable to taxation "as other personal property". Mont. Coal & Coke Co. v. Livingston, 21 M 59, 52 P 780 (1898).

15-23-703. Taxation of gross proceeds — taxable value for nontax purposes.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 331 in (1)(b) and (4) before "underground mine" inserted "surface or". Amendment effective May 7, 2019.

Chapter 355 in (1)(c)(i) near middle before "tax on coal" deleted "initial" and at end deleted "for the first 10 years of coal production. After 10 years, coal production from the mine is taxed as provided in subsection (1)(a)"; and in (1)(c)(ii) in two places substituted "December 31, 2030" for "December 31, 2020" and in middle of first sentence before "tax rate" deleted "initial". Amendment effective May 7, 2019.

Retroactive Applicability: Section 4, Ch. 331, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018."

2011 Amendments — Composite Section: Chapter 128 in (2) after "For" deleted "county classification and". Amendment effective July 1, 2011.

Chapter 406 in (1)(a) in second sentence inserted "and except as provided in subsection (1)(c)"; in (1)(b) at end substituted "production by the percentage amount of the tax abated by the county under 15-23-715" for "production by 50%"; and inserted (1)(c) pertaining to initial tax on coal mined in new or existing underground mine. Amendment effective May 13, 2011.

Retroactive Applicability: Section 4, Ch. 406, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010."

2009 Amendments — Composite Section — Coordination: Chapter 433 in (1) at end of second sentence substituted "15-23-701(4)" for "15-23-701(1)(d)". Amendment effective May 4, 2009.

Chapter 476 in (1)(a) in first sentence after "reported" substituted "value of coal gross proceeds" for "gross proceeds from coal", in second sentence after "against" substituted "coal gross proceeds" for "the reported gross proceeds of coal", after "shall" inserted "subject to subsection (1)(b)", and after "value of" substituted "coal" for "the reported gross proceeds"; inserted (1)(b) requiring the levy of a tax rate that would reduce the tax by 50%; deleted former (3) through (5) that read: "(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706"; inserted (3) regarding allocation of certain coal gross proceeds taxes; inserted (4) regarding distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement; in (5) substituted "subsection (3)(b)(i)" for "subsection (4)(a)"; in (5)(a) at end and in (6)(a) at end substituted "the previous fiscal year" for "fiscal year 1990"; in (5)(b) and (6)(b) substituted "reallocate" for "allocate"; in (7) at beginning inserted exception clause; inserted (8) allowing the board of county commissioners to direct the county treasurer to reallocate the distribution of coal gross proceeds; inserted (9) allowing the board of trustees of an elementary or high school district to reallocate the coal gross proceeds taxes distributed to the district by the county treasurer; and made minor changes in style. Amendment effective October 1, 2009.

The amendments to this section made by sec. 1, Ch. 264, L. 2009, and by sec. 2, Ch. 476, L. 2009, were rendered void by sec. 4, Ch. 476, L. 2009, a coordination section.

Applicability: Section 6, Ch. 433, L. 2009, provided: "[This act] applies to coal mined after June 30, 2009."

Section 5, Ch. 476, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

2003 Amendment: Chapter 114 in (1) near middle of third sentence after "full notice" deleted "as provided in 15-16-101"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 29 at beginning of (2) after "For" deleted "bonding"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1997 Amendments: Chapter 22 in (4)(b), near middle, substituted "impact aid money, as provided in 20 U.S.C. 7701, et seq." for "Public Law 81-874 money". Amendment effective July 1, 1997.

Chapter 42 in (1), at end, substituted "shall proceed to give full notice as provided in 15-16-101 to each coal producer of the taxes due and shall collect the taxes" for "shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101". Amendment effective March 12, 1997.

1995 Amendment: Chapter 318 at end of (2) deleted reference to subsection (5) of 15-35-102. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch. 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Special Session Amendment: Chapter 27 in (1), in two places, substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 610 at beginning of (3) inserted exception clause; in (4)(a), after "mills", inserted "in fiscal year 1990", after "against" inserted "1988", and near end substituted "fiscal year 1990" for "the year 1989"; in (4)(b), near beginning after "mills", inserted "in school fiscal year 1990", after "against" inserted "1988", and near end substituted "school fiscal year 1990" for "1989"; inserted (6) allowing Board of County Commissioners to direct County Treasurer to reallocate the distribution of certain coal gross proceeds taxes; and inserted (7) allowing board of trustees of an elementary or high school district to reallocate coal gross proceeds taxes under certain conditions. Amendment effective July 1, 1991.

Chapter 641 inserted (3) requiring County Treasurer to calculate and distribute to state, county, and eligible school districts coal gross proceeds taxes based on unit value, except for taxes collected from mines beginning production after December 31, 1988; in (4) inserted exception clause and after "credit" substituted "the amount determined under subsection (3) and the amounts received under 15-23-706" for "all taxes collected under this part"; near end of (4)(a) substituted "fiscal year 1990" for "the year 1989"; near end of (4)(b) substituted "the 1990 school fiscal year" for "1989"; inserted (5)(a) establishing requirement for County Treasurer relating to redistribution when tax liability exceeds or is less than amount determined; inserted (5)(b) relating to taxing jurisdiction's entitlement to redistribution; and inserted (8) requiring County Treasurer to credit taxes collected from coal mines that began production after December 31, 1988, in proportions required by levies for state, county, and school district purposes in same manner as previous fiscal year's property tax distribution. Amendment effective July 1, 1991.

Chapter 711 in (3), in first sentence after "schools", inserted "and counties under the provisions of 20-9-366" (rendered void by Ch. 790). Amendment effective July 1, 1991.

Chapter 790 deleted former (3) that read: "(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under 20-9-368". Amendment effective May 17, 1991.

Effective Date — Retroactive Applicability: Section 7, Ch. 641, L. 1991, provided: "[This act] is effective July 1, 1991, and applies retroactively, within the meaning of 1-2-109, to the distribution and redistribution of coal gross proceeds taxes levied against coal produced after December 31, 1989."

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

1989 Special Session Amendment: In (1) inserted second sentence providing for 5% tax on gross proceeds of coal in lieu of mill levies and at end substituted "of the taxes due and to collect the taxes as provided in 15-16-101" for "and to collect the taxes due within 60 days after mailing"; inserted (2) relating to taxable value of gross proceeds for bonding, county classification, and nontax purposes; inserted (3) relating to taxable value of gross proceeds for computing guaranteed tax base aid for schools; inserted (4) relating to crediting taxes to taxing jurisdictions that levied mills against production or used other revenue in lieu of levying mills against production; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

Case Notes

Apportionment of Tax From Coal Mine Spanning Two Counties Proper: Musselshell County filed an action against Yellowstone County for a declaratory judgment that the Department of Revenue improperly allocated a portion of the tax collected on coal from the Signal Peak mine, which spans both counties. Musselshell County argued that while coal is extracted from both counties, the coal is shipped only from Musselshell County and that the Department was required to adopt rules under the Montana Administrative Procedure Act to correctly apportion the proceeds. The Supreme Court held that the Legislature intended the coal gross proceeds to be apportioned between the counties in which the mine is located and that the Department was not required to adopt an administrative rule before apportioning the proceeds. Musselshell County v. Yellowstone County, 2012 MT 292, 367 Mont. 350, 291 P.3d 579.

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of State Coal Taxes to Crow Coal — Crow Cases:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV).

Levy Against 1988 Coal Production — Distribution of Coal Tax Revenue: There were only five children in the Decker school district, and by arrangement the children were sent to school in Wyoming. A group of electors in the Decker district filed a petition to transfer the Decker district from Lodge Grass to Hardin, and the petition was granted in 1991. Since then, the gross proceeds coal tax revenue from mines in the Decker district were distributed to both Hardin and Lodge Grass. The portion sent to Lodge Grass was to cover bonded indebtedness that Lodge Grass incurred while serving the Decker district. Lodge Grass sought declaratory relief, alleging that revenue was being distributed to Hardin in violation of this section. The Supreme Court found that a plain reading of the 1991 version of this section revealed that a school district only had to levy against 1988 production in 1990 and did not require a school district in 1990 to levy against a specific territory in order to receive tax revenue from that territory; however, if a school district levied against any mine in 1990, that district was entitled to receive coal tax revenue. Because Hardin levied against 1988 production in 1990, Hardin was entitled to the distribution of the revenue. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

Transfer of School District Property to Another District — Distribution of Flat Tax Proceeds: In 1989, the method of taxing coal gross proceeds with a property tax was replaced with a flat tax of 5% on production. The final clause of subsection (4)(b) of the 1991 version of this section directs that the flat tax be distributed in accord with the property tax distribution scheme of 1990. The Decker school district was transferred from Lodge Grass to Hardin in 1991. Thus, under the 1990 property tax scheme, Hardin would have been entitled to property tax revenue from the Decker district after that territory was transferred to Hardin. When read in conjunction with 20-6-412, subsection (4)(b) of the 1991 version of this section entitled Hardin to distribution of the Decker district coal tax revenue under the flat tax distribution scheme. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary. The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

Law Review Articles

The Black Book, Raney, 43 Pub. Land & Resources L. Rev. 303 (2020).
History of the Coal Tax, Towe, 43 Pub. Land & Resources L. Rev. 271 (2020).
The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).
Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

15-23-704. Lien of tax — enforcement of payment.

Compiler's Comments

2021 Amendment: Chapter 145 in second sentence at beginning deleted "These" and inserted "Unless suspended under the provisions of 15-23-708" and near middle inserted "used as collateral in consideration of a payment plan and". Amendment effective April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

1993 Special Session Amendment: Chapter 27 near end substituted "15-16-119" for "15-16-113"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: At end substituted "15-17-911" for "chapter 17, part 9, or by suit under 15-16-501 and 15-16-502".

15-23-708. Suspension of collection of coal gross proceeds taxes, interest, and penalties — local government discretion — payment plan.

Compiler's Comments

Effective Date: Section 22, Ch. 145, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

15-23-709. Application of suspension and installment arrangement.

Compiler's Comments

Effective Date: Section 22, Ch. 145, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 8, 2021.

Retroactive Applicability — Applicability: Section 23, Ch. 145, L. 2021, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to installment payments of delinquent coal gross proceeds taxes, interest, and penalties that were due on or before [the effective date of this act]; and

(2) to installment payments of delinquent coal gross proceeds taxes, interest, and penalties due after [the effective date of this act]." Effective April 8, 2021.

15-23-715. New or expanding mines — tax abatement — definition.

Compiler's Comments

2019 Amendment: Chapter 331 in (1), (4)(a), and (4)(b) before "underground mine" inserted "surface or"; and inserted (5) defining surface mine. Amendment effective May 7, 2019.

Retroactive Applicability: Section 4, Ch. 331, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018."

2011 Amendment: Chapter 406 in (1) after "mine" inserted "that is taxed at the rate provided in 15-23-703(1)(a)" and after "50%" inserted "or less"; and in (3) inserted second sentence pertaining to tax abatement for second 5-tax-year period. Amendment effective May 13, 2011.

Retroactive Applicability: Section 4, Ch. 406, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010."

Effective Date: This section is effective October 1, 2009.

Applicability: Section 5, Ch. 476, L. 2009, provided: "[This act] applies to tax years beginning after December 31, 2009."

Part 8
Metal Mines Gross Proceeds

Part Compiler's Comments

Effective Date — Applicability: Section 2, Ch. 349, L. 1987, provided: "This act is effective on passage and approval and applies only to settlement proceeds received during calendar year 1993." Effective April 6, 1987.

Proceeds From Settlement of Disputed Taxes: Section 1, Ch. 349, L. 1987, provided: "Disputed mines net proceeds or metal mines gross proceeds taxes — characterization of proceeds of settlement. (1) Proceeds received by a municipality or county in settlement of an alleged tax obligation arising under the mines net proceeds tax in Title 15, chapter 23, part 5, or the metal mines gross proceeds tax in Title 15, chapter 23, part 8, do not constitute the payment of delinquent taxes or money arising from the taxation of property if all of the following conditions are met:

(a) there are no entries in the county's assessment book reflecting the disputed valuations;

(b) the proceeds are not apportioned to previous tax years in which the department through revised assessment determined taxes were owing;

(c) the payment schedule differs from that applicable to mines net proceeds and metal mines gross proceeds taxes with respect to time of payment;

(d) the settlement agreement provides for penalty and interest provisions that differ from relevant statutory provisions; and

(e) the county and the taxpayer are given the discretion to modify the time and amount of payments.

(2) After all mandatory distributions have been made to state and local taxing jurisdictions, remaining settlement proceeds satisfying all the conditions set forth in subsection (1) may be:

(a) allocated to a school district building fund established under 20-9-508; or

(b) used to provide additional security for bonds issued under Title 90, chapter 5, part 1, for financing of projects for local government facilities, including schools and local port authorities."

Part Case Notes

Taxation and Tax Sale of Minerals in Place: Since minerals in place are corporeal, they are not taxable. Therefore, a tax lien could not be assessed against or attached to coal and mineral rights in property sold with a reservation of coal and mineral rights in grantors, and a tax sale could not sell and a tax deed could not convey the coal and mineral rights. Lien v. Simons, 522 F. Supp. 712, 38 St. Rep. 1644 (D.C. Mont. 1981), reversed at 698 F2d 1230 (9th Cir. 1982).

Part Attorney General's Opinions

Legality of Independent Payment Procedure — Mine Proceeds Taxes — Revised Assessments: It is legal to allow the establishment of a payment procedure independent of the statutory scheme by a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes by authority in 15-8-601 to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. 41 A.G. Op. 67 (1986).

Part Law Review Articles

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part Collateral References

Taxation of Metal Mines, 1977-78 Interim Report, Montana Legislative Council.

15-23-801. Definitions.

Compiler's Comments

2003 Amendment: Chapter 342 inserted definition of basic treatment and refinery charges; and made minor changes in style. Amendment effective April 15, 2003.

Applicability: Section 4, Ch. 342, L. 2003, provided: "[This act] applies to metal mine production occurring after December 31, 2003."

1999 Amendment: Chapter 524 deleted definition of department that read: ""Department" means the department of revenue"; in definition of receipts received inserted (b) pertaining to cost of transporting mineral product and in (f) deleted second and third sentences that read: "Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refinery. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible"; and made minor changes in style. Amendment effective April 30, 1999.

Effective Date — Retroactive Applicability: Section 2, Ch. 524, L. 1999, provided: "[This act] is effective on passage and approval [approved April 30, 1999] and applies retroactively, within the meaning of 1-2-109, to metal mine production occurring after December 31, 1998."

1989 Amendment: In definition of gross proceeds or gross metal yield inserted "or gross value of product", substituted "receipts" for "revenue", and at end substituted "extraction and sale of metals or concentrate containing metals" for "extraction of metals, determined by multiplying the quantity produced by the merchantable value"; deleted definition of market value; in definition of merchantable value, after "means the", substituted "receipts" for "average market value" and at end substituted "is the receipts received for these metals after processing" for "shall be the average market value of these metals after this processing"; and inserted definition of receipts received. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

15-23-802. Metal mines — ad valorem taxation — reports and sampling.

Compiler's Comments

1981 Amendment: Substituted "any mine or mining property located within this state" for "whatever source" in the first sentence of (1); inserted "or mining property" after "each mine" in the middle of (1) and after "operator of the mine" in (1)(a); deleted former (3) and (4) that read "(3) the tons of ore extracted from the mine during the taxable period; (4) the merchantable value in dollars and cents of all metals extracted"; inserted (1)(c) through (1)(f) requiring itemization of tonnage extracted, smelter used, gross yield, and gross value; inserted (2) relating to location of smelter; and inserted (3) requiring sampling, testing or assaying to be done within the state.

Administrative Rules

ARM 42.25.201 Metal mines tax — reporting requirements.

15-23-803. Valuation — gross proceeds.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 substituted second sentence concerning recording of merchantable value in property tax record for former sentence that read: "The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment roll after subtracting such portion of the proceeds as may be exempt from property taxation." Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-23-804. Taxation of merchantable value.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 near beginning substituted "department" for "department's agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

CHAPTER 24
SPECIAL PROPERTY TAX APPLICATIONS

Part 2
Mobile Homes, Manufactured Homes, and Housetrailers

15-24-201. Definitions.

Compiler's Comments

1997 Amendment: Chapter 200 in definition of dealer, after "mobile homes", inserted "or manufactured homes"; in definition of housetrailer, near end, increased length from 32 feet to 45 feet; inserted definition of manufactured home; in definition of mobile home, near middle, increased length from 32 feet to 45 feet and at end, after "connected", substituted "to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence" for "thereto"; and made minor changes in style. Amendment effective January 1, 1998.

Case Notes

Restrictive Covenant Prohibiting Mobile Homes — Application to Manufactured Home — "Mobile Home" Used in Ordinary and Popular Sense: Wittmers purchased a 26- by 60-foot manufactured home that was capable of being put on wheels and moved it to a subdivision in Gallatin County. The plaintiffs brought an action to restrain Wittmers from maintaining the home within the subdivision because it was in violation of a restrictive covenant that prohibited the use of "mobile homes". The Supreme Court held that the covenant was not ambiguous and that the term "mobile home", which was undefined in the covenants, should be understood in its ordinary and popular sense. The Supreme Court noted that other statutory definitions of the term "mobile home" could be looked to for guidance in determining the meaning of the term for the purposes of the covenants and that those other definitions include structures such as Wittmers'. The Supreme Court held that the District Court correctly construed the term "mobile home" to include the Wittmers' manufactured home because their home fell within other definitions of the term "mobile home", because the Supreme Court had previously construed the term to include homes such as the Wittmers' in two other cases before the court, and because the Wittmers' home had the characteristics of a mobile home. (Case decided prior to 1997 amendment of this section defining "manufactured home".) Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996), followed in Toavs v. Sayre, 281 M 243, 934 P2d 165, 54 St. Rep. 155 (1997), followed in Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79, 54 St. Rep. 1142 (1997).

15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.

Compiler's Comments

2021 Amendment: Chapter 14 in (5) in introductory clause after "manufactured home" inserted "or housetrailer"; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: Chapter 36 in (3) in first sentence inserted reference to housetrailer; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 50 in (4) in second sentence substituted "unless the exceptions in 15-24-206(3), 15-24-209, or 15-24-212 apply" for "Except as provided in 15-24-206 and 15-24-209"; in (5)(b) inserted "15-24-212"; and made minor changes in style. Amendment effective February 27, 2013.

2005 Amendment: Chapter 587 in (1)(a) near end inserted "10-1-606 or"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 200 in (1)(a), near beginning after "mobile home", inserted "manufactured home"; in (1)(b), after first "due", inserted "on or before May 31 or" and after second "due" inserted "whichever is later"; in (1)(c) substituted "November 30" for "September 30"; in (2), in first sentence of (3), in (4), in five places, and in (5), in two places after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendment: Inserted (2) requiring Treasurer to notify a lienholder who has requested notification that taxes have not been paid; in (4), near beginning, inserted "Except as provided in 15-24-206 and 15-24-209"; inserted (4)(b) relating to the exceptions in 15-24-206(3) or 15-24-209; and made minor changes in style.

1989 Amendment: In (3), in second and third sentences, substituted language requiring issuance of tax-paid sticker for mobile home or trailer only when moved for former language that required issuance in all instances if taxes, penalty, and interest were paid; deleted (4) that read: "(4) The tax-paid sticker and receipt are not required for mobile homes which are classified as improvements to land, but payment of the assessed property taxes and display of a mobile home movant declaration of destination are required before moving the mobile home"; and made minor change in form.

1987 Amendments: Chapter 360 inserted (1)(d) relating to delinquent payment; and deleted former (2) that read: "(2) Tax, other than the prorated tax described in subsection (1), due on a mobile home or housetrailer not taxed as an improvement that is not paid on or before September 30 of the year that the property is assessed is delinquent and is subject to the same interest and penalty as delinquent property taxes under 15-16-102. Interest begins to accrue as of September 30 of the year the property is assessed."

Chapter 419 in (3), in last sentence, substituted "declaration of destination" for "permit"; inserted (4) relating to mobile homes classified as improvements to land; and inserted (5) relating to the procedure for collecting taxes on mobile homes moved in violation of section.

1985 Amendment: In (1) changed "15-24-206(2)" to "15-24-206" at end of first sentence and inserted last two sentences relating to proration of taxes assessed after second payment date; and near beginning of (2) after "Tax", inserted exclusion clause referring to subsection (1).

1981 Amendment: Inserted subsection (2) relating to delinquent tax on mobile homes not taxed as improvements; inserted "and any interest and penalty owed" after "if the taxes" in the second sentence of (3).

Case Notes

Invalid Application — Flathead Reservation Indians: This section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Attorney General's Opinions

Mobile Home Not Improvement — Lienholder to Pay Personal Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home not classified as an improvement to real property must pay the personal property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

Seizure of Mobile Home Upon Delinquency of First-Half Taxes: If the owner of a mobile home that is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of 15-16-102 apply, and the mobile home may be seized and sold for delinquent taxes pursuant to 15-16-113 (now repealed) and/or 15-17-911. 42 A.G. Op. 95 (1988).

15-24-203. Tax receipt — when production required.

Compiler's Comments

1997 Amendment: Chapter 200 near middle, after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1989 Amendment: Changed "patrolman" to "patrol officer".

15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.

Compiler's Comments

1997 Amendment: Chapter 200 in (2), near beginning after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1989 Amendment: Near beginning of (2) inserted "while in the process of moving a mobile home or house trailer".

1987 Amendment: In (1) inserted "display or" before "produce a declaration"; and in (2) deleted last sentence that read: "The sticker and receipt are not required for mobile homes which are classified as improvements to land."

15-24-205. Sections limited to taxable trailers and manufactured homes.

Compiler's Comments

1997 Amendment: Chapter 200 near middle, after "mobile home", inserted "manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

15-24-206. Declaration of destination on imported mobile homes, manufactured homes, and housetrailers — display — tax receipt — exemptions.

Compiler's Comments

2019 Amendment: Chapter 36 in (1) in first sentence in two places and in last sentence, (2) in first sentence, (3) in introductory clause, (3)(a), (3)(b)(i), (4) in introductory clause, and (4)(d) inserted reference to housetrailer; and made minor changes in style. Amendment effective October 1, 2019.

1997 Amendment: Chapter 200 in (1), in three places, in (2), near beginning, in (3), in (3)(a), in (3)(b)(i), in (4), in introductory clause, and in (4)(d), after "mobile home", inserted "or manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendment: Inserted (3)(b)(ii) requiring a receipt showing payment of property taxes provided for in 15-24-209; inserted (4)(d) providing that subsection (3)(b) does not apply when a person moves a mobile home after he repossesses it unless Treasurer has given the lienholder or secured party timely notice of delinquent taxes; and made minor changes in style.

Case Notes

Invalid Application — Flathead Reservation Indians: Subsection (2) of this section is invalid insofar as it requires the payment of a motor vehicle tax or other personal property taxes by members of the Confederated Salish and Kootenai Tribes residing on the Flathead Reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 US 463, 48 L Ed 2d 96, 96 S Ct 1634 (1976), affirming Confederated Salish and Kootenai Tribes v. Dept. of Revenue, 392 F. Supp. 1325 (D.C. Mont. 1975).

Attorney General's Opinions

Writ of Execution Issuable to Sheriff of Any County: The provisions of 15-16-401 and 15-24-206 do not apply exclusively to the county where the original tax was assessed, and a Writ of Execution against a delinquent personal property taxpayer may be issued by the County Treasurer to the Sheriff of any county in the state. 35 A.G. Op. 79 (1974).

15-24-208. Penalty for moving mobile home, manufactured home, or housetrailer on which taxes due.

Compiler's Comments

2019 Amendment: Chapter 36 inserted reference to housetrailer; and made minor changes in style. Amendment effective October 1, 2019.

1997 Amendment: Chapter 200 after "mobile home" inserted "or manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

Attorney General's Opinions

Mobile Home as Improvement — Lienholder to Pay Delinquent Property Taxes Upon Repossession: A lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. 42 A.G. Op. 95 (1988).

15-24-209. Limit on delinquent mobile home, manufactured home, or housetrailer taxes chargeable to security interest holder.

Compiler's Comments

1997 Amendment: Chapter 200 in four places, after "mobile home", inserted "manufactured home". Amendment effective January 1, 1998.

15-24-210. Notice of impending sale to certain lienholders.

Compiler's Comments

2019 Amendment: Chapter 36 in four places inserted reference to housetrailer; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 189 at beginning of first sentence after "notation" substituted "by a county treasurer" for "under 15-16-115(2)". Amendment effective April 8, 2005.

1997 Amendment: Chapter 200 in four places, after "mobile home", inserted "or manufactured home". Amendment effective January 1, 1998.

15-24-211. Mobile home, manufactured home, or housetrailer — transfer of interest.

Compiler's Comments

2019 Amendment: Chapter 36 in (1) in three places and in (2) in two places inserted reference to manufactured home; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: Section 5, Ch. 50, L. 2013, provided that this section is effective on passage and approval. Approved February 27, 2013.

15-24-212. Cancellation of delinquent property taxes on mobile home or housetrailer.

Compiler's Comments

Effective Date: Section 5, Ch. 50, L. 2013, provided that this section is effective on passage and approval. Approved February 27, 2013.

Part 3
Migratory Personal Property

Part Administrative Rules

ARM 18.8.426 Custom combines.

15-24-301. Personal property brought into state — assessment — exceptions — custom combine equipment.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in (5) substituted "classified as class eight property under 15-6-138" for "classified under class eight". Amendment effective October 1, 2009.

Chapter 343 in (5) near end of second sentence substituted "15-6-138" for "class eight"; inserted (6) concerning farm implements or construction equipment brought into the state under a purchase incentive rental program; and made minor changes in style. Amendment effective April 24, 2009.

Retroactive Applicability: Section 5, Ch. 343, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008."

2005 Amendments — Composite Section: Chapter 542 in (4) substituted "61-3-321(2)" for "61-3-560 and 61-3-561"; and made minor changes in style. Amendment effective January 1, 2006. The Ch. 596 amendment rendered this amendment void.

Chapter 596 in (4) near beginning after "vehicle" deleted "subject to the registration fee imposed by 61-3-560 and 61-3-561" and at end substituted "under 61-3-701" for "fees as follows:

(a) The motor vehicle fee is imposed by the county in which it is located.

(b) One-fourth of the annual fee of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly fees are due the first day of the quarter"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of (4) after exception clause substituted "motor vehicle subject to the registration fee imposed by 61-3-560 and 61-3-561" for "motor vehicle not subject to a fee in lieu of tax" and near end substituted "registration fees" for "taxation and assessment for taxes"; in (4)(a) substituted "fee is imposed" for "is taxed"; in (4)(b) substituted "fee" for "tax liability"; in (4)(c) substituted "fees" for "taxes"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 246 at beginning of (4) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 285 at beginning of (1)(a) substituted "personal property, excluding livestock, brought into this state" for "any personal property (including livestock) brought, driven, or coming into this state"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1987 Amendment: In (4), after "vehicle", substituted "not subject to a fee in lieu of tax" for "not subject to the light vehicle license fee or a fee in lieu of tax"; and deleted (6) that read: "(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less, motorcycles, or quadricycles. These vehicles are subject to the fee provided for in 61-3-532 or 61-3-541."

1985 Amendment: In (4) near beginning after "license fee", inserted "or a fee in lieu of tax"; and in (6), in first sentence, after "or less", inserted "motorcycles, or quadricycles", and at end of second sentence inserted "or 61-3-541" (effective January 1, 1986).

1983 Amendment: In (5), substituted "the calendar year in which the fee is collected" for "a 60-day period".

1981 Amendments: Chapter 598 in (4) substituted "Any motor vehicle not subject to the light vehicle license fee brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter" for "This section does not apply to any motor vehicle brought, driven, or coming into this state by any nonresident person temporarily employed in Montana for a period not exceeding 90 days if the motor vehicle is used exclusively for transportation of such person."

Chapter 613 deleted "in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date" from the end of (3) in the version to be effective January 1, 1983.

Chapter 614 added "Except as provided in subsections (2) through (6)" at the beginning of (1); and added subsection (6) relating to light vehicles subject to a fee which is effective January 1, 1982.

Coordination: Section 15-24-301 appeared in HB 389 (Ch. 598, L. 1981) twice. It appeared in section 1 and 6. Section 6, Ch. 598, L. 1981, was a coordination section; it provided, in part: "If Senate Bill 355 [Ch. 614, L. 1981], providing a license fee system for light vehicles, is passed and approved then section 1 of this act is void and section 15-24-301, MCA, is amended to read:...." Because SB 355 was passed and approved the 1981 amendments of Ch. 598, L. 1981 to 15-24-301 are those contained in sec. 6, Ch. 598, L. 1981.

Administrative Rules

ARM 18.8.426 Custom combines.

ARM 42.21.162 Personal property taxation dates.

Case Notes

Motor Vehicle Inventory: State Board of Equalization (now Department of Revenue) would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. Hardin Auto Co. v. Alley, 149 M 1, 422 P2d 346 (1967).

Purchase From Dealer: When new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, and under former law truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. Swartz v. Berg, 147 M 178, 411 P2d 736 (1966).

Attorney General's Opinions

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-24-302. Collection procedure.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 189 after "15-8-408" deleted "15-16-115"; and made minor changes in style. Amendment effective April 8, 2005.

Chapter 596 deleted former (1) that read: "(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, near end of introductory clause after citations deleted "as amended"; and at beginning of (1) substituted "the imposition of registration fees on" for "taxation of". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1993 Special Session Amendment: Chapter 27 in introductory clause substituted reference to 15-16-119 for reference to 15-16-111 through 15-16-114; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In introductory clause substituted "15-17-911" for "chapter 17, part 9".

1981 Amendments: Chapter 159 substituted "15-24-202" for "15-24-202(1)".

Chapter 598 added subsection (1) relating to taxation of motor vehicles under 15-24-301.

15-24-303. Proration of tax on personal property — refund.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in last sentence substituted "livestock for which a fee is imposed under 15-24-902(2)" for "livestock assessed under 15-24-902(2)". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In (1) in last sentence substituted "per capita fee" for "per capita levy".

1999 Amendment: Chapter 285 at end of (1) substituted "livestock subject to the per capita levy under 15-24-921" for "livestock assessed under 15-24-902(2)". Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1), at end, inserted "or to livestock assessed under 15-24-902(2)".

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Amendment: Chapter 587 in (1), near beginning after "into", substituted "or otherwise located in the state on or" for "any county" and inserted second sentence concerning nonapplicability to motor vehicles; inserted (2) concerning prorated refund; and made minor changes in style. Amendment effective April 28, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 587, L. 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992." Approved April 28, 1993.

1989 Amendment: Substituted "The tax on personal property brought, driven, or coming into any county after the assessment date must be prorated according to the ratio which the remaining number of months in the year bears to the total number of months in the year" for "If such personal property is brought or driven or comes into any county before the assessment date, the tax shall be the full amount of the tax computed as provided above, but if brought, driven, or coming into the county after the assessment date, the tax shall be prorated according to the ratio which the number of months the property has its taxable situs in the county bears to the total number of months in said year." Amendment effective April 21, 1989.

Effective Date — Retroactive Applicability: Section 4, Ch. 615, L. 1989, provided: "[This act] is effective on passage and approval [approved April 21, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Administrative Rules

ARM 42.21.162 Personal property taxation dates.

15-24-304. Prorated fee in lieu of tax — aircraft.

Compiler's Comments

1987 Amendment: In (1) changed reference to subsection (7) to reference to subsection (6) and deleted second sentence that read: "The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 15-24-303"; inserted (2) relating to proration of fee; inserted (3) relating to penalty; and inserted (4) relating to migratory aircraft. Amendment applicable to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

1983 Amendment: Substituted "(7)" for "(6)"; and changed registration date from June 1 to March 1.

1981 Amendment: Substituted "June 1" for "March 1".

Attorney General's Opinions

Assessment of Airplane — Where Assessable: A county may not assess an aircraft owned by a Montana resident but located in Montana for not more than 30 days in a taxable year. 30 A.G. Op. 20 (1963).

15-24-305. Taxation of motion picture and television commercial property.

Compiler's Comments

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Preamble: The preamble attached to Ch. 525, L. 1989, provided: "WHEREAS, Montana has abundant scenery, resources, and accommodations that are uniquely suited to the filming of motion pictures and television commercials; and

WHEREAS, the motion picture industry and the television commercial filming industry are increasingly recognizing Montana's intrinsic beauty and character that enhance the products produced by both industries; and

WHEREAS, the State of Montana and her citizens welcome the filming industry to this beautiful state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to extend the state's inherent hospitality to these industries by exempting from taxation certain property used in the production of motion pictures and television commercials."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

Part 8
Building and Loan Associations

15-24-801. Savings and loan associations — taxation.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in second sentence, after "department", deleted "of revenue or its agent in the county in which the principal office of the association is located"; in third and fourth sentences, after "department", deleted "or its agent"; in fourth sentence substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Part 9
Livestock

Part Case Notes

Seizure and Sale of Cattle: When nonresident taxpayer failed to pay tax on 200 head of migratory cattle in 1960, county had a lien for the tax under 15-16-401 and 15-16-402, and properly seized and noticed up for sale on May 7, 1963, as the lien was not limited to 1960 cattle by 15-17-901 (now repealed), as amended in 1963, but extended to all of taxpayer's property. O'Brien v. Ross, 144 M 115, 394 P2d 1013 (1964).

15-24-902. Number of livestock.

Compiler's Comments

2001 Amendment: (Temporary version) Chapter 574 in (1) in first sentence substituted "determine the number of" for "assess" and in second sentence substituted "assigned" for "assessed"; and in (2) in three places substituted "have a fee imposed on nonexempt livestock" for "have nonexempt livestock assessed". Amendment effective July 1, 2001.

(Version effective January 1, 2003) In first sentence substituted "determine the number of" for "assess" and substituted "per capita fee" for "per capita levy" and in second sentence substituted "assigned" for "assessed".

1999 Amendment: Chapter 285 at beginning of section deleted "Except as provided in subsection (2)" and substituted "assess livestock for the purposes of the per capita levy imposed under 15-24-921" for "assess all nonexempt livestock"; deleted former (2) that read: "(2) An owner of livestock may elect to have nonexempt livestock assessed on the average inventory basis as provided in 15-24-927. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have nonexempt livestock assessed on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have nonexempt livestock assessed on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1), at beginning, inserted exception clause and after "department" inserted "of revenue"; and inserted (2) concerning assessment on average inventory basis.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 after "department" deleted "or its agent" and in two places substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Substituted language (see 1989 Session Law for text) for former section that read: "Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit or until it arrives in the county where the person owning the same resides and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county."

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Case Notes

Control Sufficient for Taxation: Under former law, when a feedlot owner exercised control but not ownership over cattle, taxes on the cattle assessed against the feedlot owner were valid. Possessory control of property was held sufficient to authorize its assessment to the possessor or keeper of it. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

Taxes on Cattle as Personal Property: Unpaid taxes previously and properly assessed on cattle under the control of a cattle feedlot owner could not be assessed against a new owner of the feedlot. Such taxes are taxes on personal property. Stensvad v. Musselshell County, 180 M 489, 591 P2d 225 (1979).

15-24-903. Duty of owner to assist in assessment.

Compiler's Comments

2015 Amendment: Chapter 54 in (1) substituted "deliver to the department by March 1 of each year an electronic or written statement, under oath, listing the number of the owner's livestock and the county or counties where the livestock were located on February 1 of the same year" for "at the time of assessment make and deliver to the department for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands". Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 54, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

1999 Amendment: Chapter 285 in (1) at beginning deleted "Except as provided in subsection (1)(b)" and substituted "as defined in 15-24-921" for "as defined in 15-24-901"; deleted former (1)(b) that read: "(b) If the owner of livestock is assessed on the average inventory basis, as provided in 15-24-927, the owner or the owner's agent shall, in the manner and timeframe provided in subsection (1)(a), report to the department the county or counties where the livestock were located in the prior tax year and show the months during the prior tax year that the livestock were within the county or counties"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (1)(a), at beginning, inserted exception clause and after "department" inserted "of revenue"; and inserted (1)(b) concerning assessment on average inventory basis.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1), after "department", deleted "or its agent" and substituted "February 1" for "March 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Near middle of (1), after "located", substituted "on March 1" for "since the last assessment date" and at end, after "brands", deleted "and showing the times during that period that his livestock were within the county or counties".

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

15-24-904. Penalty for violation of law.

Compiler's Comments

2001 Amendments — Composite Section: (Version effective January 1, 2003) Chapter 7 near end after "15-8-309" substituted "on the" for "[on the]". Amendment effective October 1, 2001.

(Version effective January 1, 2003) Chapter 574 near end substituted "per capita fee" for "per capita levy"; and made minor changes in style.

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 285 near end substituted "increase the per capita levy, as provided in 15-24-921, by 10%" for "increase the assessment by 10%"; and made minor changes in style. Amendment effective January 1, 2003.

Chapter 427 substituted "shall" for "may"; at end substituted "assess the penalty provided in 15-8-309" for "increase the assessment by 10% as a penalty"; and made minor changes in style. Amendment effective January 1, 2000.

In the version effective January 1, 2003, the code commissioner added the bracketed material. The section was amended two times, and the bracketed material is necessary to effectuate both amendments.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Special Session Amendment: Chapter 27 substituted "department" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Section Not Codified: Section 84-5201.2, R.C.M. 1947, which is a short title, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 507, L. 1975.

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

15-24-905. Livestock brought into state — notice to department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 120, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 3, Ch. 120, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

2015 Amendment: Chapter 54 substituted "complete a livestock reporting form" for "forward to the department a certified letter", after "number of livestock" deleted "the brand on the livestock, the ages of the livestock, the time and place at which the livestock were brought across the state line", and deleted former last sentence that read: "The department of livestock shall at least once each month furnish from its own records to the department a list of the number and kind of livestock moved into each county, together with the name of the owner of the livestock"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 54, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, substituted "supervisor" for "foreman", substituted "February 1" for "March 1", after "department" deleted "of revenue or its agent in the county into which the livestock are moved", before "certified" deleted "or registered", and at end inserted "and the county or counties into which the livestock are moved"; in second sentence, after "department", deleted "of revenue or its agent in the county into which such livestock are moved" and after "moved" inserted "into each county"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

1989 Amendment: Near beginning substituted "March 1" for "January 1"; deleted former (2) and (3) that read: "(2) The tax due on livestock brought into this state must be paid within 30 days after receiving the tax notice.

(3) Livestock on which tax is owed under this section may not be removed from the county until the taxes have been paid"; and made minor changes in phraseology.

Applicability: Section 13, Ch. 598, L. 1989, provided: "[This act] applies to tax years beginning after December 31, 1989."

15-24-906. Collection of fee on livestock.

Compiler's Comments

2015 Amendment: Chapter 54 substituted "livestock reporting form" for "letter"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 54, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

1993 Special Session Amendment: Chapter 27 near beginning, after "department", deleted "or its agent", after "letter" inserted "provided for in 15-24-905", and substituted "February 1" for "January 1"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(3), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1994.

15-24-921. Per capita fee to pay expenses of enforcing livestock laws.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 120, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 3, Ch. 120, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

2021 Amendment: Chapter 507 inserted (1)(b) providing that a per capita fee may not be imposed on certain bison owned by a tribal member or a tribe; in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 14, 2021.

2017 Amendment: Chapter 119 in (1) and (3) before "bees" inserted "honey". Amendment effective October 1, 2017.

2015 Amendment: Chapter 54 in (1) at beginning deleted "In addition to appropriations made for those purposes", substituted "The fee is in addition to appropriations and is to help pay" for "for the purpose of aiding in the payment of", and before "bounties" deleted "for the payment of"; in (2) substituted "May 31" for "November 30"; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 54, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2002 Amendment: Chapter 13 inserted (2) relating to when the fee is due and penalty and interest provisions; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendment: Chapter 574 in (1) near beginning substituted "per capita fee is authorized and directed to be imposed" for "per capita tax is authorized and directed to be levied". Amendment effective July 1, 2001.

1995 Amendment: Chapter 206 in (2) inserted "ostriches, rheas, emus".

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1993 Special Session Amendment: Chapter 27 in (1) substituted "department" for "county assessor" and at end substituted "provided in 81-7-104" for "hereinafter specified"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 417 in (2) inserted "alpacas"; and made minor changes in style.

1991 Amendment: At end of (2) inserted "llamas, domestic bison, and domestic ungulates"; and made minor change in style. Amendment effective April 24, 1991.

Retroactive Applicability: Section 6, Ch. 627, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In (1), before "tax", inserted "per capita", after "levied" inserted "by the county assessor", after "on all" substituted language referring to poultry, bees, swine, and livestock for "livestock in", and near end, before "laws", changed "stock" to "livestock"; and inserted (2) defining livestock. Amendment effective January 1, 1988.

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

15-24-922. Board of livestock to prescribe per capita fee — refunds.

Compiler's Comments

2019 Amendment: Chapter 15 in (3)(a) in third sentence substituted "March 31" for "January 31" and substituted last sentence concerning a statement and documentation to be provided by the applicant for former text that read: "The application must include a statement showing the date when the livestock were moved out of the state." Amendment effective July 1, 2019.

2015 Amendment: Chapter 83 in (2) in first sentence after "generated" inserted "solely by the per capita fee" and in second sentence after "The calculation" inserted "may not include investment income and". Amendment effective July 1, 2015.

2001 Amendment: Chapter 574 throughout section substituted references to fee for references to levy and tax; in (2) near middle of second sentence substituted "department" for "counties"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 285 near beginning of (3)(a) substituted "livestock owner who moves livestock between states" for "livestock owner taxed under 15-24-920"; at beginning of (3)(b) deleted "Except as provided in subsection (3)(c)"; deleted former (3)(c) that read: "(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be taxed on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita tax levy must be reported on February 1 of each year"; and made minor changes in style. Amendment effective January 1, 2003.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

1995 Amendment: Chapter 576 in (2), at end of first sentence after "years", deleted "beginning with revenue generated by 81-7-104 and this section in the taxable years 1985, 1986, and 1987"; in (3)(b), at beginning, inserted exception clause; inserted (3)(c) concerning assessment on average inventory basis; and made minor changes in style.

Applicability: Section 9, Ch. 576, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1991 Amendment: Inserted (3) concerning refund of per capita levy. Amendment effective April 24, 1991.

Retroactive Applicability: Section 6, Ch. 627, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In beginning of (1) substituted "board of livestock shall" for "department of revenue is hereby empowered and it is made its duty to", before "levy" inserted "amount of the per capita", after "purpose" deleted "above", and after "indicated" substituted "in 15-24-921" for "and the board of livestock has the right to recommend to said department the amount of such levy"; and inserted (2) relating to 110% cap. Amendment effective January 1, 1988.

1983 Amendment: Changed "various boards herein named" to "board of livestock".

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

15-24-925. Reimbursement to department — transmission of fees to state.

Compiler's Comments

Extension of Termination Date: Section 3, Ch. 20, L. 2023, amended sec. 8, Ch. 284, L. 2017, by extending the termination date imposed by Ch. 284 to June 30, 2029. Effective February 28, 2023.

2017 Amendment: Chapter 284 in (3) substituted "At least $350,000 must be transferred" for "The amount of $350,000 is transferred". Amendment effective May 4, 2017, and terminates June 30, 2023.

2011 Amendment: Chapter 339 inserted (3) regarding transfer from state general fund each fiscal year. Amendment effective July 1, 2011.

2005 Amendment: Chapter 12 in (2) inserted last sentence requiring interest earned on money in the account to be deposited in the account. Amendment effective March 15, 2005.

2002 Amendment: Chapter 13 at end of (1) inserted "unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis". Amendment effective August 16, 2002.

2001 Amendments — Composite Section: Chapter 257 throughout section substituted references to department (of revenue) for references to state treasurer. Amendment effective July 1, 2001.

Chapter 574 in (1) near beginning substituted "department" for "county treasurer", after "reimbursement" deleted "to the county", and near end substituted "fee" for "levy"; and in (2) deleted former first sentence that read: "Except for the amount withheld under subsection (1), the taxes levied and the money collected pursuant to the provisions of 15-24-922 must be transmitted to the state treasury by the county treasurer of each county, as provided in 15-1-504, but not later than July 1 following assessment", in first sentence near beginning substituted "department" for "county treasurer", in two places substituted "fee imposed" for "tax levied", and at end substituted "department of livestock" for "state treasurer", and in second sentence substituted "department" for "state treasurer". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1995 Amendment: Chapter 509 in (2), in third sentence, inserted "in an account in the special revenue fund" and inserted fourth sentence concerning keeping money in the account separate from other money received by the Department of Livestock; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: Inserted (1) relating to county reimbursement; at beginning of (2) inserted exception clause, after "provisions of" changed "15-24-923" to "15-24-922", after "transmitted" deleted "with other taxes for state purposes", after "15-1-504" inserted "but not later than July 1 following assessment", in third sentence, after "shall be", substituted "deposited" for "placed", after "credit of the" substituted "department of livestock" for "funds as provided in 15-24-924", and made minor changes in phraseology. Amendment effective January 1, 1988.

1983 Amendments: Chapters 100 and 444 both deleted "annually" following "transmitted" in the first sentence; and added "as provided in 15-1-504" at the end of the first sentence.

Administrative Rules

ARM 42.21.165 Livestock reporting and per capita fee payment.

Part 11
Leasehold and Other Interests in U.S. Property

Part Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

15-24-1101. Federal property held under contract by private person subject to taxation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-24-1102. Federal property held under contract of sale.

Compiler's Comments

1989 Special Session Amendment: Near middle substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendment: Near middle of first sentence changed "15-6-131 through 15-6-140" to "15-6-131 through 15-6-149".

15-24-1103. Federal property held under lease.

Compiler's Comments

1993 Amendment: Chapter 80 inserted third sentence holding lessor liable for property taxes when the property interest is acquired through foreclosure; and made minor changes in style. Amendment effective February 25, 1993.

Effective Date — Applicability: Section 4, Ch. 80, L. 1993, provided: "[This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act]." Effective February 25, 1993.

1989 Special Session Amendment: Near middle substituted reference to Title 15, ch. 6, part 1, for reference to 15-6-131 through 15-6-149. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

1987 Amendment: Near middle of first sentence changed "15-6-131 through 15-6-140" to "15-6-131 through 15-6-149".

15-24-1104. Collection of taxes on interests in United States lands.

Case Notes

Tax Sale Provisions Applicable to Improvements on Tax-Exempt Land — Meaning of "Real Property" and "Real Estate": Montana's tax collection laws governing real estate tax sales apply to improvements located on tax-exempt lands. The conveyance by tax deed of appellant's log cabin for nonpayment of taxes was upheld against his assertion that the cabin, situated on Forest Service land, is not an improvement fixed to land for purposes of the Realty Transfer Act and not "real estate" for purposes of the tax sale provisions. The court traced the Legislature's circuitous route to a definition of taxable real property in support of its holding. Brown v. Hart, 213 M 517, 692 P2d 14, 41 St. Rep. 2264 (1984).

Part 12
State and Other Exempt Property

Part Attorney General's Opinions

Tax Lien — Delinquent Tax, Penalty, Interest Secured — No Priority Over SBA Mortgage: The tax lien provided in 15-16-403 secures both the delinquent tax and any penalties and interest. The lien for penalties and interest does not enjoy statutory priority over an SBA (Small Business Administration) mortgage but is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure. A county may not enforce a lien for penalties and interest under 15-16-403 through the tax sale procedure under Title 15, ch. 17, if there are other prior security interests in the property. 39 A.G. Op. 69 (1982).

15-24-1201. State and other exempt property held under contract — when taxable.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions.

Compiler's Comments

1997 Amendment: Chapter 49 in (1) deleted former second through fourth sentences that read: "The tax may not be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to tax. The tax may not be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates"; inserted (2)(c) prohibiting the imposition of the tax on the possession or other beneficial use of public lands occupied under certain leases issued by the United States or Montana or upon any easement unless the lessee or permittee is entitled to exclusive possession of the land to which the lease, permit, or easement relates; inserted (2)(d) prohibiting the imposition of the tax on the possession or other beneficial use of buildings owned by public entities located upon public airports and providing that private buildings located on public airport property are subject to the tax; and made minor changes in style. Amendment effective March 13, 1997.

Effective Date — Retroactive Applicability: Section 3, Ch. 49, L. 1997, provided: "[This act] is effective on passage and approval [approved March 13, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1993 Amendments: Chapter 104 in first sentence, at beginning, deleted "After March 17, 1969" and near middle, after "beneficial use", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 427 inserted last sentence prohibiting imposition of tax on beneficial use of port authority property; and made minor changes in style. Amendment effective April 20, 1993.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1991 Amendment: Near end, after "track", inserted "owned by the United States or" and after "as long as the state" inserted "or the United States". Amendment effective April 24, 1991.

Retroactive Applicability: Section 2, Ch. 621, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

1989 Amendment: Near end substituted "right-of-way or track" for "right-of-way and track".

1987 Amendment: At end inserted sentence exempting certain state-owned tracks.

Severability: Section 5, Ch. 591, L. 1987, was a severability section.

1983 Amendment: Inserted last sentence that reads: "The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax."

Administrative Rules

ARM 42.22.101 Definitions.

ARM 42.22.105 Reporting requirements.

ARM 42.22.107 Additional reporting requirements for beneficial use of government-owned transmission lines.

Case Notes

State Beneficial Use Tax on Private Utility's Use of Power Lines Not Discriminatory: Five investor-owned utilities appealed a District Court order upholding Montana's assessment of beneficial use taxes on use of federally owned transmission lines within the state. The utilities argued that assessing the tax against users of federal property while exempting users of state-owned property violated the supremacy clause of the U.S. Constitution. In affirming the District Court decision upholding the tax, the Supreme Court ruled that allowing a tax exemption for users of two state-owned railroad lines designed to promote tourism while assessing the tax against users of federally owned property used to increase private revenues did not unconstitutionally discriminate against the utility owners. Pac. Power & Light Co. v. Dept. of Revenue, 246 M 398, 804 P2d 397, 48 St. Rep. 9 (1991).

Privilege of Using Power Lines Taxable: To advance its commercial activities and thereby increase profits, Portland General Electric Company (PGE) contracted for firm transmission capacity over the lines of the Bonneville Power Administration. Although PGE does not possess the lines, the power flowing through the lines remains under PGE's ownership. PGE pays for the use of the lines regardless of the actual transmission flow. The reservation of firm transmission demand grants PGE an exclusive right taxable under this section. Portland Gen. Elec. Co. v. Dept. of Revenue, 237 M 324, 773 P2d 1189, 46 St. Rep. 839 (1989).

Contract Right Constituting Beneficial Use: Several investor-owned utility companies contracted with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that they did not have the right to possession, control, or exclusive use of the lines and therefore did not have a taxable interest in the lines. The Supreme Court held that an enforceable contract right to use or enjoy property owned by another is subject to taxation. The court also held that the companies had reserved the right to transmit more power than the lines could handle and that until other parties were able to reserve some of the lines' transmission capacity, the companies' use was exclusive. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.

Compiler's Comments

1993 Amendment: Chapter 427 near beginning, after "tax-exempt property", substituted "for industrial, trade, or other business purposes is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be" and in second sentence, at end after "government", deleted "the amount of payments which are made in lieu of taxes"; and made minor changes in style. Amendment effective April 20, 1993.

Coordination Instruction: Section 2, Ch. 427, L. 1993, a coordination section, provided that if House Bill No. 312, Senate Bill No. 325, and [this act] are passed and approved, then 15-24-1204 is amended as provided in this section (see 1993 Session Law for text). House Bill No. 312 was passed and approved March 18, 1993, and Senate Bill No. 325 was passed and approved March 31, 1993. Therefore, the amendment to 15-24-1204 contained in this section is effective.

The amendments made by Ch. 104 and Ch. 256 were:

Chapter 104 near beginning, after "tax-exempt property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Chapter 256 at end of first sentence substituted "is on the separate private interest in the tax-exempt property" for "shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof"; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 3, Ch. 427, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

Case Notes

Due Process and Equal Protection Clause of U.S. Constitution Not Violated by Use Tax on Electric Transmission Lines: Several investor-owned utility companies contracted with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that the beneficial use tax imposed on them violated their rights under the 14th amendment in that the counties where the lines were located conferred no benefit on the companies, the counties had already been compensated through the impact-aid portions of the Montana Intertie Agreement, and the imposed tax was based on the full value of the facilities when the Agreement gave the companies far less than full ownership. The Supreme Court noted that state tax statutes normally are not set aside based upon due process clause violations. The court ruled that the companies had failed to show that their activities did not meet the two-prong test that, first, the object of the tax lacked a nexus within the state and, second, the tax failed to fairly reflect the taxpayer's activity in the taxing state. The court also ruled that the law did not deny equal protection simply because it did not tax users of lines of less than 500 kilovolts. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

Federal Supremacy Clause Not Violated by State Taxation of Private Users of U.S. Agency's Power Lines: Certain privately owned utility companies entered into an agreement with a federal agency to use the agency's power lines located in Montana to transmit electricity to out-of-state users. The companies argued that a beneficial use tax imposed on them was preempted by several federal laws, including 15 U.S.C. 391 that provides that a tax is discriminatory if it results in a greater tax burden on electricity that is generated and transmitted in interstate commerce than on electricity that is generated and transmitted in intrastate commerce. The Supreme Court held that the tax did not violate the federal law because it was applied at the same rate on both interstate and intrastate users. The companies also argued that the tax was preempted by 16 U.S.C. 839, which provides for impact-aid payments to the affected counties. The court ruled that an examination of the federal law showed that the payments were not in lieu of taxes. In addition, the companies argued that the tax was preempted because the legal incidence of the tax fell on the federal government. The court found that the tax was levied directly on the companies for their beneficial use of the federal government's facilities and that there was no transfer of liability to the government. Pac. Power & Light Co. v. Dept. of Revenue, 237 M 77, 773 P2d 1176, 46 St. Rep. 636 (1989).

15-24-1206. County suit for delinquent privilege tax.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-24-1207. Reporting requirements — penalty — rules.

Compiler's Comments

1999 Amendment: Chapter 427 inserted (2) relating to penalty for failure to file a statement; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Amendment: Chapter 104 in (1), near beginning of first sentence after "property", inserted "for industrial, trade, or other business purposes"; and made minor changes in style.

Statement of Intent: The statement of intent attached to HB. 747 (Ch. 683, L. 1983) provided: "A statement of intent is required for this bill because section 1 [15-24-1207] grants rulemaking authority to the Department of Revenue.

It is the legislature's intent that the rules promulgated by the Department of Revenue shall insure compliance by all affected private parties with the provisions of Title 15, chapter 24, part 12, MCA, including producers of electrical energy who use tax-exempt high voltage transmission lines to make bulk power transfers. The rules enacted by the department shall provide a mechanism whereby private users or possessors of tax-exempt property, including producers of electrical energy who use tax-exempt high voltage transmission lines for bulk power transfers, are required to report the value of such tax-exempt property in order that ad valorem taxes may be levied and collected. Any energy producer using a transmission line owned by the federal government and therefore not subject to state and local property taxes shall be subject to this tax. If the line is made available to private producers, the private producers who own power being transmitted over such lines shall be subject to the tax at the rates and in the manner prescribed in 15-24-1204. The allocation among several users shall be allocated according to the charge by the federal government for such use to the maximum extent possible. The rules shall provide that if a private party fails to report the value of tax-exempt property used or possessed by it, the department shall determine the value of the tax-exempt property and order the taxpayer to show cause why such value should not be used in computing the tax and why tax computed from that value should not be levied against and collected from the taxpayer. It is the legislature's intent that no rules other than those necessary to effectuate the provisions of section 1 [15-24-1207] of this act as set forth in this statement of intent shall be promulgated by the Department of Revenue."

Administrative Rules

ARM 42.22.101 Definitions.

ARM 42.22.105 Reporting requirements.

ARM 42.22.107 Additional reporting requirements for beneficial use of government-owned transmission lines.

15-24-1208. Apportionment of tax-exempt property.

Administrative Rules

ARM 42.19.502 Exemptions involving ownership test.

ARM 42.19.506 Exemptions involving use test.

15-24-1209. Adjustment of taxes for formerly taxed property — presumption of taxability.

Compiler's Comments

Preamble: The preamble attached to Ch. 472, L. 2009, provided: "WHEREAS, the Department of Natural Resources and Conservation has asserted regulatory jurisdiction over the beds of various rivers and streams based on the premise that the streams are navigable and that the state therefore owns the riverbeds and streambeds; and

WHEREAS, very few Montana rivers or streams have been adjudicated as navigable, either in whole or in part; and

WHEREAS, it is not economically feasible for either the Department of Revenue or the Department of Natural Resources and Conservation to obtain judicial determinations of riverbed or streambed ownership by statewide quiet title actions, yet that ownership determination may not be made legally by unilateral administrative decisions; and

WHEREAS, if the Department of Natural Resources and Conservation wishes to assert regulatory control over the bed of a river or stream that has not been adjudicated to be navigable and was not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river, it is required to provide written notice of the claim of state ownership to the affected property owners; and

WHEREAS, because the present claims of state ownership of riverbeds and streambeds is contrary to longstanding administrative practice and because the test for navigability depends upon evidence concerning the log floating capability of a stream at the time of statehood, there is no presumption of correctness attached to a navigability claim made by any state agency."

Legislative Findings: Section 1, Ch. 472, L. 2009, provided: "The legislature finds that:

(1) for 120 years since the admission of Montana as a state in 1889, the department of revenue and its predecessor agencies have taxed some landowners whose property abuts a river or stream on the assumption that those riparian landowners owned the property to the middle of the river or stream;

(2) in Montana v. United States, 450 U.S. 544 (1981), the United States supreme court recognized that if a river or stream is not navigable, the abutting riparian landowners own the land in the bed of the stream to the middle of the stream, but if a river or stream is navigable, the state owns the bed of the river or stream, having acquired ownership from the United States when the state was admitted to the union, and therefore Montana owns the bed of the Bighorn River where it flows through the Crow reservation;

(3) for the purpose of determining the ownership of a riverbed or streambed, the test of navigability is whether logs could be floated in the stream at the time of statehood as stated in Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 682 P.2d 163 (1984), based upon The Montello, 87 U.S. 430 (1874), Sierra Pacific Power Co. v. Federal Energy Regulatory Commission, 681 F.2d 1134 (9th Cir. 1982), and State of Oregon v. Riverfront Protection Association, 672 F.2d 792 (9th Cir. 1982);

(4) beginning with tax assessments that were effective January 1, 2008, the lien date for real property taxes, the department of revenue reassessed the property of riparian landowners whose land abuts various rivers and streams by reducing the amount of land assessed based upon the premise that the landowners did not own to the middle of the river or stream because the river or stream was navigable and these reassessments, if correct, have enormous impact upon the riparian landowners because they affect land titles, acreage owned, qualification for various conservation and price support programs, and ownership of water diversion facilities and other structures that the riparian landowners have constructed for water usage;

(5) the 2008 reassessments were made by simply sending out tax bills without any notice that they were based upon a claim of state ownership of the riverbeds or streambeds and some riparian landowners have paid the first installment of 2008 real property taxes based upon the reassessments without realizing that a claim of state ownership of the riverbeds and streambeds was the basis for the reassessments;

(6) procedural due process requires that if a claim of change in ownership is involved, the state agency involved shall afford the affected property owners both notice of the claim and the opportunity to be heard;

(7) the 2008 real property tax assessments based upon claims of state ownership did not comply with the constitutional requirement for procedural due process and under that circumstance payment by the property owners of taxes based on the reassessment does not constitute acquiesence in the underlying state ownership claim;

(8) The department of revenue is required to provide written notice to the affected property owners of the state's claim of ownership so that the affected property owners have a fair opportunity to be heard and to dispute the government's claim."

Effective Date: Section 18, Ch. 472, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 6, 2009.

Part 14
New or Expanding Industry — Ammunition Components

15-24-1401. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 644, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 291 inserted (2)(h) regarding operation of a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system; and made minor changes in style. Amendment effective April 28, 2021.

Applicability: Section 16, Ch. 291, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2021."

Severability: Section 14, Ch. 291, L. 2021, was a severability clause.

2019 Amendment: Chapter 269 in definition of expansion substituted "has added or will add" for "has added after July 1, 1987"; in definition of new in first sentence substituted "has invested or will invest" for "has invested after July 1, 1987"; and made minor changes in style. Amendment effective May 2, 2019.

Applicability: Section 4, Ch. 269, L. 2019, provided: "[This act] applies to new or expanding industry tax abatements granted on or after [the effective date of this act]." Effective May 2, 2019.

2017 Amendment: Chapter 438 in definition of industry inserted (g) concerning operation of qualified data center or dedicated communications infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

Applicability: Section 7, Ch. 438, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Preamble: The preamble attached to Ch. 438, L. 2017, provided: "WHEREAS, no large-scale commercial data centers currently operate in Montana; and

WHEREAS, Montana's current property tax classes and assessment methodologies prevent large data center operators from locating in Montana due to valuation uncertainty and noncompetitive tax rates; and

WHEREAS, Montana needs to create a new property tax class and valuation certainty while expanding existing abatements and incentives to allow local governments in Montana to compete against locations outside Montana for data center investment."

2003 Amendment: Chapter 405 in definition of industry at end of (f) substituted "15-6-225" for "90-4-102". Amendment effective October 1, 2003.

2001 Amendment: Chapter 591 in definition of industry inserted (f) concerning electrical energy production from an alternative renewable energy source. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124 (now repealed), 15-32-102, 15-32-109 (now repealed), 15-32-115 (now repealed), 15-32-201 (now repealed), and 15-32-402 (now repealed)] apply to tax years beginning after December 31, 2001."

1999 Amendment: Chapter 51 in (2)(a) after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1972 Standard Industrial Classification Manual"; and made minor changes in style. Amendment effective March 15, 1999.

1991 Amendment: In definition of expansion decreased from $250,000 to $50,000 the worth of qualifying improvements or modernized processes; in definition of industry inserted (d) to include a firm that transports, warehouses, or distributes commercial products if 50% or more of gross sales or receipts are earned from outside the state and inserted (e) to include a firm that earns 50% or more of annual gross income from out-of-state sales; in definition of new, near beginning of first sentence, substituted "firm" for "industry", changed subsection reference to 15-24-1402, and near middle decreased from $500,000 to $125,000 the worth of qualifying improvements or modernized processes; and made minor changes in style. Amendment effective April 27, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

1987 Amendment: In (1) substituted definition of expansion for definition of new or expanding that read: ""New or expanding" means that the manufacturing industry is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) or that the manufacturing industry has added qualifying improvements to its property within the same jurisdiction since July 1, 1981"; in (2) substituted ""Industry" includes but is not limited to a firm" for ""Manufacturing industry" means an industry"; and inserted (2)(b) and (2)(c) that read: "(b) extraction or harvesting of minerals, ore, or forestry products; or

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products"; in (3) inserted definition of new; and in (4) inserted definition of qualifying.

Applicability: Section 4, Ch. 574, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." Effective April 20, 1987.

Administrative Rules

ARM 42.19.1235 Tax incentive for new and expanding industry.

Case Notes

New or Expanding Industry Tax — Discretionary Tax Break Held Not to Violate Substantive Due Process: After granting new or expanding industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanding industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under 15-24-1402 on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the statute under which the Board had acted violates Cenex's right to substantive due process of law. Citing Plumb v. District Court, 279 M 363, 927 P2d 1011 (1996), the Supreme Court held that the statute does not violate the company's right to substantive due process of law. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

Statute Held to Grant Discretion to Approve or Deny Tax Reduction — County Immunity Not Implicated by Declaratory Judgment Action: After granting new or expanded industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanded industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted by the Board if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under 15-24-1402 on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the Board had illegally withheld the tax reduction. Noting the construction previously given to the statutory use of the term "approval" in McCarten v. Sanderson, 111 M 407, 109 P2d 1108 (1941), the Supreme Court held that 15-24-1402 clearly gives the County Commissioners discretion over whether or not to grant approval of the tax reduction and does not require that approval to be granted. The Supreme Court also held that the Board could change its position as to whether the tax reductions would be granted for property subject to other tax breaks and was not required to continue to grant the tax reductions under 15-24-1402 after the Board discovered the fiscal effect of granting a reduction on property that already received a tax break under another program. The Supreme Court held that because Cenex sought a declaratory judgment, the Board's liability wasn't an issue and that for that reason, the Supreme Court would not address the Board's claim of immunity under 2-9-111. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

15-24-1402. New or expanding industry — assessment — notification.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 692, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 692, L. 2023, provided: "[This act] applies to a renewable diesel production facility or a sustainable aviation fuel production facility that commences construction after December 31, 2020, and the abatement provided by [this act] applies to property tax years beginning after December 31, 2023."

2019 Amendment: Chapter 269 in (1) in first sentence near beginning substituted "commencement of construction" for "a construction permit is issued"; in (2)(a) at end of first sentence inserted "may submit an application for a project with a project plan and receive approval for an abatement prior to commencement of construction", at beginning of second sentence inserted "A taxpayer that does not seek approval prior to commencing construction", and inserted last sentence regarding a tax abatement approved prior to construction; substituted current (2)(d) for former (2)(d) that read: "(d) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits"; in (2)(f) near middle of first sentence before "recapture" inserted "termination or"; and made minor changes in style. Amendment effective May 2, 2019.

Applicability: Section 4, Ch. 269, L. 2019, provided: "[This act] applies to new or expanding industry tax abatements granted on or after [the effective date of this act]." Effective May 2, 2019.

2017 Amendment: Chapter 379 in (1) near middle substituted "25% or 50%" for "50%". Amendment effective October 1, 2017.

Applicability: Section 2, Ch. 379, L. 2017, provided: "[This act] applies to new or expanding industry tax abatements granted on or after [the effective date of this act]. Effective October 1, 2017."

2013 Amendment: Chapter 57 in (2)(a) in first sentence at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable" and in second sentence after "following due notice" substituted "as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town" for "as defined in 76-15-103"; inserted (2)(b) and (2)(c) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (2)(d) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1999 Amendment: Chapter 584 in (1) and (2)(b) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in (3), near beginning after "apply to the", deleted "county assessor on a form provided by the" and near end substituted "department" for "assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendments: Chapter 694 inserted (5) requiring notification prior to approval of the resolution. Amendment effective April 27, 1991.

Chapter 767 in (4), near end, inserted reference to 20-9-360; and made minor changes in style. Amendment effective May 15, 1991.

Effective Date — Applicability: Section 5, Ch. 694, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies to taxable years beginning after December 31, 1991."

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: In (1), after "is issued", inserted "qualifying", after "improvements" inserted "or modernized processes", after "processes" deleted "to real property", after "new" deleted "manufacturing", after "industry" deleted "construction", after "existing" deleted "manufacturing", and after "industry" inserted "as designated in the approving resolution"; in (2)(a), after "approved by", inserted "separate", after "resolution" inserted "for each project", after "following" inserted "due notice as defined in 76-15-103 and", and inserted last two sentences concerning tax payment; in (2)(c), after "improvements", inserted "or modernized processes" and inserted second sentence concerning property designated in resolution; and inserted (4) containing limits on applicability of tax benefit.

Applicability: Section 4, Ch. 574, L. 1987, provided: "This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1986." Effective April 20, 1987.

Administrative Rules

ARM 42.19.1235 Tax incentive for new and expanding industry.

Case Notes

New or Expanding Industry Tax — Discretionary Tax Break Held Not to Violate Substantive Due Process: After granting new or expanding industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanding industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under this section on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the statute under which the Board had acted violates Cenex's right to substantive due process of law. Citing Plumb v. District Court, 279 M 363, 927 P2d 1011 (1996), the Supreme Court held that the statute does not violate the company's right to substantive due process of law. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

Statute Held to Grant Discretion to Approve or Deny Tax Reduction — County Immunity Not Implicated by Declaratory Judgment Action: After granting new or expanded industry tax reductions to several applicants whose property also received a tax break pursuant to another program, the Board of County Commissioners of Yellowstone County amended its resolution implementing the new or expanded industry tax reduction to provide that applicants were to no longer be entitled to a reduction but that reductions would be granted in the discretion of the Board and would not be granted by the Board if the property of the applicant was already subject to a tax break through some other program. Pursuant to these changes, the County Commissioners denied Cenex's application for a tax reduction under this section on pollution control equipment that had already received a different tax reduction from the state. Cenex brought a declaratory judgment action against the Board, claiming that the Board had illegally withheld the tax reduction. Noting the construction previously given to the statutory use of the term "approval" in McCarten v. Sanderson, 111 M 407, 109 P2d 1108 (1941), the Supreme Court held that this section clearly gives the County Commissioners discretion over whether or not to grant approval of the tax reduction and does not require that approval to be granted. The Supreme Court also held that the Board could change its position as to whether the tax reductions would be granted for property subject to other tax breaks and was not required to continue to grant the tax reductions under this section after the Board discovered the fiscal effect of granting a reduction on property that already received a tax break under another program. The Supreme Court held that because Cenex sought a declaratory judgment, the Board's liability wasn't an issue and that for that reason, the Supreme Court would not address the Board's claim of immunity under 2-9-111. Cenex, Inc. v. Yellowstone County Bd. of Comm'rs, 283 M 330, 941 P2d 964, 54 St. Rep. 695 (1997).

15-24-1410. Manufacturer of ammunition components — exemption from statewide property taxes.

Compiler's Comments

2019 Amendment: Chapter 3 substituted "15-10-109" for "15-10-108". Amendment effective October 1, 2019.

Severability: Section 13, Ch. 440, L. 2015, was a severability clause.

Effective Date: Section 14, Ch. 440, L. 2015, provided: "[This act] is effective on passage and approval." Chapter 440, L. 2015, was enacted into law without the governor's signature on May 6, 2015.

Applicability: Section 15, Ch. 440, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 16, Ch. 440, L. 2015, provided that this section terminates December 31, 2024.

Administrative Rules

ARM 42.20.119 Ammunition components manufacturing — property tax exemption applications.

Part 15
Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.

Compiler's Comments

2013 Amendment: Chapter 57 in (2) in first sentence at beginning substituted "In order for a taxpayer to receive" for "In order to confer" and at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable", and in second sentence near middle inserted "following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing"; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (5) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Special Session Amendment: Chapter 27 in first sentence of (1), after "department", deleted "or its agents"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1989 Amendment: In (1), at beginning, inserted "Subject to the authority contained in subsection (4)" and in two places inserted reference to subsection (4); in (2), at end, inserted "or a schedule adopted pursuant to subsection (4)"; inserted (4) allowing a local government to modify the tax benefits percentages for the first through fourth years following construction; and made minor changes in phraseology.

1985 Amendment: In (1) substituted "Remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2½% as determined by the department of revenue or its agents, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) and (3) and the following schedule. The percentages shall be applied only as provided in subsection (3) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion" for "Remodeling of existing buildings or structures may receive tax benefits during the construction period and for the following 5 years in accordance with the following schedule. The percentages shall be applied to any increase in taxable value caused by the remodeling"; in (2) substituted present language for "In order to receive the tax benefits described in subsection (1), the governing body of a county or incorporated city or town must have approved by resolution the use of the schedule provided for in subsection (1) for their respective jurisdiction"; and inserted (3) limiting tax benefit to school district levies.

Administrative Rules

ARM 42.20.103 Tax benefits for the remodeling, reconstruction, or expansion of existing buildings or structures.

ARM 42.20.106 Definitions.

15-24-1502. Tax exemption and abatement for remodeling, reconstruction, or expansion of certain commercial property — approval.

Compiler's Comments

2013 Amendment: Chapter 57 in (2)(a) in first sentence at beginning substituted "In order for a taxpayer to receive" for "In order to confer", and at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable", and in second sentence near middle after "city or town shall" inserted "following due notice as provided in 7-1-2121 if a county or consolidated local government or 7-1-4127 if an incorporated city or town and a public hearing"; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (3) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

Effective Date: Section 4, Ch. 135, L. 2001, provided that this section is effective on passage and approval. Approved March 27, 2001.

Retroactive Applicability: Section 5, Ch. 135, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.20.110 Tax exemption and reduction for remodeling, reconstruction, or expansion of certain commercial property.

Part 16
Historic Properties

15-24-1601. Purpose.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1602. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1603. Historic property tax abatement — levy limitations.

Compiler's Comments

2013 Amendment: Chapter 57 in (2) at end inserted second and third sentences requiring applications to be submitted by March 1 of the year during which the benefit is first applicable and requiring approval by separate resolution; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1604. Eligibility.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1605. Responsibilities of local governing bodies — local review board — design review process.

Compiler's Comments

2013 Amendment: Chapter 57 in (3) in second sentence near middle after "tax abatement" inserted "within 30 days of receiving a taxpayer's complete application." Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1606. Responsibilities of the state historic preservation office.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

15-24-1607. Disqualification and penalty.

Compiler's Comments

Effective Date: Section 9, Ch. 424, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 10, Ch. 424, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Part 17

Commercial and Other Property

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property — subordination of county tax lien — local government discretion.

Compiler's Comments

2019 Amendment: Chapter 189 in (4) substituted current first sentence for former text that read: "If a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes." Amendment effective April 18, 2019.

1991 Amendments: Chapter 16 near end of (2) substituted "suspension" for "cancellation"; and made minor change in style.

Chapter 77 inserted (3) providing that a governing body may subordinate a county's tax lien to a purchaser's financing.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

15-24-1702. Resolution to suspend or cancel delinquent taxes.

Compiler's Comments

1993 Amendment: Chapter 422 in (2), near end after "owner", inserted "under 15-24-1701 or by the owner or purchaser under 15-24-1704". Amendment effective April 20, 1993, and terminates July 1, 1995.

Effective Date — Retroactive Applicability: Section 4, Ch. 422, L. 1993, provided: "[This act] is effective on passage and approval [approved April 20, 1993] and applies retroactively to tax years beginning after December 31, 1987."

Termination: Section 5, Ch. 422, L. 1993, provided: "[This act] terminates July 1, 1995."

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

15-24-1703. Application of suspension or cancellation.

Compiler's Comments

2009 Amendment: Chapter 57 in (1) at end after "20-9-333" deleted "and 20-25-423"; and made minor changes in style. Amendment effective March 25, 2009.

Termination Provision Repealed: Section 2, Ch. 77, L. 1991, repealed sec. 17, Ch. 631, L. 1989, which terminated this section December 31, 1993.

Severability: Section 15, Ch. 631, L. 1989, was a severability clause.

Effective Date — Retroactive Applicability: Section 16, Ch. 631, L. 1989, provided: "[This act] is effective on passage and approval [approved April 25, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983."

Part 18
Business Incubators

15-24-1802. Business incubator tax exemption — procedure.

Compiler's Comments

2013 Amendment: Chapter 57 in (2) in first sentence at beginning after "In order" inserted "for a taxpayer" and at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable", and in second sentence near end after "due notice" substituted "as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town" for "as defined in 76-15-103"; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (5) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: In (1), near beginning after "owned", inserted "or leased" and before "property taxes" deleted "certain local"; in (2), near beginning of first sentence before "county", deleted "affected", after "school district" inserted "in which the property is located", and at end substituted "due notice as defined in 76-15-103" for "notice" and inserted second through fifth sentences concerning governing body approval of each business incubator by separate resolution and payment of taxes prior to approval; in (2)(c), at beginning after "owns", inserted "or leases"; inserted (3) concerning Assessor making assessment change for tax exemption upon receipt of governing body's approval; and in (4), at beginning of second sentence, substituted "If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments" for "The exemption may not apply to levies or assessments". Amendment effective April 26, 1991.

Retroactive Applicability: Section 2, Ch. 669, L. 1991, provided that the amendment applies retroactively to taxable years beginning after December 31, 1990.

Part 19
Industrial Parks

15-24-1901. Definitions.

Compiler's Comments

1995 Amendment: Chapter 277 in definition of industrial park inserted second sentence to include undeveloped land owned by a local economic development organization.

15-24-1902. Industrial park tax exemption — procedure — termination.

Compiler's Comments

2013 Amendment: Chapter 57 in (2) in first sentence at beginning after "In order" inserted "for a taxpayer" and at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable", and in second sentence near end after "due notice" substituted "as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town" for "as defined in 76-15-103"; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (6) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: In (1), near end before "property", deleted "certain local"; in (2), in first sentence before "county", deleted "affected", after "town" inserted "or school district in which the property is located", before "notice" inserted "due", and after "notice" inserted "as defined in 76-15-103" and inserted second through fifth sentences regarding approval or disapproval of the tax exemption by the governing body; inserted (3) requiring assessor to make the assessment change upon receipt of approval; in (4), at beginning of second sentence, substituted "If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies" for "The exemption may not apply"; in (5) inserted third sentence regarding assessment upon termination of the exemption; and made minor changes in style. Amendment effective April 27, 1991.

Coordination Instruction: Section 2, Ch. 702, L. 1991, provided: "If House Bill No. 757 is not passed and approved, the bracketed [third] sentence in 15-24-1902(5) amended in section 1 [of Ch. 702, L. 1991] is void." House Bill No. 757 was approved April 23, 1991, as Ch. 570, L. 1991. Therefore, the third sentence of 15-24-1902(5), added by sec. 1, Ch. 702, L. 1991, is valid.

Effective Date — Retroactive Applicability: Section 3, Ch. 702, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Part 20
Local Economic Development Organizations

15-24-2002. Building and land tax exemption — procedure — termination.

Compiler's Comments

2013 Amendment: Chapter 57 in (2) in first sentence at beginning after "In order" inserted "for a taxpayer" and at end inserted "taxpayer must have applied by March 1 of the year during which the benefit is first applicable", and in second sentence near end after "due notice" substituted "as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town" for "as defined in 76-15-103"; inserted (3) requiring governing bodies to publish notice and hold a public hearing and authorizing writs of mandamus; and made minor changes in style. Amendment effective February 28, 2013.

Saving Clause: Section 9, Ch. 57, L. 2013, was a saving clause.

Applicability: Section 11, Ch. 57, L. 2013, provided: "[This act] applies to applications for tax benefits submitted to a governing body on or after [the effective date of this act]." Effective February 28, 2013.

2005 Amendment: Chapter 597 inserted (6) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part. Amendment effective October 1, 2005.

1993 Special Session Amendment: Chapter 27 in (3) substituted "department" for "assessor". Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Coordination Instruction: Section 4, Ch. 693, L. 1991, provided: "If House Bill No. 757 is not passed and approved, the bracketed sentence in [section 2(4) of this act] [15-24-2002(5)] is void." House Bill No. 757 was approved April 23, 1991, as Ch. 570. During the legislative process, sec. 2(4) of Ch. 693 was renumbered sec. 2(5), a change not reflected in the coordination instruction. Therefore, the Code Commissioner has retained the third sentence of 15-24-2002(5) regarding assessment under 15-16-203 upon termination of the exemption, which constituted the original bracketed language.

Part 30

Electrical Generation and Delivery Facilities

Part Compiler's Comments

Effective Date: Section 7, Ch. 592, L. 2001, provided that this part is effective on passage and approval. Approved May 5, 2001.

Part Administrative Rules

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

15-24-3004. Wind generation facility impact fee for local governmental units and school districts.

Compiler's Comments

2021 Amendment: Chapter 13 in (2)(a) substituted "15-24-3005(1) and (2)" for "15-24-3005(2) and (3)"; and in (2)(b) substituted "15-24-3005(3)" for "15-24-3005(4)". Amendment effective October 1, 2021.

2015 Amendment: Chapter 109 in (1) near middle of first sentence substituted "local school impact fee to be paid for each year of" for "local school impact fee for"; and near beginning of second sentence inserted "annual". Amendment effective March 23, 2015.

Effective Date: Section 14, Ch. 563, L. 2005, provided: "[This act] is effective on passage and approval." Approved May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-24-3005. Wind generation facility impact fee for local governmental units and school districts.

Compiler's Comments

2021 Amendment: Chapter 13 deleted former (1) (see 2021 Session Law for former text); in (1) before "wind generation facility" deleted "an electrical generation facility or" and at end after "15-24-3004(1)" deleted "or subsection (1) of this section"; in (3) in first and last sentences before "wind generation facility" deleted "electrical generation facility or"; in (4) in first sentence after "15-24-3004" deleted "and this section" and in second and last sentences before "wind generation facility" deleted "an exempt electrical generation facility or"; in (5) near end of first sentence substituted "wind generation facility" for "electrical generation facility"; and made minor changes in style. Amendment effective October 1, 2021.

2005 Amendments — Composite Section: Chapter 130 in (4) near end of first sentence after "pursuant to" deleted "the percentage allocation required in"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 563 in (2) near middle after "facility" inserted "or wind generation facility" and near end after "pursuant to" inserted "15-24-3004(1) or"; in (4) near beginning of first sentence after "if the" inserted "electrical generation" and after "facility" inserted "or wind generation facility" and in second sentence after "facility" inserted "or wind generation facility"; in (5) at beginning of first sentence after "purposes of" inserted "15-24-3004 and" and near beginning of second sentence and near end of third sentence after "facility" inserted "or wind generation facility"; in (6) near beginning of first sentence after "imposed under" inserted "15-24-3004(2)(b) or under"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-24-3006. Electrical energy generation impact fee reserve account.

Compiler's Comments

2021 Amendment: Chapter 13 in (1) in first sentence substituted current text concerning establishment of electrical energy generation impact fee reserve account for former text that read: "The governing body of a county receiving impact fees under 15-24-3004(2)(b) or 15-24-3005(4) shall establish an electrical energy generation impact fee reserve account to be used to hold the collections." Amendment effective October 1, 2021.

2005 Amendment: Chapter 563 in (1) in first sentence before "15-24-3005(4)" inserted "15-24-3004(2)(b) or"; and in (2) in first sentence before "15-24-3005" inserted "15-24-3004 or". Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

15-24-3007. Electrical generation impact fund.

Compiler's Comments

2021 Amendment: Chapter 13 in (1) in first sentence substituted current text concerning establishment or retention of electrical generation impact fund for former text that read: "A local governmental unit, as defined in 15-24-3005, and a school district that receives impact fees pursuant to 15-24-3004(2)(a), 15-24-3005(2), or 15-24-3006 shall establish an electrical generation impact fund for the deposit of the fees." Amendment effective October 1, 2021.

2005 Amendment: Chapter 563 in (1) in first sentence before "15-24-3005(2)" inserted "15-24-3004(2)(a)"; and made minor changes in style. Amendment effective May 2, 2005.

Retroactive Applicability: Section 15(2), Ch. 563, L. 2005, provided that this section applies retroactively, within the meaning of 1-2-109, to wind generation facilities constructed after December 31, 2004.

Part 31

Property Related to Renewable Energy, New Energy Technology, and Clean Coal

Part Compiler's Comments

Short Title: Section 1, Ch. 2, Sp. L. May 2007, provided: "[This act] may be cited as the "Jobs and Energy Development Incentives Act"."

Severability: Section 14, Ch. 2, Sp. L. May 2007, was a severability clause.

Effective Date: Section 15, Ch. 2, Sp. L. May 2007, provided that this part is effective May 25, 2007.

15-24-3101. Policy.

Administrative Rules

ARM 42.4.4114 Energy production or development tax abatement eligibility for new investment in the conversion, transport, manufacture, research, and development of renewable energy, clean coal energy, and carbon dioxide equipment and facilities.

Law Review Articles

A Judicial Duty: Interpreting and Enforcing Montanans' Inalienable Right to a Clean and Healthful Environment, Bellinger & Sullivan, 45 Pub. Land & Resources L. Rev. 1 (2022), https://scholarworks.umt.edu/plrlr/vol45/iss1/4.

15-24-3102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 692, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 692, L. 2023, provided: "[This act] applies to a renewable diesel production facility or a sustainable aviation fuel production facility that commences construction after December 31, 2020, and the abatement provided by [this act] applies to property tax years beginning after December 31, 2023."

Administrative Rules

ARM 42.4.4114 Energy production or development tax abatement eligibility for new investment in the conversion, transport, manufacture, research, and development of renewable energy, clean coal energy, and carbon dioxide equipment and facilities.

15-24-3111. Energy production or development — tax abatement — eligibility.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 692, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 6, Ch. 692, L. 2023, provided: "[This act] applies to a renewable diesel production facility or a sustainable aviation fuel production facility that commences construction after December 31, 2020, and the abatement provided by [this act] applies to property tax years beginning after December 31, 2023."

2009 Amendment: Chapter 277 in (4)(a)(ii) near middle substituted "18-2-414" for "18-2-401(13)(a)". Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

Administrative Rules

ARM 42.4.4114 Energy production or development tax abatement eligibility for new investment in the conversion, transport, manufacture, research, and development of renewable energy, clean coal energy, and carbon dioxide equipment and facilities.

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-24-3112. Certification.

Compiler's Comments

2013 Amendment: Chapter 419 in (5) after "15-1-211" substituted "to mediation under 15-1-212 and" for "or"; and made minor changes in style. Amendment effective May 6, 2013.

Administrative Rules

ARM 17.80.201 Definitions.

ARM 42.4.4114 Energy production or development tax abatement eligibility for new investment in the conversion, transport, manufacture, research, and development of renewable energy, clean coal energy, and carbon dioxide equipment and facilities.

15-24-3116. Rules.

Administrative Rules

ARM 17.80.201 Definitions.

ARM 42.4.4114 Energy production or development tax abatement eligibility for new investment in the conversion, transport, manufacture, research, and development of renewable energy, clean coal energy, and carbon dioxide equipment and facilities.

CHAPTER 30
INDIVIDUAL INCOME TAX

Chapter Compiler's Comments

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Section Not Codified: Section 84-4936, R.C.M. 1947, which provided a construction for the terms "this act" for the purposes of Ch. 49, Title 84, R.C.M. 1947, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 28, L. 1941.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Part of Section Not Codified: A part of section 84-4902.1, R.C.M. 1947, which temporarily set the surtax at 40%, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 10, Ex. L. 1969, as amended by sec. 40, Ch. 9, Ex. L. 1971.

Sales Tax Referendum Defeated: Chapter 9, 2nd Ex. L. 1971, provided for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election held on November 2, 1971. The measure failed by a vote of 154,680 against and 66,967 for.

Chapter Case Notes

Educational Expense Deductible Only if Primary Purpose Is to Improve Individual's Skills at Present Job: The husband and wife plaintiffs sought tax deductions for educational expenses incurred by the wife in pursuit of a doctoral degree in psychology. The State Tax Appeal Board (now Montana Tax Appeal Board) upheld the Department of Revenue's disallowance of the deduction. The District Court denied the plaintiffs' petition for judicial review. In affirming, the Supreme Court found that the plaintiffs failed to demonstrate that the educational expenses were deductible under 26 C.F.R. 1.162-5(a)(1) or (2), because education expenses can be deducted only if the primary purpose is to improve an individual's skills at the individual's present job. The wife pursued her education in an effort to become a clinical psychologist rather than to improve her skills in her current job as a counselor. Myrup v. Dept. of Revenue, 2013 MT 136, 370 Mont. 266, 304 P.3d 385.

Legislative Employee's Fiscal Assumptions Cannot Trigger Tax Credits — Unlawful Delegation of Power — Invasion of Executive Branch Power Impermissible: Legislative Referendum 123 (LR-123) provided a potential tax credit, tax refund, or payment to individuals when a certain level of surplus revenue was in the state treasury at the close of the fiscal year. As part of the process of determining whether there was surplus revenue, the Legislative Fiscal Analyst (LFA) was required to perform two dozen steps or calculations, including discretionary projections of balances, revenues, transfers, appropriations, and reversions. The Supreme Court held that the delegation of authority to the LFA violated Article V, section 1, of the Montana Constitution as an unlawful delegation of legislative power, similar to the unlawful delegation of authority to a legislative interim committee in State ex rel. Judge v. Legislative Fin. Comm., 168 Mont. 470, 543 P.2d 1317 (1975). Moreover, the requirement that the LFA exercise judgment and interpretations regarding the law violated the separation of powers under Article III, section 1, of the Montana Constitution, since these are Executive Branch functions. MEA-MFT v. McCulloch, 2012 MT 211, 366 Mont. 266, 291 P.3d 1075.

Three-Year Oil Rig Employment in Wyoming Deemed Indefinite Employment — Deduction for Travel and Mileage Disallowed: The appellant employee claimed mileage deductions for travel from his home in Billings to his place of work on an oil rig in Wyoming. An audit concluded the 3-year employment was indefinite and that the employee's tax home was in Wyoming instead of Billings, which prohibited the claimed deduction. The Supreme Court agreed, holding the employment was indefinite because the employee never knew how long he would be employed at the site and termination was not foreseeable within a short period of time. Robison v. Dept. of Revenue, 2012 MT 145, 365 Mont. 336, 281 P.3d 218.

Test for Determining Whether Taxpayer Engaged in Nonprofit Activity — Applicability of Federal Code: The determination of a taxpayer's Montana income tax liability is primarily based on the federal Internal Revenue Code. The question of whether a taxpayer is engaged in an activity with the requisite intention of making a profit is based on the surrounding facts and circumstances evaluated using the nine-part test listed in Treasury Regulation 1.183-2(b): (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or the taxpayer's advisers; (3) the time and effort expended in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar or dissimilar activities; (6) the taxpayer's history of income or losses with respect to the activity; (7) the amount of occasional profits earned, if any; (8) the financial status of the taxpayer; and (9) elements of personal pleasure or recreation. Although no one factor is conclusive, a record of substantial losses over many years and the unlikelihood of achieving a profitable operation are important factors bearing on the taxpayer's true intention. On judicial review of the present case, the District Court properly considered the factors in concluding that Leahys' horsetraining operation was not engaged in for profit. Leahy v. Dept. of Revenue, 266 M 94, 879 P2d 653, 51 St. Rep. 665 (1994).

State Right to Tax Nonresident Income: Appellant residents of the Montana portion of Yellowstone Park contended Montana's income tax was unconstitutional because appellants did not enjoy all the same benefits as state residents. The Supreme Court affirmed the state's right to tax income of nonresidents earned within this state, citing Shaffer v. Carter, 252 US 37, 64 L Ed 445, 40 S Ct 221 (1920). The court found that appellants enjoyed substantial residential benefits and that alleged denial of certain benefits was not sufficient reason to prevent the state from levying the income tax. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

State Taxing Jurisdiction Acquired Through 1940 Federal Act — Applicable to Montana Portion of Yellowstone Park: The Supreme Court affirmed a District Court finding that the right to tax persons living in the Montana portion of Yellowstone Park was acquired by Montana in 1940 by virtue of the federal Buck Act, specifically 4 U.S.C. 106(a). The court further found no requirement of any formal state legislative action to reclaim jurisdiction over the former federal area before taxation could begin. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

Constitutionality of Graduated Surtax: A former subsection of 15-30-103 (renumbered 15-30-2103), as amended by Ch. 40, Ex. L. 1933, providing for a graduated and progressive surtax, in addition to the normal tax, was unconstitutional since it resulted in arbitrary discriminations between individual taxpayers. Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934).

Chapter Attorney General's Opinions

National Guard Salary Not Qualified: The salary earned by members of the National Guard employed under the Conversion Full Time Military (CFTM) program does not qualify for a tax exemption under 15-30-116(2) (renumbered 15-30-2117(2)). 39 A.G. Op. 43 (1981).

Personal Tax Exemption Under Initiative 86: Under Initiative 86, the 1980 tax indexing initiative, the personal exemption for state income tax purposes was $1,250 because the Initiative defined "base year structure" as the exemptions in effect on January 1, 1980, which, because of a temporary law, was increased from the $800 permanent amount. 39 A.G. Op. 9 (1981).

Income Tax — Special Military Exemption: Members of Air National Guard called to active duty in the Air Defense Alert program are entitled to Montana's statutory tax exemption for the salary received while serving in that program. 36 A.G. Op. 64 (1976).

Chapter Law Review Articles

The Federal Income Taxation of Contingent Attorneys' Fees: Patchwork by Congress and Supreme Court Creates Uncertainty, Wood, 67 Mont. L. Rev. 1 (2006).

Tax Consequences of Divorce and Legal Separation, Peete & Coffee, 55 Mont. L. Rev. 359 (1994).

Income Tax Consequences of Dividing Marital Property in a Marriage Dissolution, Munson, 44 Mont. L. Rev. 175 (1983).

Estate Planning for Farmers and Ranchers, Dietrich, 40 Mont. L. Rev. 189 (1979).

Developing Theories of State Jurisdiction Over Indians: The Dominance of Preemption Analysis, Lynaugh, 38 Mont. L. Rev. 64 (1977).

Chapter Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Income Tax Indexing, 1977-78 Interim Report, Montana Legislative Council.

Comparative Individual Tax Burdens in the Fifty States, 1977-78 Interim Report, Montana Legislative Council.

Montana's State Income Tax, 1975-76 Interim Report, Montana Legislative Council.

Income Taxation, 1969-70 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 21
Rate and General Provisions

15-30-2101. Definitions.

Compiler's Comments

2021 Amendment: Chapter 503 inserted definitions of federal adjusted gross income, federal taxable income, head of household, joint return, married individual, Montana taxable income, and surviving spouse; deleted definitions of base year structure, gross income, net income, and taxable income (see 2021 Session Law for former definitions); in definition of inflation factor at end substituted "June 2023" for "June 2015"; in definition of paid near beginning after ""Paid"" deleted "for the purposes of the deductions and credits under this chapter" and at end after "method of accounting" substituted "used to compute federal taxable income" for "upon the basis of which the taxable income is computed under this chapter"; in definition of received near beginning after ""Received"" deleted "for the purpose of computation of taxable income under this chapter" and at end after "method of accounting" substituted "used to compute federal taxable income" for "upon the basis of which the taxable income is computed under this chapter"; and made minor changes in style. Amendment effective January 1, 2024.

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 418 in definition of inflation factor before "tax year" inserted "previous" and substituted "June 2015" for "June 2005". Amendment effective October 1, 2015.

Applicability: Section 9, Ch. 418, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2009 Amendment: Chapter 401 in definition of Montana source income inserted (a)(xvii) regarding calculation by nonresident of net gain or loss on certain sales; and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 5, Ch. 401, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2003 Amendments — Composite Section: Chapter 225 inserted definition of foreign C. corporation; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 544 in definition of consumer price index after "items" inserted "for all urban consumers (CPI-U)" and substituted "1982-84 base" for "1967 base"; in definition of inflation factor at end substituted "June 2005" for "June 1980"; in definition of tax year deleted "Taxable year" as optional defined term; and made minor changes in style. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

2001 Amendment: Chapter 143 inserted definitions of corporation, disregarded entity, internal revenue code, limited liability company, limited liability partnership, Montana source income, nonresident, partner, partnership, pass-through entity, and S. corporation; in definition of dividend in (a) before "corporation" inserted "C." and substituted "earnings and profits" for "earnings or profits" and inserted (b) regarding distribution made by S. corporation; in definition of lottery winnings in introduction at beginning substituted "Lottery winnings" for "Montana lottery winnings" and substituted "periodic payments" for "annual payments"; in definition of taxpayer near beginning after "includes any person" inserted "entity", after "tax" inserted "or other obligation", near middle after "this chapter and" inserted "unless otherwise specifically provided", and at end substituted "a C. corporation" for "corporations"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 31 inserted definition of Montana lottery winnings; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 42 in definition of foreign government deleted reference to foreign country; in definition of gross income, in two places, and in definition of pension and annuity income, in two places, inserted parenthetical references to United States Code sections of the Internal Revenue Code; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1)(b) substituted reference to subsection (6) of 15-30-112 for "subsections (7) and (8) of 15-30-112". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1991 Amendment: Inserted definition of pension and annuity income. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

1991 Statement of Intent: The statement of intent attached to Ch. 823, L. 1991, provided: "A statement of intent is required for this bill because the public employees' retirement board and the teachers' retirement board must establish a percentage rate to provide a uniform adjustment payment rate to all members of public retirement systems as provided in [section 4] [19-15-101, now repealed]."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: In definition of information agents inserted "brokers, real estate brokers".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1981 Amendment: Chapter 548, L. 1981, inserted ", but unadjusted by subsection (2) of 15-30-103" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(a); inserted "but unadjusted by subsections (7) and (8) of 15-30-112" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(b); inserted "but unadjusted by subsection (2) of 15-30-122" and changed "January 1, 1980" to "June 30 of the taxable year" in (1)(c).

1980 Initiative Amendment: Initiative No. 86 inserted definitions of base year structure, consumer price index, and inflation factor.

Part of Section Not Codified: Subsection (a) of section 84-4942, R.C.M. 1947, which defines "department" and is redundant with 15-30-101, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 246, L. 1955, as amended by sec. 185, Ch. 516, L. 1973.

Administrative Rules

ARM 42.9.502 Disregarded entities — sourcing gain or loss on the sale of an interest.
ARM 42.15.107 Definitions.
ARM 42.15.112 Nonresident military personnel.
ARM 42.15.214 Resident military salary exclusion.
ARM 42.15.220 Exemption of certain income of enrolled tribal members.
ARM 42.19.405 Definitions.
ARM 44.11.226 Inflation factor applied to limits on receipts from political committees.

Attorney General's Opinions

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

Law Review Articles

Giggin' in the 21st Century, Ford, 80 Mont. L. Rev. 299 (2019).

15-30-2102. Construction of income.

Compiler's Comments

2021 Amendment: Chapter 503 in first sentence near beginning after "raising revenue, the" deleted "net" and near end after "the tax" substituted "may" for "hereunder shall", in last sentence near beginning after "under the provisions of" inserted "the Internal Revenue Code or" and near end after "determining the" substituted "income of taxpayers subject to tax within" for "net income of taxpayers within"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Case Notes

General Use of Out-of-State Income Within Montana Income Tax Framework Does Not Violate Federal Constitutional Principles. Tiegs v. Dept. of Revenue, 2023 MT 168, 413 Mont. 223, 535 P.3d 220, following Maxwell v. Bugbee, 250 U.S. 525 (1919).

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of 15-30-105 (renumbered 15-30-2104) in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1) (renumbered 15-30-2111(1), now repealed); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in this section, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of 15-30-105 (renumbered 15-30-2104), governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of 15-30-105 (renumbered 15-30-2104), as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. (See 2001 amendment to 15-30-101, renumbered 15-30-2101.) Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

Taxation of Reservation Employment: Indians who reside off the Crow Reservation are subject to state income tax for their income earned on the reservation. If the taxpayer is an Indian who resides on a reservation set aside for the exclusive use of the Indians, such as the Crow Reservation, under joint federal-tribal control, the income earned on the reservation is beyond the state's taxing power whether the taxpayer is enrolled on the reservation or not. "Indian" includes one who: (1) has a quantum of Indian blood; (2) is recognized as an Indian by his community and has not had his wardship status terminated; and (3) is an enrolled member of a federally recognized Indian tribe or eligible to be an Indian ward. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

15-30-2103. Rate of tax — net long-term capital gains — definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 46, L. 2023, in (1) near beginning substituted "as provided in subsections (2) and (3)" for "as provided in 15-30-3704 and subsection (2) of this section"; inserted (2) regarding net long-term capital gains tax percentages for net long-term capital gains income based on brackets for a joint return and surviving spouse, head of household, single individual, or married filing separate individual and estate; in (3) near beginning of first sentence and at end of second sentence substituted "subsections (1) and (2)" for "subsection (1)"; in (4) inserted definitions of net long-term capital gains and nonqualified taxable income; and made minor changes in style. Amendment effective January 1, 2024.

Section 1, Ch. 50, L. 2023, in (1)(a)(ii), (1)(b)(ii), (1)(c)(ii), and (1)(d)(ii) reduced highest marginal tax rate for Montana taxable income from 6.5% to 5.9%. Amendment effective January 1, 2024.

Applicability: Section 5, Ch. 46, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

Section 4, Ch. 50, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendments — Composite Section — Coordination: Chapter 458 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 11, 2021.

Chapter 488 in (1)(g) after "$17,400 or any part of that income" substituted "6.75%" for "6.9%". Amendment effective October 1, 2021, October 1, 2022, and October 1, 2023, and terminates on occurrence of contingency or no later than December 31, 2023. The amendments to this section by secs. 4 and 5, Ch. 488, L. 2021, were rendered void by sec. 8, Ch. 488, L. 2021, a coordination section, since the effective dates of the amendments are after the termination date imposed by the coordination instruction.

Chapter 503 in (1) in introductory clause at beginning inserted exception clause, near middle after "each tax year upon the" substituted "Montana taxable income" for "taxable income" and after "taxpayer subject to this" deleted "tax, after making allowance for exemptions and deductions as provided in this"; substituted (1)(a) through (1)(d) establishing different tax percentages for income brackets for a joint return and surviving spouse, head of household, single individual, or married filing separate individual and estate or trust for former text that read: "(a) on the first $2,900 of taxable income or any part of that income, 1%;

(b) on the next $2,200 of taxable income or any part of that income, 2%;

(c) on the next $2,700 of taxable income or any part of that income, 3%;

(d) on the next $2,700 of taxable income or any part of that income, 4%;

(e) on the next $3,000 of taxable income or any part of that income, 5%;

(f) on the next $3,900 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $17,400 or any part of that income, 6.9%"; and made minor changes in style. Amendment effective January 1, 2024.

Retroactive Applicability: Section 9, Ch. 458, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Effective dates — Applicability: Section 6, Ch. 488, L. 2021, provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Section 1] [amendment to 15-30-2103(1)(g)] is effective October 1, 2021, and applies to the income tax year beginning after December 31, 2021.

(3) [Section 2] [amendment to 15-30-2103(1)(g)] is effective October 1, 2022, and applies to the income tax year beginning after December 31, 2022.

(4) [Section 3] [amendment to 15-30-2103(1)(g)] is effective October 1, 2023, and applies to the income tax year beginning after December 31, 2023.

(5) [Section 4] [amendment to 15-30-2103(1)(g), rendered void by sec. 8, Ch. 488, L. 2021, a coordination section] is effective October 1, 2024, and applies to the income tax year beginning after December 31, 2024.

(6) [Section 5] [amendment to 15-30-2103(1)(g), rendered void by sec. 8, Ch. 488, L. 2021, a coordination section] is effective July 1, 2025, and applies to the income tax years beginning after June 30, 2025."

Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Severability: Section 7, Ch. 488, L. 2021, was a severability clause.

Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 418 in (1)(a) substituted "$2,900" for "$2,300"; in (1)(b) substituted "$2,200" for "$1,800"; in (1)(c) substituted "$2,700" for "$2,100"; in (1)(d) substituted "$2,700" for "$2,200"; in (1)(e) substituted "$3,000" for "$2,400"; in (1)(f) substituted "$3,900" for "$3,100"; in (1)(g) substituted "$17,400" for "$13,900"; in (2) in two places before "tax year" inserted "following"; and made minor changes in style. Amendment effective October 1, 2015.

Transition: Section 7(1), Ch. 418, L. 2015, provided that the bracket amounts in 15-30-2103(1) as amended by Ch. 418 are not subject to an inflation factor increase for the tax year ending December 31, 2016.

Applicability: Section 9, Ch. 418, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2003 Amendment: Chapter 544 in (1) substituted "tax year" for "taxable year commencing on or after December 31, 1968"; substituted (1)(a) through (1)(g) establishing tax percentage for income brackets for former text that read: "as adjusted under subsection (2) at the following rates:

(a) on the first $1,000 of taxable income or any part thereof, 2%;

(b) on the next $1,000 of taxable income or any part thereof, 3%;
(c) on the next $2,000 of taxable income or any part thereof, 4%;
(d) on the next $2,000 of taxable income or any part thereof, 5%;
(e) on the next $2,000 of taxable income or any part thereof, 6%;
(f) on the next $2,000 of taxable income or any part thereof, 7%;
(g) on the next $4,000 of taxable income or any part thereof, 8%;
(h) on the next $6,000 of taxable income or any part thereof, 9%;
(i) on the next $15,000 of taxable income or any part thereof, 10%;
(j) on any taxable income in excess of $35,000 or any part thereof, 11%"; in (2) in two places substituted "tax year" for "taxable year"; and made minor changes in style. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(2), Ch. 544, L. 2003, provided: "(2) [Sections 40 and 42 through 45] [15-30-183, 15-30-101, 15-30-103, 15-30-112, and 15-30-121] apply to tax years beginning after December 31, 2004."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1980 Initiative Amendment: Inserted "on the following brackets of taxable income as adjusted under subsection (2)" after "a tax" near the end of the lead-in to subsections (1)(a) through (1)(j); and added subsection (2) relating to an inflation factor adjustment.

Administrative Rules

ARM 42.4.501 Definitions.
ARM 42.4.502 Capital gain credit.
ARM 42.9.203 Computation of composite tax.

Case Notes

Ad Valorem Tax on Bank Shares Not Repealed: Property or ad valorem tax on bank shares (now repealed) was not recoverable on the theory that national bank shares had been taxed under the income tax law, and that the Legislature had impliedly repealed the ad valorem method of taxing them and substituted the tax on dividends, since no such substitution was made or intended, and ad valorem tax was not repealed by income tax on dividends. Johnson v. Meagher County, 116 M 565, 155 P2d 750 (1945), appeal dismissed 326 US 679, 90 L Ed 397, 66 S Ct 31 (1946).

No Retroactive Application: In the absence of any express provision in Ch. 181, L. 1933, making the income tax law retrospective, this act may not be given retrospective action to deduct losses sustained on an investment in bonds before the act became operative, under statutory rule of construction set forth in 1-2-109. State ex rel. Whitlock v. St. Bd. of Equalization, 100 M 72, 45 P2d 684 (1935).

Constitutionality:

The income tax law does not violate the Equal Protection of the Law Clause of the federal constitution. O'Connell v. St. Bd. of Equalization, 95 M 91, 25 P2d 114 (1933); Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934), affirmed in St. v. Toomey, 135 M 35, 335 P2d 1051 (1958).

The income tax law, being an excise tax, did not violate Art. XII, sec. 1, 9, or 17, 1889 Mont. Const., relating to the assessment of property for taxation. O'Connell v. St. Bd. of Equalization, 95 M 91, 25 P2d 114 (1933), explained in Poorman v. St. Bd. of Equalization, 99 M 543, 45 P2d 307 (1935); Mills v. St. Bd. of Equalization, 97 M 13, 33 P2d 563 (1934).

Law Review Articles

A Legal Response to the Sovereign Citizen Movement, Kalinowski, 80 Mont. L. Rev. 153 (2019).

Giggin' in the 21st Century, Ford, 80 Mont. L. Rev. 299 (2019).

15-30-2104. Tax on nonresident.

Compiler's Comments

2023 Amendments — Composite Section: (Version effective January 1, 2025) Section 2, Ch. 51, L. 2023, in (2) near beginning of first sentence substituted "section 2, of 15-1-601" for "section 2, of the Multistate Tax Compact" and at end of last sentence substituted "Article IV, sections 11 and 12, of 15-1-601" for "Article IV, sections 16 and 17, of the Multistate Tax Compact"; and made minor changes in style. Amendment effective January 1, 2025.

(Both versions) Section 3, Ch. 563, L. 2023, in (1)(a) at beginning inserted exception clause. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendment: Chapter 503 in (1)(a) in two places after "nonresident" inserted "individual, estate, or trust". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2001 Amendment: Chapter 143 in (1)(a) substituted text imposing tax on nonresident for former text that read: "A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana"; inserted (1)(b) prohibiting double counting in determining Montana source income and authorizing department to adopt rules; in (2) in second sentence at end inserted "and subsection (1)(a) of this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 31 in (1) near beginning inserted "on income earned in Montana" and inserted last sentence concerning Montana lottery winnings; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), at end of first sentence, deleted "as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state" and inserted last two sentences relating to calculating the tax based upon income ratio and consideration of interest income from installment sales of certain property. Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1981 Amendment: In the second sentence of subsection (2), substituted "tax" for "taxes" before "imposed" and deleted "and 15-30-104" after "15-30-103".

Administrative Rules

ARM 42.2.304 Definitions.

ARM 42.2.308 Nonresident calculation of Montana source income realized and recognized when Montana property is relinquished as part of a section 1031 exchange.

ARM 42.4.501 Definitions.

ARM 42.4.502 Capital gain credit.

ARM 42.15.108 Determining tax liability.

ARM 42.15.110 Taxation of nonresidents.

ARM 42.15.119 Alternative tax.

ARM 42.30.101 Definitions.

ARM 42.30.102 Fiduciary — filing requirements.

ARM 42.30.104 Fiduciary — income tax liability determination.

ARM 42.30.105 Fiduciary — Montana distributable net income and Montana income distribution deduction — character.

ARM 42.30.203 Preneed funeral trusts — election to file composite return.

ARM 42.30.204 Electing small business trust (ESBT).

Case Notes

General Use of Out-of-State Income Within Montana Income Tax Framework Does Not Violate Federal Constitutional Principles. Tiegs v. Dept. of Revenue, 2023 MT 168, 413 Mont. 223, 535 P.3d 220, following Maxwell v. Bugbee, 250 U.S. 525 (1919).

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of this section in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1) (renumbered 15-30-2111(1), now repealed); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in 15-30-102 (renumbered 15-30-2102), no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of this section, governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of this section, as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. (See 2001 amendment to 15-30-101 (renumbered 15-30-2101).) Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

No Basis for Denying Alimony Payment Deduction to Nonresident Taxpayer: Dray, a Texas resident, paid his ex-wife $10,000 a month alimony. Dray paid taxes in Montana on royalty income and agricultural income. In tax years 1984 through 1988, Dray claimed an alimony payment deduction for Montana taxes based on the deduction of alimony used in arriving at adjusted gross income for federal tax purposes. The Department of Revenue disallowed the deduction on the basis that 15-30-131 (renumbered 15-30-2111, now repealed) does not expressly provide for an alimony deduction for nonresidents and that deductions exist only by express grant of the Legislature. The Supreme Court held that although it agreed that a deduction existed only if granted by the Legislature, Montana's adoption of the federal definition of adjusted gross income in 15-30-111 (renumbered 15-30-2110, now repealed) gives no basis for denying the deduction to nonresident taxpayers. Dept. of Revenue v. Dray, 266 M 89, 879 P2d 651, 51 St. Rep. 756 (1994).

Common Carrier Employee Tax Information to Be Supplied to Department of Revenue: While 49 U.S.C. 11504 fixes the mandatory duties of employers engaged in interstate commerce to withhold taxes and to file reports respecting earnings in any particular state, that section does not prohibit the furnishing of earnings information at the request of the state or under a properly issued administrative subpoena. Therefore, the Department of Revenue may by administrative subpoena obtain information relating to Montana earnings from an interstate rail carrier respecting its employees, even though the carrier is not obliged to withhold Montana state income tax. Burlington N., Inc. v. Dept. of Revenue, 239 M 458, 781 P2d 1121, 46 St. Rep. 1830 (1989).

State Right to Tax Nonresident Income: Appellant residents of the Montana portion of Yellowstone Park contended Montana's income tax was unconstitutional because appellants did not enjoy all the same benefits as state residents. The Supreme Court affirmed the state's right to tax income of nonresidents earned within this state, citing Shaffer v. Carter, 252 US 37, 64 L Ed 445, 40 S Ct 221 (1920). The court found that appellants enjoyed substantial residential benefits and that alleged denial of certain benefits was not sufficient reason to prevent the state from levying the income tax. Olson v. Dept. of Revenue, 223 M 464, 726 P2d 1162, 43 St. Rep. 1916 (1986).

15-30-2105. Tax on lump-sum distributions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (2) at end substituted "26 U.S.C. 402(e)" for "of 1954, as amended, or as section 402(e) may be renumbered or amended"; and made minor changes in style. Amendment effective October 1, 2003. The amendment by Ch. 159 rendered the amendment by Ch. 114 void.

Chapter 159 at end of (1) substituted "that portion of a lump-sum distribution for which a deduction was allowed by section 62(a)(8) of the Internal Revenue Code (now repealed)" for "lump-sum distributions"; at end of (2) substituted "section 402(d) of the Internal Revenue Code that was in effect and applicable to a distribution before amendment by section 1401 of Public Law 104-188" for "section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended"; and made minor changes in style. Amendment effective March 28, 2003.

Retroactive Applicability: Section 6(1), Ch. 159, L. 2003, provided: "[Section 1] [15-30-106] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1999."

15-30-2106. Nonresident compensation — exclusion.

Compiler's Comments

Effective Date: Section 9, Ch. 563, L. 2023, provided: "[This act] is effective January 1, 2024."

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

15-30-2112. Change from nonresident to resident or vice versa.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, after "he shall file a return" deleted "covering the fraction of the year during which he was a resident. The exemptions provided in 15-30-112 shall be prorated on the ratio the Montana adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state, abandoning his residence in the state, and establishing a residence elsewhere must file a return on the fractional basis" and in last sentence, after "outside the state", deleted "without abandoning his Montana residence"; and made minor changes in style. Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

Administrative Rules

ARM 42.30.204 Electing small business trust (ESBT).

15-30-2113. Determination of status — effect of status elections.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 701, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

2021 Amendment: Chapter 503 in (1) near beginning after "the determination of" substituted text relating to status being made as provided in the Internal Revenue Code for former text that read: "whether an individual is married must be made as of the close of the individual's tax year, except that if the individual's spouse dies during the individual's tax year, the determination must be made as of the time of death"; in (2) substituted text relating to federal income tax return filing being conclusive for former text that read: "an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married"; inserted (3) concerning a joint Montana individual income tax return being filed when a joint federal income tax return is filed; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-30-2118. Taxable liability on termination of independent liability fund.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

Administrative Rules

ARM 42.15.526 Small business liability funds.

15-30-2120. Adjustments to federal taxable income to determine Montana taxable income.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 46, L. 2023, deleted former (3)(l) that read: "(l) an amount equal to 30% of net-long term capital gains, as defined in section 1222 of the Internal Revenue Code, 26 U.S.C. 1222, if and to the extent such gain is taken into account in computing federal taxable income"; and made minor changes in style. Amendment effective January 1, 2024.

Section 5, Ch. 47, L. 2023, inserted (3)(o) regarding subtraction for amount of property tax rebate received; and made minor changes in style. Amendment effective January 1, 2024, and terminates June 30, 2025.

Section 2, Ch. 128, L. 2023, deleted former (3)(c)(iii) that read: "(iii) the amount received pursuant to 10-1-1114 or from the federal government by a service member, as defined in 10-1-1112, as reimbursement for group life insurance premiums paid"; and made minor changes in style. Amendment effective January 1, 2024.

Section 1, Ch. 650, L. 2023, inserted (3)(n)(i) regarding subtraction of a portion of military pensions or military retirement income received by a retired member of the armed forces of the United States, the army national guard, the air national guard, or a reserve component of the United States armed forces; inserted (3)(n)(ii) regarding subtraction for up to 50% of all income received as survivor benefits for military service; inserted (8) regarding limitation to the subtraction for military pension or retirement income in (3)(n)(i) equal to lesser of Montana source wage income or 50% of military pension or retirement income; inserted (9) regarding limitations for subtraction of military pension, retirement, or survivor benefits provided for in (3)(n) based on time of residency, date of receiving benefits, and a maximum of 5 consecutive years; and made minor changes in style. Amendment effective January 1, 2024, and terminates December 31, 2033.

Section 9, Ch. 669, L. 2023, inserted (3)(m) regarding subtraction for Montana end of watch trust payments; and made minor changes in style. Amendment effective January 1, 2024.

Section 2, Ch. 701, L. 2023, in (2)(j) at beginning substituted "for an individual taxpayer" for "for a taxpayer"; inserted (2)(k) regarding addition for certain pass-through entity, estate, or trust income; in (3)(d) at beginning substituted "annual contributions and income in a medical care savings account" for "interest and other income related to contributions that were made prior to January 1, 2024, that are retained in a medical care savings account"; and made minor changes in style. Amendment effective January 1, 2024.

Section 6, Ch. 702, L. 2023, in (2)(j) at beginning substituted "for an individual taxpayer" for "for a taxpayer"; inserted (2)(k) regarding addition for certain pass-through entity, estate, or trust income; and made minor changes in style. Amendment effective January 1, 2024.

Applicability — Retroactive Applicability: Section 5, Ch. 46, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2023."

Section 6, Ch. 128, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Section 3, Ch. 650, L. 2023, provided: "[This act] applies to military retirement or pension income or survivor benefits received after December 31, 2023."

Section 16, Ch. 669, L. 2023, provided: "(1) [This act] applies retroactively, within the meaning of 1-2-109, to persons eligible for loss payments from the Montana end of watch trust pursuant to [section 3(2)] [2-15-2042(2)] on or after July 1, 2013.

(2) Retroactive payments allowed in subsection (1) must be made for 5 years from July 1, 2023."

Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

Section 9, Ch. 702, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

Preamble: The preamble attached to Ch. 669, L. 2023, provided: "WHEREAS, Montana law enforcement officers are charged with the enforcement of the laws of the State of Montana as determined by the Montana State Legislature; and

WHEREAS, law enforcement officers put their lives on the line each day to protect the people of Montana; and

WHEREAS, line of duty deaths and catastrophic injuries often leave behind dependent family members who are struggling to cope mentally, emotionally, and financially with the trauma of a line of duty death or to provide care to a catastrophically injured spouse; and

WHEREAS, the State of Montana does not currently provide a line of duty death or catastrophic injury benefit to officers or their families when one of these tragedies occurs."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Case Notes

Educational Expense Deductible Only if Primary Purpose Is to Improve Individual's Skills at Present Job: The husband and wife plaintiffs sought tax deductions for educational expenses incurred by the wife in pursuit of a doctoral degree in psychology. The State Tax Appeal Board (now Montana Tax Appeal Board) upheld the Department of Revenue's disallowance of the deduction. The District Court denied the plaintiffs' petition for judicial review. In affirming, the Supreme Court found that the plaintiffs failed to demonstrate that the educational expenses were deductible under 26 C.F.R. 1.162-5(a)(1) or (2), because education expenses can be deducted only if the primary purpose is to improve an individual's skills at the individual's present job. The wife pursued her education in an effort to become a clinical psychologist rather than to improve her skills in her current job as a counselor. Myrup v. Dept. of Revenue, 2013 MT 136, 370 Mont. 266, 304 P.3d 385.

Three-Year Oil Rig Employment in Wyoming Deemed Indefinite Employment — Deduction for Travel and Mileage Disallowed: The appellant employee claimed mileage deductions for travel from his home in Billings to his place of work on an oil rig in Wyoming. An audit concluded the 3-year employment was indefinite and that the employee's tax home was in Wyoming instead of Billings, which prohibited the claimed deduction. The Supreme Court agreed, holding the employment was indefinite because the employee never knew how long he would be employed at the site and termination was not foreseeable within a short period of time. Robison v. Dept. of Revenue, 2012 MT 145, 365 Mont. 336, 281 P.3d 218.

Federal Self-Employment Tax Not Considered Income Tax and Not Deductible in Calculating Montana Net Income — No Administrative Rule Required to Explain Denial of Tax Deduction When Deduction Not Explicitly Provided: The federal income tax and the federal self-employment tax are distinct entities, despite their colocation in the federal tax code and their conjoined collection procedures. The self-employment tax, although based on income, is in the nature of an employment tax and is a Social Security tax rather than an income tax as that term is commonly understood. Montana has the authority to interpret its own tax code without being bound by the vagaries of the federal tax code. Therefore, federal income tax, as used in 15-30-121 (renumbered 15-30-2131, now repealed), does not include federal self-employment taxes for purposes of calculating net income on Montana tax returns. Further, the Department of Revenue is not required to promulgate a rule explaining the denial of a tax deduction that is not explicitly provided for in the tax code. Baitis v. Dept. of Revenue, 2004 MT 17, 319 M 292, 83 P3d 1278 (2004).

No Basis for Denying Alimony Payment Deduction to Nonresident Taxpayer: Dray, a Texas resident, paid his ex-wife $10,000 a month alimony. Dray paid taxes in Montana on royalty income and agricultural income. In tax years 1984 through 1988, Dray claimed an alimony payment deduction for Montana taxes based on the deduction of alimony used in arriving at adjusted gross income for federal tax purposes. The Department of Revenue disallowed the deduction on the basis that 15-30-131 (renumbered 15-30-2111, now repealed) does not expressly provide for an alimony deduction for nonresidents and that deductions exist only by express grant of the Legislature. The Supreme Court held that although it agreed that a deduction existed only if granted by the Legislature, Montana's adoption of the federal definition of adjusted gross income in 15-30-131 gives no basis for denying the deduction to nonresident taxpayers. Dept. of Revenue v. Dray, 266 M 89, 879 P2d 651, 51 St. Rep. 756 (1994).

Phaseout of $3,600 Tax Exemption for Retirement Income Not Violation of Federal Law: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that the phaseout of the $3,600 tax exemption violated section 4 of the Public Salary Tax Act of 1939 (4 U.S.C. 111). Citing Davis v. Mich. Dept. of Treasury, 489 US 803 (1989), the Supreme Court held that the phaseout would result in a larger tax burden for federal retirees because their pensions were generally larger than state pensions of state retirees. The Supreme Court held that this was a difference based upon the amount of the pension rather than the source of the pension and was specifically allowed by Davis. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

Federal Retirees Not Entitled to Retroactive Tax Refunds: Applying the U.S. Supreme Court's decision in Davis v. Mich. Dept. of the Treasury, 489 US 803, 103 L Ed 2d 891, 109 S Ct 1500 (1989), the District Court adopted a stipulation that the state income tax assessed on benefits received by federal retirees under 4 U.S.C. 111 that were in excess of $3,600 was unconstitutional and invalid for tax years after 1988. The District Court denied plaintiffs' summary judgment motion that Davis be applied retroactively, thus entitling retirees to refunds for previous tax years. On appeal, the Montana Supreme Court affirmed, ruling that it would be inequitable to refund taxes to retirees because the refunds would be made at the expense of all state taxpayers. Sheehy v. St., 250 M 437, 820 P2d 1257, 48 St. Rep. 1008 (1991).

Federal Employees' Retirement Act — Military Retirement Pay: Section 15-30-131 (renumbered 15-30-2111, now repealed) allows taxpayer to exempt the first $3,600 of his military retirement pay from state income tax liability. The Legislature used "the Federal Employees' Retirement Act" in its broad generic sense to include all federal legislation providing retirement benefits. Nice v. St., 161 M 448, 507 P2d 527 (1973).

Amendment Not Retroactive: In the absence of any language in the 1955 act warranting a retrospective application the court could not decide a 1951 tax case in accordance with federal statutes and decisions. In re Armstrong's Estate, 133 M 328, 323 P2d 595 (1958).

Rule of Expressio Unius Not Applicable: The rule expressio unius est exclusio alterius not available to taxpayer to deduct, under subsection (5) of sec. 8, Ch. 181, L. 1933, losses on securities sustained prior to Jan. 1, 1933, the basic date set by subsection (7) for deduction of worthless debts, there being a special reason for the inclusion of the date in subsection (7). Expressio unius rule not to apply if there is some special reason for mentioning one thing and none for mentioning the other. State ex rel. Whitlock v. St. Bd. of Equalization, 100 M 72, 45 P2d 684 (1935).

Attorney General's Opinions

National Guard Salary Not Qualified: The salary earned by members of the National Guard employed under the Conversion Full Time Military (CFTM) program does not qualify for a tax exemption under 15-30-116 (renumbered 15-30-2117, now repealed). 39 A.G. Op. 43 (1981).

Personal Tax Exemption Under Initiative 86: Under Initiative 86, the 1980 tax indexing initiative, the personal exemption for state income tax purposes was $1,250 because the Initiative defined "base year structure" as the exemptions in effect on January 1, 1980, which, because of a temporary law, was increased from the $800 permanent amount. 39 A.G. Op. 9 (1981).

Income Tax — Special Military Exemption: Members of Air National Guard called to active duty in the Air Defense Alert program are entitled to Montana's statutory tax exemption for the salary received while serving in that program. 36 A.G. Op. 64 (1976).

Law Review Articles

Giggin' in the 21st Century, Ford, 80 Mont. L. Rev. 299 (2019).

The Federal Income Taxation of Contingent Attorneys' Fees: Patchwork by Congress and Supreme Court Creates Uncertainty, Wood, 67 Mont. L. Rev. 1 (2006).

Montana's Adoption of the Federal Definition of Income, Bennett, 23 Mont. L. Rev. 105 (1961).

The Income Tax Basis of Land Acquired by Homestead, Rusoff, 22 Mont. L. Rev. 60 (1960).

15-30-2151. Tax on beneficiaries or fiduciaries of estates or trusts.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) substituted text relating to tax being imposed on the fiduciaries or the beneficiaries to the same extent as the federal income tax for former text (see 2021 Session Law for former text); in (2) near end of first sentence after "fiduciary or the beneficiaries are" substituted "responsible for the payment of the tax" for "taxable", in second sentence at beginning deleted "In cases under subsections (1)(a) and (1)(d)" and near middle after "return is made" inserted provision concerning furnishing a copy of the federal income tax return, and inserted last sentence concerning a copy of the federal schedule of the beneficiary's share of income, deductions, and credits; in (3) substituted "The tax imposed on the fiduciary of the estate or trust must be paid by the fiduciary" for former text (see 2021 Session Law for former text); deleted former (4) and (5) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: (1) "Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendments: Chapter 2, in (1)(d), changed "an infant" to "a minor".

Chapter 260 deleted former (1)(e), which read: "income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary."; in (2), deleted second sentence, which read: "The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia.", in second sentence, substituted "(a) and (d)" for "(d) and (e)", and made minor changes in phraseology; at end of (3), deleted "except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131." and made a minor phraseology change; in (3), inserted former (4)(c), relating to calculation of taxpayer's net income on basis of period differing from that of estate or trust, as second sentence after making a minor phraseology change; and deleted former (4)(a) and (b), which read: "(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of an infant, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary."

Administrative Rules

ARM 42.30.101 Definitions.
ARM 42.30.102 Fiduciary — filing requirements.
ARM 42.30.104 Fiduciary — income tax liability determination.
ARM 42.30.105 Fiduciary — Montana distributable net income and Montana income distribution deduction — character.
ARM 42.30.110 Fiduciary — audit adjustments.
ARM 42.30.203 Preneed funeral trusts — election to file composite return.
ARM 42.30.204 Electing small business trust (ESBT).

15-30-2153. Determination of tax of estates and trusts.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 458 in (1) at end of first sentence inserted "or, if applicable, the rate contained in 15-30-3704"; and made minor changes in style. Amendment effective May 11, 2021.

Chapter 503 in first sentence near beginning after "is determined from" substituted "Montana taxable income" for "taxable income" and near middle after "of an estate or trust" substituted "as adjusted in 15-30-2120" for "in the same manner as the tax on taxable income of individuals"; and made minor changes in style. Amendment effective January 1, 2024.

Retroactive Applicability: Section 9, Ch. 458, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

Administrative Rules

ARM 42.30.101 Definitions.
ARM 42.30.104 Fiduciary — income tax liability determination.
ARM 42.30.105 Fiduciary — Montana distributable net income and Montana income distribution deduction — character.
ARM 42.30.203 Preneed funeral trusts — election to file composite return.
ARM 42.30.204 Electing small business trust (ESBT).

15-30-2154. Estates and trusts tax remedies.

Administrative Rules

ARM 42.30.101 Definitions.
ARM 42.30.103 Fiduciary — income tax return extensions.

15-30-2191. Individual income tax rebate.

Compiler's Comments

Effective Date: Section 8, Ch. 44, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 13, 2023.

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 764, L. 2023, to this section as enacted by sec. 2, Ch. 44, L. 2023. Amendment effective June 5, 2023, and terminates December 31, 2025.

Termination: Section 9, Ch. 44, L. 2023, provided: "[This act] terminates December 31, 2025."

Severability: Section 6, Ch. 44, L. 2023, was a severability clause.

Section 8, Ch. 764, L. 2023, was a severability clause.

Part 23
Specific Tax Credits and Tax Checkoffs

15-30-2302. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries.

Compiler's Comments

2005 Amendment: Chapter 95 inserted (4) pertaining to extent a credit is allowed on taxes imposed by a foreign country; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 2, Ch. 95, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

2003 Amendment: Chapter 544 inserted (1)(c) concerning distributive share of income tax paid to another state or country; in (5) inserted reference to subsection (1)(c); in (5)(c) after "S. corporation" inserted "or partnership"; and made minor changes in style. Amendment effective April 30, 2003.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Retroactive Applicability: Section 62(3), Ch. 544, L. 2003, provided: "(3) [Section 47] [15-30-124] applies retroactively, within the meaning of 1-2-109, to years beginning after December 31, 2002."

2001 Amendment: Chapter 143 in (1) at beginning substituted "Subject to the conditions provided in subsections (2) through (5)" for "Subject to the following conditions"; inserted (1)(b) regarding resident's pro rata share of income tax imposed by and paid to another state; in (2) in two places after "state" inserted "or country"; in (3) after "state" inserted "or country"; inserted (5) providing definition, tax election, and conditions for application of tax credit; and made minor changes in style. Amendment effective March 29, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.4.401 Definitions.

ARM 42.4.402 Credit for income taxes paid to another state or country.

ARM 42.4.403 Computation of credit for tax paid to another state or country.

Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

15-30-2303. Tax credits subject to review by interim committee.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 19, L. 2023, in (1) deleted former text that read: "(1) The following tax credits must be reviewed during the biennium commencing July 1, 2019, and during each biennium commencing 10 years thereafter"; in former (1)(a) revised review cycle for contractor's gross receipts credit from former (1)(a) commencing July 1, 2019, to (4)(d) commencing July 1, 2027; in former (1)(b) revised review cycle for residential property tax for the elderly from former (1)(b) commencing July 1, 2019, to (3)(a) commencing July 1, 2025; in (1), (2), (3), and (4) revised review cycle from every 10 years to every 8 years; in (1)(a) substituted "donations to innovative educational programs" for "donations to an educational improvement account"; in (2)(d) revised review cycle for credit for preservation of historic buildings from former (4)(a) commencing July 1, 2025, to (2)(d) commencing July 1, 2023; and made minor changes in style. Amendment effective October 1, 2023.

Section 2, Ch. 493, L. 2023, inserted (1)(c) regarding adoption tax credit; and made minor changes in style. Amendment effective May 16, 2023, and terminates December 31, 2031.

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550. Amendment effective May

3, 2023. The amendment did not affect the December 31, 2028, termination date of the Ch. 550, L. 2021, amendment to this section.

Extension of Termination Date: Section 2, Ch. 576, L. 2023, amended sec. 7, Ch. 248, L. 2021, by extending the termination date imposed by Ch. 248 to December 31, 2028. Effective May 18, 2023.

Retroactive Applicability: Section 5, Ch. 493, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to eligible adoptions on or after July 1, 2022, claimed on tax returns filed for tax years beginning after December 31, 2022."

2021 Amendments — Composite Section: Chapter 15 deleted former (1)(c) that read: "(c) the credit for new or expanded manufacturing provided for in 15-31-124 through 15-31-127"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 35 in (1), (2), (3), (4), and (5) at end of introductory clause inserted "and during each biennium commencing 10 years thereafter"; deleted former (1)(a) that read: "(a) the credit for income taxes imposed by foreign states or countries provided for in 15-30-2302"; in (6) substituted current text concerning review of tax credits, including tax credits with expiration or termination dates that are not included in the section, and recommendations to the legislature for former text that read: "The revenue interim committee shall review the tax credits scheduled for review in the biennium of the next regular legislative session, including any individual or corporate income tax credits with an expiration or termination date that are not listed in this section, and make recommendations to the legislature about whether to eliminate or revise the credits. The legislature may extend the review dates by amending this section"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 248 inserted (4)(d) concerning trades education and training credit; and made minor changes in style. Amendment effective April 19, 2021, and terminates December 31, 2026.

Chapter 261 in (6) near end of first sentence after "make recommendations" inserted "in accordance with 5-11-210 at the conclusion of the full review". Amendment effective April 20, 2021.

Chapter 503 throughout section deleted references to tax credits repealed by this chapter including credits for the following activities or expenses: installing an alternative energy system, energy-conserving expenditures, commercial or net metering system investment, qualified elderly care expenses, dependent care assistance and referral services, contributions to a university or college foundation or endowment, providing disability insurance for employees, installation of a geothermal system, converting a motor vehicle to alternative fuel, mineral or coal exploration, capital gains, a new employee in an empowerment zone, oilseed crush facility, biodiesel or biolubricant production facility, biodiesel blending and storage, adoption, and providing temporary emergency lodging (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2022.

Chapter 550 inserted (4)(c) concerning the job growth incentive tax credit; and made minor changes in style. Amendment effective July 1, 2021, and terminates December 31, 2028.

Retroactive Applicability: Section 6, Ch. 248, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Effective Dates — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Section 22, Ch. 550, L. 2021, was a severability clause.

Effective Date: Section 6, Ch. 399, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 8, 2019.

2019 Amendment — Coordination — Name Change — Directions to Code Commissioner: Section 15, Ch. 352, L. 2019, a coordination section, inserted (5)(g) concerning media production and postproduction credits.

Section 5, Ch. 399, L. 2019, a coordination section, inserted (3)(f) concerning credit for contributions to a qualified endowment.

Pursuant to sec. 20, Ch. 163, L. 2019, in (6) in two places, the code commissioner changed "revenue and transportation interim committee" to "revenue interim committee".

Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

15-30-2318. Earned income tax credit.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 50, L. 2023, in (2) increased amount of credit from 3% to 10%. Amendment effective March 13, 2023.

Section 3, Ch. 701, L. 2023, deleted former (3)(a) (see sec. 3, Ch. 701, L. 2023, for former text); and made minor changes in style. Amendment effective January 1, 2024.

Applicability: Section 4, Ch. 50, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

Effective Date: This section is effective October 1, 2017.

Applicability: Section 4, Ch. 381, L. 2017, provided: "[This act] applies to income tax years beginning after December 31, 2018."

Severability: Section 3, Ch. 381, L. 2017, was a severability clause.

15-30-2321. Adoption tax credit — rulemaking.

Compiler's Comments

Effective Date: Section 4, Ch. 493, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 16, 2023.

Retroactive Applicability: Section 5, Ch. 493, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to eligible adoptions on or after July 1, 2022, claimed on tax returns filed for tax years beginning after December 31, 2022."

Termination: Section 6, Ch. 493, L. 2023, provided: "[This act] terminates December 31, 2031."

15-30-2327. Qualified endowments credit — definitions — rules.

Compiler's Comments

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

2013 Amendment: Chapter 317 in (1)(a)(i) substituted "managed, invested, and appropriated pursuant to the Uniform Prudent Management of Institutional Funds Act provided for in Title 72, chapter 30" for "invested for the production or growth of income, or both, that may either be added to principal or expended"; inserted (2) regarding creation of donor restriction to qualify for tax credit; in (3)(b) near beginning inserted "first partial or full-year"; inserted (3)(e) requiring at least 5% annuity rate to be a planned gift; and made minor changes in style. Amendment effective April 26, 2013, and terminates December 31, 2019.

Applicability: Section 10, Ch. 317, L. 2013, provided: "[This act] applies to charitable contributions made on or after [the effective date of this act]." Effective April 26, 2013.

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

2007 Amendment: Chapter 208 in (1) in introductory clause after "15-30-166" inserted "and this section"; inserted (1)(a) defining permanent, irrevocable fund; and made minor changes in style. Amendment effective April 17, 2007, and terminates December 31, 2013.

Extension of Termination Date: Sections 2 and 3, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, and sec. 5, Ch. 266, L. 2001, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

Applicability: Section 6, Ch. 208, L. 2007, provided: "[This act] applies to charitable contributions made on or after [the effective date of this act]." Effective April 17, 2007.

Termination: Section 7(2), Ch. 208, L. 2007, provided: "Sections 1 through 4, Chapter 226, Laws of 2001 [amending 15-30-165, 15-30-166, 15-31-161, and 15-31-162], terminate December 31, 2013."

Section 7(3), Ch. 208, L. 2007, provided: "Section 7, Chapter 482, Laws of 2003 [amending 15-30-165], terminates December 31, 2013." Effective April 17, 2007.

2003 Amendment: Chapter 482 inserted (3)(d) providing that a contribution is not a planned gift unless it is a qualified charitable gift annuity as defined in 33-20-701. Amendment effective April 24, 2003.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

2001 Amendments — Composite Section: Chapter 226 at beginning of definition of planned gift inserted "Subject to subsection (3)"; inserted (3) providing that contributions using certain techniques are not considered planned gifts; inserted (4) requiring rulemaking for the preparation of life expectancy tables; and made minor changes in style. Amendment to subsections (1) through (3) effective October 1, 2001. Amendment to subsection (4), for purposes of promulgating administrative rules, effective April 12, 2001.

Chapter 411 inserted (2)(b) concerning affordable housing revolving loan account as qualified endowment; and made minor changes in style. Amendment effective April 28, 2001, and terminates December 31, 2004.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Retroactive Applicability: Section 6, Ch. 411, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

15-30-2328. Credit for contributions to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 690, L. 2023. Amendment effective January 1, 2024.

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

2021 Amendment: Chapter 503 deleted former (2) that read: "(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-2131(1) or 15-30-2152(2)"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

2013 Amendment: Chapter 268 in (4)(a) at end substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

Extension of Termination Date: Sections 2 through 4, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 266, L. 2001, and sec. 7, Ch. 4, L. 2005, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

Termination: Section 7(2), Ch. 208, L. 2007, provided: "Sections 1 through 4, Chapter 226, Laws of 2001 [amending 15-30-165, 15-30-166, 15-31-161, and 15-31-162], terminate December 31, 2013." Effective April 17, 2007.

2005 Amendment: Chapter 4 inserted (4) regarding requirements if a charitable gift is recovered by a taxpayer during any tax year. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in (1) in first sentence reduced percentage of present value of aggregate gift from 40% to 30% and in second sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in (1) in first sentence increased percentage of present value of aggregate gift from 40% to 50% and in second sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near middle of first sentence of (1) after "equal to" substituted "40% of the present value" for "50% of the present value". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Preamble: The preamble attached to Ch. 537, L. 1997, provided: "WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

ARM 42.4.2704 Tax credit and deduction limitations.

ARM 42.4.2706 Reporting requirements.

ARM 42.4.2708 Determining present value for endowment credit.

15-30-2329. Beneficiaries of estates — credit for contribution to qualified endowment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 690, L. 2023. Amendment effective January 1, 2024.

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

2021 Amendment: Chapter 503 in third sentence near middle after "beneficiary may claim is $10,000" deleted "subject to the limitation in 15-30-2328(2)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

Extension of Termination Date: Sections 2 and 3, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, and sec. 5, Ch. 266, L. 2001, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in third sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in third sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

ARM 42.4.2708 Determining present value for endowment credit.

15-30-2334. Credit for providing supplemental funding to public schools — innovative educational program.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

15-30-2335. Qualified education individual income tax credit for contributions to student scholarship organization.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

Law Review Articles

Espinoza v. Montana Department of Revenue: Pulling Back the Curtain on Tax Expenditure Spending, Lindberg, 82 Mont. L. Rev. 211 (2021).

Montana's Constitutional Prohibition on Aid to Sectarian Schools: "Badge of Bigotry" or National Model for the Separation of Church and State?, Dougherty, 77 Mont. L. Rev. 41 (2016).

15-30-2337. Residential property tax credit for elderly — definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 476 in (8) after "the amount obtained by subtracting" substituted "$12,600" for "$6,300". Amendment effective October 1, 2021, October 1, 2022, October 1, 2023, October 1, 2024, and October 1, 2025, and terminates on occurrence of contingency until December 31, 2025.

Effective Dates — Applicability: Section 11, Ch. 476, L. 2021, provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 2 and 7] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 3 and 8] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 4 and 9] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 5 and 10] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2025, and apply to the income tax years beginning after December 31, 2025."

2009 Amendment: Chapter 147 at beginning deleted references to repealed sections; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 445 in definition of income near beginning inserted exception clause, in (a)(i) near beginning before "amount" deleted "gross", in (a)(vii) at beginning deleted "payments and", and inserted (b) providing that income is reduced by taxpayer's basis; and made minor changes in style. Amendment effective April 22, 1999.

Coordination Instruction: Section 2, Ch. 445, L. 1999, provided: "If Senate Bill No. 424 is passed and approved and if it amends section 15-30-171, then the section of Senate Bill No. 424

amending section 15-30-171 is void." Senate Bill No. 424, including an amendment to 15-30-171, was passed and approved as Ch. 547, L. 1999; therefore, the amendment to 15-30-171 in Ch. 547 was void.

Retroactive Applicability: Section 4, Ch. 445, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 in definition of claimant, before "person", deleted "individual natural"; in definition of homestead, in (a) near beginning after "subject to", substituted "property" for "ad valorem"; in definition of household income after "means" deleted "$0 or" and after "subtracting" substituted "$6,300 from gross household income" for "the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater"; substituted property tax billed for property tax paid as defined term, before "taxes" deleted "general ad valorem", substituted "including special assessments" for "exclusive of special assessments", before "penalties" inserted "and fees but excluding", and after "interest" deleted "and paid"; and made minor changes in style. Amendment effective May 5, 1997.

Retroactive Applicability: Section 6, Ch. 543, L. 1997, provided: "[Sections 1 and 4] [15-30-171 and 15-30-177] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1991 Amendment: In definition of income, in (h), inserted "except social security income paid directly to a nursing home". Amendment effective April 24, 1991.

Retroactive Applicability: Section 4, Ch. 612, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

1989 Amendments: Chapter 559 in definition of homestead inserted (b) relating to a dwelling rented from a county or municipal housing authority. Amendment effective January 1, 1990.

Chapter 693 in definition of household income inserted "the greater of" and "or 50% of total retirement benefits"; and made minor change in phraseology. Amendment effective May 22, 1989, and applicable to taxable years beginning after December 31, 1988.

1987 Amendment: In (7) deleted 6-month residence requirement for owner, renter, or lessee of a dwelling. This amendment is applicable retroactively to claim periods beginning after December 31, 1986.

1983 Amendments: Chapter 134, in (1), after "nontaxable income" deleted "except all payments received under federal social security"; inserted (1)(h) relating to Social Security payments; in (5), substituted "Gross household income" for "Household income" and deleted "except payments received under federal social security" after "all income"; inserted definition of household income; and made minor phraseology changes. This amendment is applicable to claim periods beginning after December 31, 1982.

Chapter 605, in (1), after "received" substituted "as a result of fulfillment of federal social security eligibility requirements or payments comparable thereto" for "under federal social security"; in (1)(a), after "disability benefits" inserted exception of payments received by fulfillment of social security eligibility requirements; and in (5), after "all income" deleted "except payments received under federal social security". These amendments are not reflected in the statute because they are no longer applicable. See Effective Date note below.

Effective Date — Applicability: Section 2, Ch. 605, L. 1983, provided: "This act is effective on passage and approval and is applicable only to claim periods beginning after December 31, 1980, and before January 1, 1983. It is to be applied retroactively within the meaning of 1-2-109 for such periods."

Administrative Rules

Title 42, chapter 4, subchapter 3, ARM Individual — residential property tax credit for elderly.

ARM 42.4.301 Definitions.

Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

15-30-2338. Residential property tax credit for elderly — eligibility — disallowance or adjustment.

Compiler's Comments

2009 Amendment: Chapter 147 at beginning deleted references to repealed sections; and inserted (3) and (4) relating to disallowed claims and adjustment of gross rent. Amendment effective October 1, 2009.

1999 Amendment: Chapter 547 in (1)(d) increased from less than $35,000 to less than $45,000 the maximum gross household income for receipt of credit. Amendment effective April 30, 1999.

Retroactive Applicability: Section 5, Ch. 547, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 inserted (1)(d) requiring persons claiming tax credit to have less than $35,000 gross household income; and made minor changes in style. Amendment effective May 5, 1997.

1987 Amendment: Inserted (1)(c) requiring occupation of home; inserted (2) relating to change of residence; and made minor change in style. This amendment is applicable retroactively to claim periods beginning after December 31, 1986.

15-30-2339. Residential property tax credit for elderly — filing date.

Compiler's Comments

2015 Amendment: Chapter 308 in (5) substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

2011 Amendment: Chapter 19 in (1) at end of exception clause substituted "subsection (3)" for "subsection (2)". Amendment effective October 1, 2011.

2009 Amendment: Chapter 147 inserted (2) relating to a rent receipt; in (4) and (5) deleted references to repealed sections; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 66 in (2) deleted former second sentence that read: "The department shall keep a record of each extension and the reason for granting the extension"; and inserted (4) concerning 5-year period for revising return and making claim. Amendment effective March 14, 2003.

Administrative Rules

ARM 42.4.303 Claiming elderly homeowner credit.

15-30-2340. Residential property tax credit for elderly — computation of relief.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 476 in (6) after "credit granted may not exceed" substituted " $1,150" for "$1,000". Amendment effective October 1, 2021, October 1, 2022, October 1, 2023, October 1, 2024, and October 1, 2025 and terminates on occurrence contingency until December 31, 2025.

Effective dates — Applicability: Section 11, Ch. 476, L. 2021, provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 2 and 7] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 3 and 8] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 4 and 9] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 5 and 10] [amendments to 15-30-2337(8) and 15-30-2340(6)] are effective October 1, 2025, and apply to the income tax years beginning after December 31, 2025."

2009 Amendment: Chapter 147 in introductory clause deleted references to repealed sections; inserted (7) allowing for a refund of the credit; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 547 inserted (5) specifying amount of credit for person with income of more than $35,000 but less than $45,000; and made minor changes in style. Amendment effective April 30, 1999.

Retroactive Applicability: Section 5, Ch. 547, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 543 near middle of (1) and (3)(a) and near beginning of (4), after "tax", substituted "billed" for "paid"; and made minor changes in style. Amendment effective May 5, 1997.

1995 Amendment: Chapter 574 in (5) increased credit amount from $400 to $1,000. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 14, Ch. 574, L. 1995, provided: "(1) [This act] is effective on passage and approval. [Approved May 1, 1995.]

(2) (a) Except as provided in subsection (2)(b), [this act] applies to tax years beginning after December 31, 1995.

(b) [Sections 1 through 7 and 11] [15-1-1001 through 15-1-1007, now terminated, and 15-30-176] apply retroactively, within the meaning of 1-2-209, to tax years beginning after December 31, 1994."

1983 Amendment: Inserted (3) relating to claimant who both owns and rents homestead; in (5), increased the maximum credit from $150 to $400.

Administrative Rules

ARM 42.4.302 Computation of residential property tax credit for elderly.

Collateral References

HJ 36 Residential Property Tax Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj36-final-report.pdf.

15-30-2341. Residential property tax credit for elderly — limitations — denial of claim.

Compiler's Comments

2015 Amendment: Chapter 308 in (4) substituted "the amount paid, penalties, and interest may be recovered as provided in 15-1-216" for "the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt must bear interest from the date of the original payment of claim until paid, at the rate of 1% per month". Amendment effective January 1, 2017.

Applicability: Section 17(1), Ch. 308, L. 2015, provided that this section applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

2009 Amendment: Chapter 147 in (1) deleted references to repealed sections; inserted (4) relating to false or fraudulent claims; and made minor changes in style. Amendment effective October 1, 2009.

1997 Amendment: Chapter 543 in (2), near middle after "taxes", substituted "billed" for "paid"; in (3), near end, substituted "Montana property taxes" for "ad valorem taxation in Montana"; and made minor changes in style. Amendment effective May 5, 1997.

Retroactive Applicability: Section 6, Ch. 543, L. 1997, provided: "[Sections 1 and 4] [15-30-171 and 15-30-177] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1989 Amendment: At beginning of (2) and (3) inserted exception clause. Amendment effective January 1, 1990.

1983 Amendment: Inserted (3) disallowing claims on rented lands or dwellings not subject to ad valorem tax.

15-30-2342. Credit for preservation of historic buildings.

Compiler's Comments

2001 Amendment: Chapter 538 inserted (2) through (5) allowing a tax credit for the preservation of historically significant property, including buildings and structures, allowing for tax credits resulting from the imposition of conservation easements on historically significant property, and allowing credit carryovers; in (6) near beginning after "credit" inserted "allowed in subsection (1)"; and made minor changes in style. Amendment effective January 1, 2002, and terminates December 31, 2011.

Applicability: Section 4, Ch. 545, L. 1997, provided: "[Sections 1 and 2] [15-31-151 and 15-30-180] apply to tax years beginning after December 31, 1997."

Administrative Rules

ARM 42.4.2902 Computation of tax credit for preservation of historic properties.

ARM 42.4.2903 Computation of tax credit for preservation of historic property for married taxpayers.

ARM 42.4.2904 Ownership of historic property.

ARM 42.4.2905 Claiming the historic preservation credit.

15-30-2357. Tax credit for hiring registered apprentice or veteran apprentice.

Compiler's Comments

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550. Amendment effective May 3, 2023. The amendment did not affect the December 31, 2028, termination date of the Ch. 550, L. 2021, amendment to this section.

2021 Amendment: Chapter 550 in (1) near beginning after "Subject to the provisions of" inserted "15-30-2361(8) and". Amendment effective July 1, 2021, and terminates December 31, 2028.

Effective Dates — Applicability: Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Severability: Section 22, Ch. 550, L. 2021, was a severability clause.

Effective Date: Section 7, Ch. 380, L. 2017, provided: "[This act] is effective January 1, 2018."

Applicability: Section 8, Ch. 380, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.4.2202 Employer apprenticeship tax credit.

15-30-2359. Tax credit for trades education and training.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 576, L. 2023. Amendment effective May 18, 2023.

Extension of Termination Date: Section 2, Ch. 576, L. 2023, amended sec. 7, Ch. 248, L. 2021, by extending the termination date imposed by Ch. 248 to December 31, 2028. Effective May 18, 2023.

Retroactive Applicability: Section 4, Ch. 576, L. 2023, provided: "[Section 1] [15-30-2359] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

Effective Date: Section 5, Ch. 248, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 19, 2021.

Retroactive Applicability: Section 6, Ch. 248, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Termination: Section 7, Ch. 248, L. 2021, provided: "[This act] terminates December 31, 2026."

15-30-2361. Grow Montana jobs — annual job growth incentive tax credit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 391, L. 2023. Amendment effective May 3, 2023.

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550 to December 31, 2028. Amendment effective May 3, 2023.

Contingent Termination Provision Repealed: Section 5, Ch. 391, L. 2023, repealed sec. 25, Ch. 550, L. 2021, which terminated this section on occurrence of a contingency. Effective May 3, 2023.

Retroactive Applicability: Section 7, Ch. 391, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2021."

Effective Dates — Applicability: Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Termination: Section 24, Ch. 550, L. 2021 (amended by sec. 4, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] [including last enactment of 15-30-2361, 15-31-175, and 39-11-404] terminates December 31, 2028.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2022.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2023.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2024.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2025.

(6) [Section 25] terminates January 1, 2025."

Severability: Section 22, Ch. 550, L. 2021, was a severability clause.

Contingent Termination: Section 25, Ch. 550, L. 2021 (repealed by sec. 5, Ch. 391, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] [first, second, third, and fourth enactments of 15-30-2361, 15-31-175, and 39-11-404] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] [first, second, third, and fourth enactments of 15-30-2361, 15-31-175, and 39-11-404] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)." Effective July 1, 2021, and terminates January 1, 2025.

15-30-2380. Credit for unlocking public lands program — definitions.

Compiler's Comments

Extension of Termination Date: Sections 1 and 2, Ch. 139, L. 2017, amended sec. 6, Ch. 346, L. 2013, and sec. 3, Ch. 392, L. 2015, by extending the termination dates imposed by those sections to December 31, 2027.

2015 Amendment: Chapter 392 in (1), (3), and (4) substituted "$750" for "$500"; in (1) in middle substituted "access to public land" for "access to state land, as defined in 77-1-101" and at end substituted "$3,000" for "$2,000"; in (4) and (5)(b) in two places substituted "public land" for "state land"; inserted (5)(a) defining public land; in (5)(b) after "an access" inserted "or corridor"; inserted (5)(b)(ii) regarding exclusions for certain land; and made minor changes in style. Amendment effective January 1, 2016.

Extension of Termination Date: Section 3, Ch. 392, L. 2015, amended sec. 6, Ch. 346, L. 2013, by extending the termination date imposed by Ch. 346 to December 31, 2020.

Applicability: Section 5, Ch. 392, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015.

Preamble: The preamble attached to Ch. 346, L. 2013, provided: "WHEREAS, the Legislature wishes to increase access by the public to publicly owned, state lands; and

WHEREAS, increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational opportunities as determined by the commission; and

WHEREAS, the unlocking state lands program will provide incentives for participating landowners to increase public access to state lands."

Effective Date: Section 4, Ch. 346, L. 2013, provided: "[This act] is effective January 1, 2014."

Applicability: Section 5, Ch. 346, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Termination: Section 6, Ch. 346, L. 2013, provided: "[This act] terminates December 31, 2018."

Administrative Rules

Title 42, chapter 4, subchapter 23, ARM Individual and corporation — unlocking state lands tax credit.

15-30-2386. Funding for administration of special revenue accounts.

Compiler's Comments

1997 Amendment: Chapter 422 in (1), near beginning after "revenue account", deleted "created after January 1, 1993"; deleted former (3) that read: "There are special revenue accounts in the state treasury for the administration of income tax checkoffs"; in (3), at end, substituted "the state general fund" for "a tax checkoff administration account"; and deleted (5) that read: "(5) The money in a tax checkoff administration account, subject to appropriation, must be expended to administer the income tax checkoff for which the account was created." Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Sections 10 and 11, Ch. 581, L. 1993, provided that this section is effective on passage and approval and applies to tax years beginning after December 31, 1992. Approved April 28, 1993.

15-30-2387. Voluntary checkoff for nongame wildlife programs.

Compiler's Comments

Retroactive Applicability: Section 4, Ch. 321, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to voluntary income tax checkoff programs to which the contingent termination in section 1, Chapter 12, Laws of 1995, applied and that were in effect prior to January 1, 1999."

1993 Amendment: Chapter 581 in (3), after "section", inserted "after the department has deducted the administrative charge provided for in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

1985 Amendment: In (1) near middle, after "chapter 30", deleted "and who is entitled to a refund"; and in (2) at end of first sentence, deleted "from the taxpayer's refunded amount" and substituted language in contribution provision for language that read: "Montana nongame wildlife funding. Check the appropriate blank if you wish to designate ___$2, ___$5, or ___$10 of your tax refund to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to designate ___$2, ___$5, or ___$10 for the same purpose."

15-30-2388. Agriculture literacy in Montana schools program account — administration.

Compiler's Comments

2013 Amendment: Chapter 34 in (1) after "agriculture" inserted "literacy"; in (3) in first sentence after "presenting" deleted "through the joint efforts of the United States department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide" and inserted last sentence requiring the program to be developed and presented through joint efforts of certain entities; and made minor changes in style. Amendment effective October 1, 2013.

Permanent Continuation of Income Tax Checkoff: As originally enacted, this section had a termination date of July 1, 1987. The termination date was repealed by sec. 1, Ch. 16, L. 1987, which was effective February 17, 1987.

15-30-2389. Voluntary checkoff for agriculture literacy in Montana schools program.

Compiler's Comments

2013 Amendment: Chapter 34 throughout section in four places after "agriculture" inserted "literacy". Amendment effective October 1, 2013.

Elimination of Contingent Termination Date: Section 1, Ch. 12, L. 1995, amended sec. 12, Ch. 581, L. 1993, by deleting the contingent termination date applicable to 15-30-152. The effect of the amendment was to make permanent the voluntary income tax checkoff for the agriculture in Montana schools program. Amendment effective January 27, 1995.

Retroactive Applicability: Section 2, Ch. 12, L. 1995, provided: "[This act] [making permanent the voluntary income tax checkoff for the agriculture in Montana schools program] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Contingent Termination: Section 12, Ch. 581, L. 1993, provided: "A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years."

Permanent Continuation of Income Tax Checkoff: As originally enacted, this section had a termination date of July 1, 1987. The termination date was repealed by sec. 1, Ch. 16, L. 1987, which was effective February 17, 1987.

15-30-2390. Voluntary checkoff for child abuse and neglect prevention program.

Compiler's Comments

Retroactive Applicability: Section 4, Ch. 321, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to voluntary income tax checkoff programs to which the contingent termination in section 1, Chapter 12, Laws of 1995, applied and that were in effect prior to January 1, 1999."

1993 Amendment: Chapter 581 at end of (3) inserted "as provided in 15-30-153"; and made minor changes in style. Amendment effective April 28, 1993.

Retroactive Applicability: Section 11, Ch. 581, L. 1993, provided: "[Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

15-30-2392. Voluntary checkoff for Montana military relief fund.

Compiler's Comments

Effective Date: Section 15, Ch. 311, L. 2007, provided that this section is effective July 1, 2007.

Applicability: Section 16, Ch. 311, L. 2007, provided that this section applies to tax years beginning after December 31, 2007.

15-30-2393. Election to deposit refund to education savings or ABLE account.

Compiler's Comments

2021 Amendment: Chapter 503 in second sentence near middle after "to claim an exclusion from" substituted "Montana taxable income" for "adjusted gross income" and at end after "contribution as provided in" substituted "15-30-2120" for "15-30-2110". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Effective Date: Section 3, Ch. 115, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 3, 2019.

Retroactive Applicability: Section 4, Ch. 115, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018."

Part 25
Estimated Tax and Withholding

15-30-2501. Definitions.

Compiler's Comments

2021 Amendment: Chapter 503 in definition of wages deleted former (b)(i), (b)(ii), and (b)(iii) that read: "(i) tips and gratuities exempt from taxation under 15-30-2110;

(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-2110;

(iii) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-2101"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 36 inserted definition of agricultural labor; inserted (6)(b)(v) regarding amounts paid for agricultural labor; and made minor changes in style. Amendment effective February 18, 2015.

Retroactive Applicability: Section 3, Ch. 36, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2013."

2005 Amendment: Chapter 67 deleted definition of agricultural labor that read: ""Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife"; deleted definition of domestic or household service that read: ""Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care"; in definition of employee inserted (b) excluding a sole proprietor from the definition; in definition of employer at end of (a) inserted "or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages", deleted former (b) that read: "(b) a person who pays $1,000 or more in wages within the current calendar year", deleted former (c) that read: "(c) a person who pays $1,000 or more in cash for domestic or household service in any quarter during the current calendar year", in (b) near beginning after "organization" inserted "that has or had in its employ one or more individuals performing services for it within this state", in (b)(ii) near middle after "company, or" deleted "a limited liability partnership that has filed with the secretary of state", in (b)(iii) near middle inserted reference to trustee in bankruptcy, in (b)(iv) at end deleted "who has or had in its employ one or more individuals performing services for it within this state", and in (c) at end substituted "or under Title 39, chapter 71, for workers' compensation purposes" for "is considered an employer for state income tax withholding purposes"; deleted definition of independent contractor that read: ""Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business"; deleted definition of wages that read: ""Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law"; inserted definition of sole proprietor; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

2003 Amendment: Chapter 114 in definition of wages in (b)(v) after "Internal Revenue Code" inserted "of 1954". Amendment effective October 1, 2003.

1997 Amendments: Chapter 42 substituted cites to and inserted parenthetical references to United States Code sections of the Internal Revenue Code (voided by Ch. 491 amendment); and made minor changes in style. Amendment effective March 12, 1997.

Chapter 491 inserted definition of domestic or household service; in definition of employee inserted (c) concerning individual who performs service for another individual or organization and inserted (d) concerning classes, grades, or types of employees; in definition of employer, in (a) at end, deleted "However, if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term means the person who has control of the payment of wages" and inserted (b) through (e) concerning persons considered employers; in definition of wages, in (a), inserted "unless specifically exempted under subsection (7)(b)", after "means all remuneration" deleted "other than fees paid to a public official", at end substituted "and includes but is not limited to the following" for "except that the term does not include remuneration paid", and inserted (i) through (iii) concerning commissions, bonuses, and remuneration, severance or continuation pay, and tips unless exempted, deleted former (a) through (k) listing types of pay excluded from definition of wages (see 1997 Session Law for former text), and inserted (b) excluding certain payments from definition; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 254 in definition of wages deleted former (j) that read: "(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d)"; and made minor changes in style. Amendment effective March 27, 1995.

Chapter 479 in (6)(j), after "tips", inserted "or gratuities that are" and after "3402(k)" inserted "or service charges that are covered by section 3401"; and made minor changes in style. Amendment effective April 15, 1995.

Chapter 529 inserted definition of independent contractor; adjusted subsection references; and made minor changes in style. Amendment effective April 25, 1995.

Chapter 572 inserted definition of lookback period; adjusted subsection references; and made minor changes in style. Amendment effective May 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Effective Date — Applicability: Section 5, Ch. 479, L. 1995, provided that this act applies to contracts entered into on or after April 15, 1995.

Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1989 Amendment: Inserted (4)(l) excluding remuneration paid by employer for dependent care assistance actually provided to or on behalf of employee and for which credit is allowed under 15-30-186 or 15-31-131, subject to limitations in section 129(b) of the Internal Revenue Code as it read January 1, 1989; and made minor changes in phraseology.

Applicability: Section 6, Ch. 706, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1983 Amendments: Chapter 128, in (4)(a), inserted "regular" before "armed forces" and inserted ", as defined in 10 U.S.C. 101(33)"; and inserted (4)(j) relating to wages for National Guard and reserve training.

Chapter 634 inserted (4)(k) that read: "as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging."

Contingent Termination: Section 3, Ch. 634, L. 1983, provided: "This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation." Section 2, Ch. 67, L. 2005, deleted subsection (7)(b)(v), which was the amendment inserted by sec. 2, Ch. 634, L. 1983, that would have terminated on occurrence of contingency pursuant to sec. 3, Ch. 634, L. 1983.

Part of Section Not Codified: Subsection (a) of section 84-4942, R.C.M. 1947, which provides a definition of "department" and is redundant with 15-30-101, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 246, L. 1955, as amended by sec. 185, Ch. 516, L. 1973.

Administrative Rules

ARM 42.17.101 Definitions.

ARM 42.17.103 Other payments.

ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.

Law Review Articles

Giggin' in the 21st Century, Ford, 80 Mont. L. Rev. 299 (2019).

15-30-2502. Withholding of tax from wages.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 563, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2005 Amendment: Chapter 67 in (1) at beginning after "employer" deleted "except an independent contractor" and near middle after "payment of wages" deleted "for employment as defined in 15-30-256"; inserted (3) providing that a disregarded entity and its owner are considered to be a single employer; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendments: Chapter 42 at beginning of first sentence, after "employer", inserted "except an independent contractor"; and in second sentence substituted "10 U.S.C. 101" for "10 U.S.C. 101(33)" (voided by Ch. 491 amendment). Amendment effective March 12, 1997.

Chapter 491 in (1) inserted "for employment as defined in 15-30-256" and deleted second sentence that read: "Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the provisions of this section"; inserted (2) concerning employer who maintains two or more separate establishments; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendment: Chapter 254 near middle of first sentence, before "withhold", deleted "deduct and"; near middle of second sentence, after "10 U.S.C. 101(33)", deleted "and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d)"; and made minor changes in style. Amendment effective March 27, 1995.

1983 Amendment: Near middle, inserted "regular" before "armed forces"; following "United States" inserted "as defined in 10 U.S.C. 101(33) and members of the national guard and reserves participating in training as provided in 5 U.S.C. 5517(d)".

Administrative Rules

ARM 42.4.3402 Media production tax credits — determination of credit base.
ARM 42.17.105 Computation of withholding.
ARM 42.17.111 Montana state income tax withholding — Form MW-4.
ARM 42.17.131 Withholding allowances.
ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.
ARM 42.17.134 Reciprocal agreement — North Dakota.
ARM 42.17.135 False statements by employees — recomputation of withholding.

Case Notes

On-Reservation Taxation: Plaintiffs' request for a prohibitive injunction to preclude on-reservation employers from withholding state taxes was denied because of due process and sovereign immunity considerations. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

15-30-2503. Employer liable for withholding taxes and statements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 563, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2005 Amendment: Chapter 67 throughout section changed "reports" to "statements"; in (1) near beginning of first sentence after "liable for the" deleted "reports and" and at end inserted "annual statements required by 15-30-206 and 15-30-207" and at beginning of second sentence inserted "The payments required by 15-30-204 and the amounts required to be deducted and withheld"; inserted (5)(a) regarding partner joint and several liability; at beginning of (5)(b) substituted "each member of a" for "a member-managed", near middle after "partnership" substituted "or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements" for "with liability for filing reports and remitting", and at end after "interest" substituted "due while a member" for "owed extending to each member who was a member at the time the report or taxes were due"; inserted (5)(c) regarding joint and several liability of members of a single-member limited liability company; in (5)(d) at beginning substituted "each manager of" for "For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by", near middle after first "company" substituted "is" for "the managers of the limited liability company are", and at end substituted "due while a manager" for "owed"; deleted former (7) that read: "(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1997 Amendment: Chapter 491 in (1), in first sentence near middle, inserted "the reports and payments required by 15-30-204"; in (2), near beginning after "The officer", deleted "or employee" and substituted "responsibility" for "duty"; inserted (3) concerning liability of officer of corporation for filing reports; inserted (4) concerning liability of individual in case of corporate bankruptcy; inserted (5) concerning liability of member-managed limited liability company; inserted (6) concerning personal liability of managers of limited liability company; inserted (7) concerning personal liability of partners of limited liability partnership; and made minor changes in style. Amendment effective January 1, 1998.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1991 Amendment: Near middle of (2), after "who", deleted "willfully"; and made minor changes in style. Amendment effective February 19, 1991.

Retroactive Applicability: Section 3, Ch. 33, L. 1991, provided: "[Section 1] [15-30-203] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Administrative Rules

ARM 42.17.120 Employer's failure to withhold.

Case Notes

Statute and Administrative Rule Not Composing Unconstitutional Dual Tax: Under this section, each employer is liable for state withholding taxes. If the employer fails to deduct and withhold the required amounts and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer. The state is not allowed to collect the same withholding taxes twice. However, under ARM 42.17.120, the employer will not be relieved from liability for the required withholding taxes unless it can show that the income tax against which the required withholdings may be credited has been paid. Here, an employer claimed that the Department of Revenue assessed both the employer and its workers for the same withholding taxes, resulting in an unconstitutional dual tax. The District Court concluded that although the statute and the administrative rule placed the burden of proving that withholding taxes were paid on the employer, they did not create a dual tax. The court noted that if the employer was in fact assessed state withholding taxes, the employer had but to show that the worker at issue also paid the tax. The Supreme Court agreed. The statutory enactments do not create a dual tax, but rather impose a burden on an employer to show that withholding taxes were paid, and if they were paid, the employer is relieved from liability so that only one tax is ultimately assessed. Spain v. Dept. of Revenue, 2002 MT 146, 310 M 282, 49 P3d 615 (2002).

15-30-2504. Schedules for remitting income withholding taxes — records.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 563, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2017 Amendment: Chapter 21 in (1)(c) near end substituted "January 31" for "February 28". Amendment effective February 17, 2017.

Retroactive Applicability: Section 5, Ch. 21, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

2011 Amendment: Chapter 269 at beginning of (1) inserted "Subject to the due date provision in 15-30-2604(1)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2005 Amendment: Chapter 67 in (1) at beginning deleted "For the purposes of this section" and near end after "taxes" substituted "withheld from employee wages" for "in accordance with the appropriate remittance schedule"; in (1)(c) near middle after "remit on" substituted "an "annual schedule"" for "a "quarterly schedule"" and at end substituted "February 28 of the year following payment of wages" for "the last day of the month following the close of each calendar quarter"; deleted former (1)(d) that read: "(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages"; deleted former (2)(a) through (2)(c) that read: "(a) Every employer is required to file a report quarterly in the form required by the department.

(b) The report is due on or before the last day of the month following the close of the calendar quarter.

(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year"; in (1)(d) near beginning after "no" substituted "withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted" for "payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules"; deleted former (2)(e) that read: "(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207"; inserted (2) requiring a noncompliant employer to remit on the monthly schedule; deleted former (3)(a) and (3)(b) that read: "(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.

(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion"; in (4) at beginning deleted "Except as provided in subsection (3)(g)" and near beginning after "subject to the" substituted "monthly" for "quarterly"; in (5) near beginning after "employer" deleted "who is subject to the quarterly schedule in subsection (1)(c)", at end after "basis" inserted "than is required by subsection (1)", and deleted former second sentence that read "An employer who is on an annual schedule may elect to remit monthly or quarterly payments"; deleted former (3)(f) and (3)(g) that read: "(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed $1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28"; in (8) near beginning of first sentence after "keep" deleted "true and"; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendment: Chapter 184 in (1)(d) near middle after "withholding" deleted "or if state income tax withholding is not required, whose total liability for old fund liability tax"; in (3)(g) near middle after "withholding" deleted "or if state income tax withholding is not required, whose estimated old fund liability tax"; and made minor changes in style. Amendment effective March 26, 1999.

1997 Amendment: Chapter 491 in (1) substituted current text concerning tax remittance schedule for former (1) concerning duty of employer subject to 15-30-202 and 15-30-203 whose liability for withholding was $12,000 or greater to file return and make payment (see 1997 Session Law for former text); in (2) substituted current text concerning duty of employer to file report quarterly for former (2) regarding duty of employer subject to 15-30-202 and 15-30-203 whose liability for withholding was less than $12,000 but greater than $1,199 to file return and make payment (see 1997 Session Law for former text); in (3)(a) substituted current text concerning payment according to remittance schedule for former (3)(a) and (3)(b) regarding duty of employer if total amount of tax withholding is less than $1,200 and regarding election to remit monthly payments (see 1997 Session Law for former text); in (3)(b), near beginning, substituted "subsection (1)(d) does not comply with the requirements of this section" for "subsection (3) does not file the annual return required by subsection (3)(a)", substituted "may be" for "is", substituted "quarterly reporting schedule provided in" for "payment and filing provisions of", near middle inserted "and to the quarterly remittance schedule provided in subsection (1)(c)", near end, after "filing", inserted "and payment", and inserted "and remit"; in (3)(d), at beginning, inserted exception clause and near middle substituted "quarterly remittance schedule in subsection (1)(c)" for "provisions of subsection (2)"; inserted (3)(e) through (3)(h) concerning employer tax remittance schedules and methods; in (4), at end, substituted "15-1-703" for "15-30-312 with respect to jeopardy assessments of income tax"; inserted (5) requiring employers to keep payroll records; and made minor changes in style. Amendment effective January 1, 1999.

Pursuant to sec. 39(1), Ch. 491, L. 1997, a coordination section, the amendments made to this section by Ch. 123, L. 1997, were rendered void.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1995 Amendment: Chapter 572 at beginning of first sentence of (1) deleted "Except as provided in subsection (3), on or before the last day of April, July, October, and January", after "15-30-203" inserted "whose total liability for withholding during the preceding lookback period was $12,000 or greater", before "shall pay" deleted "except as provided in subsection (2)", and at end, after "preceding", substituted "payroll period" for "quarter", inserted second sentence requiring payment to be submitted on or before date on which federal income tax weekly withholding payments are due, inserted third sentence requiring employer to file return on or before last day of April, July, October, and January, in fourth sentence, after "employers", substituted "subject to this subsection" for "paying weekly", and inserted fifth sentence requiring employer to file annual statement required by 15-30-207; in first sentence in (2), after "withholdings", substituted "during the preceding lookback period was less than $12,000 but greater than $1,199 shall remit monthly payment" for "equaled or exceeded $300,000 for the preceding calendar year shall remit a weekly payment" and at end substituted "month" for "week", in second sentence substituted "monthly payment must be submitted on or before the 15th day of the month following the payment of the wages" for "weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due", inserted third sentence requiring employer to file annual return and annual statement on or before February 28 of year following payment of wages, and inserted fourth sentence requiring annual returns for employers to be used to summarize and adjust payments and overpayment requests; in first sentence in (3)(a) substituted "is less than $1,200 for the preceding lookback period" for "is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such", after "department" inserted "together with the annual statement required by 15-30-207", and after "shall" inserted "at the same time"; inserted (3)(b) authorizing employer to elect to remit monthly payments during entire year; inserted (3)(c) subjecting employer who does not file required annual return to payment and filing provisions of subsection (2); inserted (4)(a) requiring Department to notify employers of remittance schedules for following calendar year on or before November 1 of each year; inserted (4)(b) subjecting new employer or employer with no filing history to provisions of subsection (2) until Department determines employer's proper remittance schedule; and made minor changes in style. Amendment effective May 1, 1995.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1989 Amendment: In (3), near middle, substituted "February 28" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1986 Amendment: In (1) at beginning inserted "Except as provided in subsection (3)", near beginning after "January", deleted "of each calendar year", in middle of first sentence inserted "except as provided in subsection (2)", at end of first sentence substituted "quarter" for "quarterly period of 3 months", and inserted second sentence that reads: "Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments"; inserted (2) requiring weekly payments by employers with annual withholdings of $300,000 or more; in (3) near middle substituted "in subsection (1)" for "in the preceding subsection"; and made minor changes in phraseology.

Effective Date — Applicability: The 1986 amendment was effective October 1, 1986, and applies to the reporting and payment period beginning April 1, 1987, and thereafter.

Administrative Rules

ARM 42.2.503 Jeopardy assessment and emergency execution.
ARM 42.15.317 Filing date.
ARM 42.17.113 Payments.
ARM 42.17.203 Records to be kept by employer.
ARM 42.17.204 Remittance of tax by employers.
ARM 42.17.222 Demand of payment or reports if employer transfers or discontinues business.

15-30-2505. Amount withheld considered as tax collected.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Indians — Withholding Tax — Refund: Montana income tax erroneously withheld from wages of an Indian employed by the federal government on a reservation may only be recovered by filing a claim for refund with the state taxing authority, since the employer is not liable under Montana law. Clincher v. U.S., 499 F2d 1250 (9th Cir. 1974).

15-30-2506. Annual withholding statement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Near beginning substituted "January 31" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Administrative Rules

ARM 42.17.114 Annual reconciliation and wage statements.

15-30-2507. Annual statement by employer.

Compiler's Comments

2017 Amendment: Chapter 21 in (1) near beginning substituted "January 31" for "February 28". Amendment effective February 17, 2017.

Retroactive Applicability: Section 5, Ch. 21, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

1999 Amendment: Chapter 184 in (1) at end after "15-30-209" deleted "and 39-71-2503". Amendment effective March 26, 1999.

1997 Amendment: Chapter 491 deleted (3) that read: "(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts"; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1993 Amendment: Chapter 637 at end of (1) inserted "and 39-71-2503". Amendment effective May 13, 1993.

Severability: Section 10, Ch. 637, L. 1993, was a severability clause.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

1989 Amendment: In (1), near beginning, and in (3), near middle, substituted "February 28" for "February 15".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1983 Amendment: In (1), substituted "wage and tax statement for each employee" for "statement"; inserted (3) imposing penalties for failure to furnish a statement; and made minor changes in phraseology.

Administrative Rules

ARM 42.15.317 Filing date.

ARM 42.17.114 Annual reconciliation and wage statements.

15-30-2508. Withheld taxes held in trust for state.

Compiler's Comments

1997 Amendment: Chapter 491 deleted (2) through (4) concerning warrant for distraint, tax lien, and third parties subject to lien (see 1997 Session Law for former text); and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

1987 Amendment: Inserted (3) relating to third-party interest recorded before warrant for distraint; and inserted (4) relating to false affidavit.

Applicability: Section 3, Ch. 489, L. 1987, provided: "This act is effective on passage and approval and applies to taxes due on and after the effective date of this act." Effective April 15, 1987.

1985 Amendment: Inserted last sentence of (2) relating to priority date of tax lien.

Effective and Applicability Dates of 1985 Amendment: Section 3, Ch. 34, L. 1985, read: "This act is effective on passage and approval and applies to taxes due after January 1, 1985." The chapter was approved February 22, 1985.

1981 Amendment: Divided the first sentence of the section into two sentences and renumbered them subsections (1) and (2); in first sentence of (2) substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due"; at end of first sentence of (2) substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for "the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in 15-30-311 with respect to warrants relating to unpaid income taxes".

15-30-2509. Violations by employer — penalties, interest, remedies, and waivers — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 753, L. 2023. Amendment effective May 22, 2023.

2005 Amendment: Chapter 67 deleted former (2) through (5) that read: "(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A summons penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.

(b) If an employer fails to honor the summons provided in subsection (5)(a), an additional $100 penalty must be added to the liability"; in (2) at beginning after "addition to" substituted "the penalties imposed by 15-1-216" for "any other penalty provided by law"; deleted former (7) through (10) that read: "(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes"; and made minor changes in style. Amendment effective March 24, 2005.

The amendment to this section made by sec. 7, Ch. 594, L. 2005, was rendered void by sec. 41, Ch. 594, L. 2005, a coordination section.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

2003 Amendment: Chapter 95 in (5)(a) in two places substituted "summons" for "subpoena" and at end substituted "15-1-301" for "15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703"; and in (5)(b) near middle substituted "summons" for "subpoena". Amendment effective March 24, 2003.

2001 Amendment: Chapter 108 inserted (1) requiring penalty and interest to be added to delinquent withholding taxes; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 427 in (2) inserted "under 15-1-216"; deleted former (2)(b) that read: "(b) If the report is not received prior to the issuance of a notice of delinquent report, a $50 penalty must be assessed at the same time the notice is issued"; deleted former (3)(a) that read: "(a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2% per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%"; in (3) substituted "waived pursuant to 15-1-206" for "suspended" and near end substituted "waiver" for "suspension"; deleted former (4) that read: "(4) An employer must be assessed interest at the rate of 18% a year, computed at 1½% a month or fraction of a month, on any remaining unpaid tax required to be paid" in (9) in second sentence substituted "The department may bring an action as provided in 15-30-321(1)" for "Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided in that subsection"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 491 in (1) substituted current text concerning filing a report or remitting a tax after the due date for former provision requiring imposition of same penalties as imposed by 15-30-321 (see 1997 Session Law for former text); inserted (2) through (10) concerning late report penalty, late payment penalty, interest, subpoena penalty, waiver, warrant for distraint, tax lien, and civil action to recover penalty and delinquent taxes; in (11), at end, inserted "unless otherwise specifically addressed in this part"; and made minor changes in style. Amendment effective January 1, 1999.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Part of Section Not Codified: A part of section 84-4955, R.C.M. 1947, which grants rulemaking authority to the Department and is redundant with 15-30-305, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 246, L. 1955, as amended by sec. 191, Ch. 516, L. 1973.

Administrative Rules

ARM 42.17.113 Payments.
ARM 42.17.114 Annual reconciliation and wage statements.
ARM 42.17.120 Employer's failure to withhold.
ARM 42.17.131 Withholding allowances.
ARM 42.17.133 Treatment of supplemental wages — state income tax withholding.
ARM 42.17.134 Reciprocal agreement — North Dakota.

ARM 42.17.135 False statements by employees — recomputation of withholding.
ARM 42.17.218 Employer registration.

15-30-2510. Remitting withholding taxes electronically — employer option — timely remittance.

Compiler's Comments

2005 Amendment: Chapter 67 in (1) at beginning inserted "Subject to subsection (2)", after "employer" deleted "within 30 days of notification of the employer's remittance schedule as required by 15-30-204", after "may" deleted "elect to", and deleted former second and third sentences that read: "An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department"; deleted former beginning of (2) that read: "An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department"; inserted (2) requiring an employer to obtain department approval before remitting withholding taxes electronically; inserted (3) providing that withholding taxes that are remitted electronically are considered timely if remitted within 5 days of the due date; and made minor changes in style. Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendment: Chapter 184 in (1) near middle after "withholding" deleted "and old fund liability tax". Amendment effective March 26, 1999.

Remittance of 1995 Fourth Quarter Tax: Section 9, Ch. 572, L. 1995, provided: "Notwithstanding the provisions of [sections 1 and 6] [15-30-210 and 39-71-2501], the provisions of 15-30-204 and 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during 1995 and the filing of all required employer returns."

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995, and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

Administrative Rules

ARM 42.5.213 Electronic funds — backup situation.
ARM 42.17.113 Payments.

15-30-2511. Voluntary state withholding from federal annuity — agreement with federal government.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 243, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [15-30-215] grants rulemaking authority to the department of revenue to implement voluntary withholding for state income tax from federal annuity payments under federal law. The rules should conform to federal requirements and provide a way for residents to apply for withholding."

Effective Date: Section 3, Ch. 243, L. 1993, provided: "[This act] is effective July 1, 1993."

15-30-2512. Estimated tax — payment — exceptions — interest.

Compiler's Comments

2021 Amendment: Chapter 503 in (4)(b) near middle after "on the basis of annualized" inserted "Montana"; deleted former (5)(d) that read: "(d) For a married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return"; in (6) near middle after "taxpayer's gross income" substituted "determined for federal income tax purposes" for "as defined in 15-30-2101"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 308 in (5)(a) at beginning inserted "Subject to subsection (5)(f)"; inserted (5)(f) concerning interest on underpayment of estimated tax; and made minor changes in style. Amendment effective January 1, 2017.

Applicability: Section 17(1), Ch. 308, L. 2015, provided that this section applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

2011 Amendment: Chapter 269 at beginning of (2)(a) and (2)(b) inserted "Subject to the due date provision in 15-30-2604(1)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2005 Amendment: Chapter 594 in (5)(a) in first sentence after "interest" deleted "equal to 12% a year" and after "underpayment" inserted "as provided in 15-1-216". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2001 Amendment: Chapter 143 in (6) after "gross income, as defined in" substituted "15-30-101" for "15-30-101(7)". Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1999 Amendment: Chapter 427 in (5)(a) in first sentence substituted "interest equal to 12% a year" for "a penalty equal to 10% a year"; in (5)(a) at beginning of second sentence substituted "The interest" for "The penalty"; in (5)(b) and (5)(c) substituted "amount of interest due" for "penalty"; in (5)(d) substituted "interest" for "penalty"; in (5)(e) at beginning substituted "Interest may not be charged" for "A penalty may not be imposed"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1992 Special Session Amendment: Chapter 17 substituted present text regarding payment of estimated tax, exceptions, and penalty for former language that read: "(1) Every individual except farmers, ranchers, or stockmen shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year if his net income from sources other than wages, salaries, bonuses, or other emoluments can reasonably be expected to equal or exceed his net income from wages, salaries, bonuses or other emoluments, which are subject to withholding.

(2) In the declaration required under subsection (1) of this section, the individual shall state:

(a) the amount which he estimates as the amount of tax under 15-30-103 for the taxable year;

(b) the amount which he estimates will be withheld from wages paid by his employer if said individual is an employee;

(c) the excess of the amount estimated under subsection (2)(a) over the amount estimated under subsection (2)(b), which excess for purposes of this section shall be considered the estimated tax for the taxable year;

(d) such other information as may be prescribed in rules promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April 15 of the taxable year, except that if the requirements of subsection (1) of this section are first met:

(a) after April 1 and before October 1 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year;

(b) after October 1 of the taxable year, the declaration shall be filed on or before February 15 of the succeeding taxable year.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules prescribed by the department.

(5) If, on or before February 15 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on his return as payable, then under rules prescribed by the department:

(a) if the declaration is not required to be filed during the taxable year but is required to be filed on or before such February 15, such return shall for the purposes of this section be considered as such declaration; and

(b) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof, such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February 15.

(6) The department shall promulgate rules governing reasonable extensions of time for filing declarations and paying the estimated tax except in the case of taxpayers who are abroad, and no such extension shall be for more than 6 months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 15-30-321."

Effective Dates — Applicability: Section 4, Ch. 17, Sp. L. January 1992, provided: "(1) Except for the purposes of subsection (2), [this act] is effective July 1, 1992, and applies to tax years beginning after December 31, 1992.

(2) For the purposes of promulgating administrative rules to implement [section 1] [amending 15-30-241], [this act] is effective on passage and approval." Approved February 4, 1992.

Part of Section Not Codified: A part of section 84-4939, R.C.M. 1947, which was temporary in nature, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 12, Ch. 260, L. 1955, as amended by sec. 183, Ch. 516, L. 1973 and sec. 1, Ch. 374, L. 1977.

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.4.3402 Media production tax credits — determination of credit base.
ARM 42.9.110 Pass-through entities — audit adjustments.
ARM 42.9.203 Computation of composite tax.
ARM 42.15.315 Original and amended returns.
Title 42, chapter 17, subchapter 3, ARM Estimated tax payments.

15-30-2513. Withholding from compensation — exception.

Compiler's Comments

Effective Date: Section 9, Ch. 563, L. 2023, provided: "[This act] is effective January 1, 2024."

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

15-30-2521. Policy and purpose.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

15-30-2522. Withholding of lottery winnings.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 701, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

2019 Code Commissioner Correction: In (1) near middle and in (3) near middle of first sentence the code commissioner changed "state lottery commission" to "state lottery and sports wagering commission" to reflect the changes made to 23-7-201 by sec. 7, Ch. 284, L. 2019.

2011 Amendment: Chapter 340 in (1) near end substituted "6.9%" for "10%". Amendment effective July 1, 2011.

Effective Date — Retroactive Applicability: Section 4, Ch. 488, L. 1993, provided: "[This act] is effective on passage and approval [approved April 22, 1993] and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won."

Case Notes

Proceeds of Multistate Lottery Ticket Purchased and Redeemed in Montana Taxed as "Income Earned in Montana" — Residency of Winner Not Determinative: The Sharps won $47 million in the multistate lottery game known as Lotto America. The Sharps, who were Montana residents when they won the lottery but later moved to Washington, challenged taxation of their earnings by the Montana Department of Revenue in a declaratory judgment action. The District Court held that all of the annual lottery payments made to the Sharps by the Montana Lottery on behalf of Lotto America were taxable as income earned in Montana. Before the Supreme Court, the Sharps argued that: (1) the version of 15-30-105 (renumbered 15-30-2104) in effect in 1991 governs their situation; (2) their annual payments from the lottery are payments in the nature of an annuity that are exempt under the 1991 version of 15-30-131(1) (renumbered 15-30-2111(1), now repealed); and (3) ARM 42.16.1113(1), exempting from taxation income from intangible personal property, applies to their situation. In beginning its analysis, the Supreme Court noted that pursuant to the statement of legislative intent in this section, no statute or administrative rule defines the proceeds of the lottery paid to the Sharps as income from intangible personal property or exempts the winnings from taxation. The Supreme Court also noted that the Department administrative rule relied upon by the Sharps cannot change a state statute and that the annual payments won by the Sharps are not an annuity or other income but are the prize itself. The Supreme Court then addressed the issue of which statute applied, holding that under the rationale of Couchot v. St. Lottery Comm'n, 659 NE 2d 1225 (Ohio 1996), certiorari denied, 519 US 810, 136 L Ed 2d 18, 117 S Ct 55 (1996), the statute in effect at the time of the annual distribution of the prize money, in this case, the 1992 version of 15-30-105 (renumbered 15-30-2104), governs the Sharps' situation. Relying upon Couchot, Harvester Co. v. Dept. of Taxation, 322 US 435 (1944), and Stark v. Comptroller, 554 A2d 458 (Md. App. 1989), the Supreme Court held that under the version of 15-30-105 (renumbered 15-30-2104), as amended by a 1992 special session of the Legislature, the Sharps' lottery winnings constitute "income earned in Montana" because they were "earned" in the state in which they were won and are therefore taxable in 1992 and subsequent years. Sharp v. Dept. of Revenue, 284 M 424, 945 P2d 38, 54 St. Rep. 949 (1997).

15-30-2523. Determination of employer status.

Compiler's Comments

2005 Amendment: Chapter 67 near middle deleted reference to part 2 of chapter 30 and deleted former second sentence that read: "A final decision of the workers' compensation court may be appealed as provided in 39-71-2904". Amendment effective March 24, 2005.

Saving Clause: Section 11, Ch. 67, L. 2005, was a saving clause.

Retroactive Applicability: Section 13, Ch. 67, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004."

1999 Amendments — Composite Section: Chapter 184 at end after "withholding" deleted "and old fund liability tax to be paid". Amendment effective March 26, 1999.

Chapter 442 in first sentence near beginning substituted "workers' compensation court" for "board of personnel appeals" and near middle after "part 2" deleted "which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer"; and inserted second sentence concerning appeal of workers' compensation court decision. Amendment effective April 23, 1999.

Preamble: The preamble attached to Ch. 442, L. 1999, provided: "WHEREAS, Montana's current employment statutes constitute a complex and often confusing body of law requiring specialized skills and knowledge to interpret; and

WHEREAS, most employers in the private sector employ 10 or fewer employees and function without the assistance of personnel officers or in-house legal staff; and

WHEREAS, employment-related disputes are currently heard in many different forums, including the Board of Personnel Appeals for wage and hour issues, the [former] Board of Labor Appeals [(now Unemployment Insurance Appeals Board)] for unemployment insurance issues, the Workers' Compensation Court for workers' compensation issues, the Commission for Human Rights for discrimination issues, and District Courts for the resolution of wrongful discharge conflicts; and

WHEREAS, the 1997 Legislature enacted House Joint Resolution No. 10, which directed the Department of Labor and Industry to convene a group of interested parties to explore, investigate, and report to the 1999 Legislature optional approaches to an integrated dispute resolution process for employment-related issues; and

WHEREAS, members of the Legislature and interest groups, including employers and employees from the private and public sectors, formed the House Joint Resolution No. 10 work group, which convened in September 1997 to begin studying the issues related to the employment dispute resolution process; and

WHEREAS, after approximately 10 meetings during the 1997 interim, the work group issued its report in November 1998, recommending that legislation be prepared for consideration by the 1999 Legislature to revise the dispute resolution process for employment-related issues."

Severability: Section 28, Ch. 442, L. 1999, was a severability clause.

Effective Date: Section 18(2), Ch. 529, L. 1995, provided that this section is effective July 1, 1996.

Administrative Rules

ARM 42.17.223 Determining employee status.

Law Review Articles

Giggin' in the 21st Century, Ford, 80 Mont. L. Rev. 299 (2019).

15-30-2531. Credits and refunds — period of limitations.

Compiler's Comments

2015 Amendment: Chapter 308 in (2) substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

Severability: Section 36, Ch. 491, L. 1997, was a severability clause.

Saving Clause: Section 37, Ch. 491, L. 1997, was a saving clause.

Effective Date: Section 40(2), Ch. 491, L. 1997, provided: "[Sections 3 through 7 [section 4 is 15-30-255], 9 through 12, 17 through 19, 21 through 23, 25 through 32, and 34] are effective January 1, 1998."

15-30-2536. Short title.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2537. Definitions.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2538. Withholding required on mineral royalty payments.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

Administrative Rules

ARM 42.17.601 Advance payments and further distributions.
ARM 42.17.604 Registration for withholding.
ARM 42.17.605 Filing requirements.

15-30-2539. Withholding — no application under certain conditions.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

Administrative Rules

ARM 42.17.601 Advance payments and further distributions.
ARM 42.17.602 Claiming the credit for tax withheld.
ARM 42.17.603 Applicable thresholds — change of ownership — publicly traded partnerships — nonprofit organizations — exempt royalty owners.
ARM 42.17.605 Filing requirements.

15-30-2540. Remitter liable for withholding taxes and statements — liability mitigation — sufficiency of mailing address.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2541. Royalty withholding tax remittance schedule — alternative schedules and methods — records.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

Administrative Rules

Title 42, chapter 17, subchapter 6, ARM Mineral royalty withholding.

15-30-2542. Amount of royalty payment withheld considered taxes collected.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2543. Annual withholding statement to royalty owner.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

Administrative Rules

ARM 42.17.605 Filing requirements.

15-30-2544. Remitter to furnish annual statement to department.

Compiler's Comments

2017 Amendment: Chapter 21 in (1) near beginning substituted "January 31" for "February 28". Amendment effective February 17, 2017.

Retroactive Applicability: Section 5, Ch. 21, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2545. Withheld taxes held in trust for state.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2546. Violations by remitter — penalties — interest — remedies — waivers — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 753, L. 2023. Amendment effective May 22, 2023.

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

15-30-2547. Rulemaking authority.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2007, provided that this section is effective January 1, 2008.

Applicability: Section 16, Ch. 468, L. 2007, provided: "[This act] applies to royalty payments made after December 31, 2007."

Part 26
Collection and Administration

15-30-2601. Tax as personal debt.

Administrative Rules

ARM 42.30.110 Fiduciary — audit adjustments.

15-30-2602. Returns and payment of tax — penalty and interest — refunds — credits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 563, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 10, Ch. 563, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendment: Chapter 503 in (1)(a) substituted current text relating to required filing of state return based on federal income tax return for former text that read: "For both resident and nonresident taxpayers, each individual or each married couple not filing a joint return and having a gross income for the tax year of more than the maximum standard deduction for that filing status, as determined in 15-30-2132, is liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in this subsection (1) must be increased by the personal exemption allowance determined in 15-30-2114 for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-2114(3) and (4)"; inserted (1)(b) concerning a taxpayer that is not required to file a federal income tax return filing a Montana return; deleted former (2) that read: "(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with a husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with the husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and, subject to 15-30-2646, the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents"; in (5) near end after "tables based on the" substituted "Montana income tax structure" for "adjusted base year structure"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 418 in (1) substituted current first sentence for former first sentence that read: "For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $3,560, as adjusted under the provisions of subsection (6), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $7,120, as adjusted under the provisions of subsection (6), are liable for a return to be filed on forms and according to rules that the department may prescribe" and in second sentence substituted "the personal exemption allowance determined in 15-30-2114" for "$1,900, as adjusted under the provisions of 15-30-2114(6)"; deleted former (6) that read: "(6) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return"; and made minor changes in style. Amendment effective October 1, 2015.

Applicability: Section 9, Ch. 418, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2009 Amendment: Chapter 470 in (2) near middle after "aggregate taxable income and" inserted "subject to 15-30-2646"; and made minor changes in style. Amendment effective May 6, 2009.

Retroactive Applicability: Section 11(2), Ch. 470, L. 2009, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

2005 Amendment: Chapter 594 deleted former (5) that read: "(5) As soon as practicable after the return is filed, the department shall examine and verify the tax"; in (5) before first "amount" inserted "department determines that the", after "tax" substituted "due" for "as verified", and after second "amount" substituted language related to notice to taxpayer of additional tax proposed to be assessed for "paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendments — Composite Section: Chapter 10 in (4) near middle of first sentence substituted "on or before the date required by this chapter for filing a return" for "at the time of filing the return required by this chapter". Amendment effective October 1, 2003.

Chapter 544 in (1) in first sentence increased gross income for single individuals from $1,500 to $3,560 and for married individuals from $3,000 to $7,120 and in second sentence increased amount of adjustment from $800 to $1,900. Amendment effective January 1, 2005.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

1999 Amendments — Composite Section: Chapter 67 in (1) at beginning of first sentence inserted "For both resident and nonresident taxpayers" and deleted last sentence that read: "A nonresident shall file a return if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4)." Amendment effective March 15, 1999.

Chapter 427 in (6) substituted reference to 15-1-216 for "at the rate of 9% a year or fraction of a year on the additional tax". Amendment effective January 1, 2000.

Retroactive Applicability: Section 3, Ch. 67, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 435 in first sentence in (1) increased required minimum filing amounts from "$1,000" to "$1,500" and from "$2,000" to "$3,000" and in last sentence, after "return", substituted "if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4)" for "if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)"; and made minor changes in style.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 14, Sp. L. July 1992, in (1), near middle, substituted reference to subsection (6) of 15-30-112 for "15-30-112(7) and (8)" and at end deleted "as prorated according to 15-30-112(6)". Amendment effective August 6, 1992.

Retroactive Applicability: Section 10, Ch. 14, Sp. L. July 1992, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991."

1981 Amendments: Chapter 477 increased the time period within which to pay taxes due after notice from 30 to 60 days in (6).

Chapter 548 changed single individual gross income from "$940" to "$1,000" and married individuals gross income from "$1,880" to "$2,000" in the first sentence of (1).

Interim Committee Bills: Chapter 4, L. 1981 (HB 219), and Ch. 477, L. 1981 (HB 13), were introduced at the request of the Revenue Oversight Committee. See Miscellaneous Reports on Taxes, Legislative Council, 1980.

Temporary Increase in Gross Income Amounts: Chapter 4, L. 1981, increased the gross income amounts from $940 to $1,470 for single returns and from $1,880 to $2,940 for joint returns and the amount to be added for each personal exemption from $800 to $1,250 for taxable year 1980.

1980 Initiative Amendment: Initiative No. 86 inserted "as adjusted under the provisions of subsection (7)" twice in (1); inserted "as adjusted under the provisions of 15-30-112(7) and (8)" in the second sentence of (1); and added (7) relating to inflation factor for minimum filing income level and (8) relating to income tax form instructions and tables.

Incorporation Into Existing Law: Section 6, Initiative No. 86 was enacted without a codification instruction. The apparent intent was that it become an integral part of Title 15, ch. 30, and it has been codified accordingly as subsection (8) of 15-30-142.

Administrative Rules

ARM 42.2.304 Definitions.
ARM 42.2.310 Voluntary disclosure program for nonfiling taxpayers.
ARM 42.2.505 Interest on unpaid tax.
ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.2.510 Review of statement of account notices.
ARM 42.5.202 Electronic returns, reports, and signatures.

Title 42, chapter 9, ARM Pass-through entities.
ARM 42.9.301 Pass-through entity information returns for partnerships.
ARM 42.9.401 Pass-through entity information returns for S. corporations.
ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.
ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.
ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.
ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.
ARM 42.9.540 Pass-through entity returns for REMIC.
ARM 42.15.301 Who must file returns.
ARM 42.15.303 Returns for those unable to make own return.
ARM 42.15.315 Original and amended returns.
ARM 42.15.319 Date and place of filing and payment.
ARM 42.15.321 Joint returns.
ARM 42.15.322 Separate returns for married taxpayers.
ARM 42.15.326 Request for adjustment of joint return.
ARM 42.15.327 Statement required for adjustment of joint return.
ARM 42.30.102 Fiduciary — filing requirements.

Case Notes

Taxpayer Properly Held in Contempt for Refusal to File Income Tax Returns — Privilege Against Self-Incrimination No Defense: Gillispie failed to file an income tax return for 4 years. The District Court ordered her to file the returns or to show cause why she should not be required to file them. At the hearing, the Department of Revenue introduced Gillispie's W-2 forms, which showed that she had made the minimum income necessary to require her to file returns. The District Court ordered her to file the returns or be found in contempt. When Gillispie failed to file the returns, the District Court held her in contempt, and Gillispie filed a petition for a writ of habeas corpus with the Supreme Court. The Supreme Court held that the District Court had jurisdiction to order Gillispie to file the returns and jurisdiction to hold Gillispie in contempt and that the District Court also had sufficient evidence to do so. The Supreme Court also held that Gillispie's privilege against self-incrimination does not justify the outright refusal to file a return and cannot be used as a method of evading payment of lawful taxes. The Supreme Court held that she must demonstrate the specific parts of the returns that would result in self-incrimination. Gillispie v. Sherlock, 279 M 21, 929 P2d 199, 53 St. Rep. 507 (1996).

Tax Withholding Statement Irrelevant: In a prosecution for failure to file proper tax returns, it was proper for the court to refuse to admit into evidence a tax withholding statement, although evidence of defendant's income was admitted. The payment of taxes by withholding was irrelevant to the issue of whether proper returns were filed and could have confused the jury. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

15-30-2603. Return of fiduciary.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.
ARM 42.9.401 Pass-through entity information returns for S. corporations.
ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.
ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.
ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.
ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.
ARM 42.9.540 Pass-through entity returns for REMIC.
ARM 42.15.301 Who must file returns.
ARM 42.30.101 Definitions.
ARM 42.30.102 Fiduciary — filing requirements.
ARM 42.30.104 Fiduciary — income tax liability determination.
ARM 42.30.105 Fiduciary — Montana distributable net income and Montana income distribution deduction — character.
ARM 42.30.203 Pre-need funeral trusts — election to file composite return.
ARM 42.30.204 Electing small business trust (ESBT).

15-30-2604. Time for filing — extensions of time.

Compiler's Comments

2015 Amendment — Coordination: Chapter 308 in (3)(a) at beginning deleted "Subject to subsections (3)(b) and (3)(c)"; deleted former (3)(b)(i) that read: "(i) Except as provided in subsection (3)(c), on or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability"; in (3)(b) substituted "The tax, penalty, and interest due must be paid" for "The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (3)(b)(ii) must be paid"; deleted former (3)(c) that read: "(c) A taxpayer that has a tax liability of $200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (3)(a). If the tax is not paid on or before the due date of the return under subsection (3)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return"; in (5) at beginning deleted "Except as provided in subsection (3)(c)"; and made minor changes in style. Amendment effective January 1, 2017.

The amendment to this section made by sec. 10, Ch. 55, L. 2015, was rendered void by sec. 15, Ch. 308, L. 2015, a coordination section.

The amendment to this section made by sec. 1, Ch. 441, L. 2015, was rendered void by sec. 2, Ch. 441, L. 2015, a coordination section.

Applicability: Section 17(1), Ch. 308, L. 2015, provided that this section applies to penalties assessed against taxes due or fees due for tax periods beginning after December 31, 2016.

2013 Amendment: Chapter 123 in (3)(a) substituted "subsections (3)(b) and (3)(c)" for "subsection (3)(b)". Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 269 in (1)(a) inserted exception clause; inserted (1)(b) regarding filing when due date falls on holiday or when taxpayers are affected by disaster; and made minor changes in style. Amendment effective April 21, 2011.

Chapter 381 in (3)(b)(i) and (5) inserted exception clause; inserted (3)(c) pertaining to taxpayers with less than $200 tax liability; and made minor changes in style. Amendment effective October 1, 2011.

Applicability — Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

Section 3, Ch. 381, L. 2011, provided: "[This act] applies to tax reporting periods beginning after December 31, 2011."

2009 Amendment: Chapter 470 deleted former (2) that read: "(2) An automatic 4-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.

(b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability"; inserted (2) pertaining to automatic extension for taxpayer and providing for payment of estimated tax payments and remaining tax, penalty, and interest; substituted (3) concerning additional extension for former first sentence that read: "An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of subsection (2)(b)"; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 11(1), Ch. 470, L. 2009, provided that this section applies to tax periods beginning after December 31, 2009.

1999 Amendment: Chapter 26 in (2)(a) after "return" substituted language requiring taxpayer to file request for extension of time for filing tax return and clarifying that extension is not extension of time for paying taxes for "an application is made on forms available from the department or in writing to the department. If the application is made in writing, it must include substantially the same information as is required on the department's forms"; in (2)(b) at beginning substituted "taxpayer" for "applicant"; in (3) at beginning of first sentence deleted "Before the expiration date of the automatic 4-month extension, an applicant may request in writing" and substituted language concerning automatic allowance of the extension and the proviso requiring the taxpayer's application for an additional extension of time in which to file a return for "The department may, in its discretion, grant the request upon a showing of good cause by the applicant" and inserted last sentence regarding payment of taxes; and made minor changes in style. Amendment effective February 18, 1999.

Effective Date — Retroactive Applicability: Section 2, Ch. 26, L. 1999, provided: "[This act] is effective on passage and approval [approved February 18, 1999] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 560 in (2), in introductory clause, substituted "4-month" for "6-month"; in (2)(a) inserted last sentence concerning content of application; in (2)(b) substituted "90%" for "95%"; and inserted (3) regarding additional 2-month extension. Amendment effective April 26, 1995.

Effective Date — Retroactive Applicability: Section 2, Ch. 560 L. 1995, provided: "[This act] is effective on passage and approval [approved April 26, 1995] and applies retroactively, within the meaning of 1-2-109, to tax returns due after December 31, 1994."

1991 Amendment: Inserted (2)(b) concerning payment of 95% of current year's or 100% of previous year's tax liability. Amendment effective May 17, 1991.

Retroactive Applicability: Section 4, Ch. 796, L. 1991, provided that the amendment to this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1981 Amendment: Increased the automatic extension of time from 2 months to 6 months at the beginning of (2); deleted provisions allowing an additional extension of time (beyond 2 months) and setting a 6-month maximum for extensions with exceptions for members of the armed forces and persons living or traveling outside the U.S.

Administrative Rules

ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.4.3411 Media production tax credit application.
ARM 42.15.312 Acceptance of reproduced tax forms.
ARM 42.15.316 Extensions.
ARM 42.30.103 Fiduciary — income tax return extensions.
ARM 42.30.107 Fiduciary — interest and penalties.

Case Notes

Venue for Failure to File Tax Returns: Tax returns are required to be filed with the Department of Revenue. The department is required to be located in Helena, Montana. Section 46-3-101 (renumbered 46-3-111) provides that in all criminal prosecutions, trial shall be in the county where the offense was committed. The offense charged here was failure to properly file tax returns, so that venue was properly with Lewis and Clark County where Helena is located. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Failure to File Tax Return — Venue: Venue of a criminal action charging intentional failure to file a properly completed Montana individual income tax return would lie in either Lewis & Clark County or the county in which defendants reside. But, since the complaint was filed in the former and no legal justification or prejudice was shown to support transfer, the Supreme Court reversed the District Court's change of venue from Lewis & Clark County. Dept. of Revenue v. Lane, 187 M 230, 609 P2d 300 (1980), following St. v. Bretz, 169 M 505, 548 P2d 949 (1976).

15-30-2605. Revision of return by department — statute of limitations — examination of records and persons.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 108 in (2) after "chapter" and in (4) after "fraudulent return" inserted "including a federal adjustments report required under 15-30-3403 or 15-30-3404"; and made minor changes in style. Amendment effective March 31, 2021.

Chapter 503 in (2) near middle after "taxpayer or estimate the" inserted "Montana"; and in (5) near beginning after "making an estimate of" inserted "Montana". Amendment effective January 1, 2024.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 308 in (3) substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

1993 Amendment: Chapter 520 in (2), after "taxpayer", substituted "does not file" for "fails to make", after "department" substituted "may, at any time, audit the taxpayer or" for "is authorized to make an", and after "possession and" substituted "based upon the audit or estimate, assess the taxpayer" for "to audit and state an account according to such return or the estimate so made by it"; substituted (3) concerning date return is considered filed for "Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter, the amount of tax due under any return shall be determined by the department within 5 years after the return was made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322"; at end of (4), after "due", deleted "and, where no return has been filed, the tax may be assessed at any time"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Effective Date — Applicability: Section 5, Ch. 648, L. 1979, provided: "This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act." This act is codified as 15-30-101, 15-30-145, 15-30-321, and 15-30-324 and was approved May 7, 1979.

Administrative Rules

ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.9.110 Pass-through entities — audit adjustments.
ARM 42.15.314 Changes in federal taxable income.
ARM 42.15.325 Failure to furnish requested information or file delinquent return.
ARM 42.30.110 Fiduciary — audit adjustments.

Case Notes

Statute of Limitations for Revising Return and Determining Correct Tax Due — 3 Years From Date Return Filed —Taxpayer-Initiated Appeals Process Not Included. Wangerin v. Dept. of Revenue, 2022 MT 236, 411 Mont. 1, 521 P.3d 36.

Limitation on Reassessment: Prior to its amendment in 1955, this section did not constitute a Statute of Limitations but was a limitation on the authority of the State Board of Equalization (now Department of Revenue) to reassess returns. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958); State ex rel. Anderson v. St. Bd. of Equalization, 133 M 8, 319 P2d 221 (1957).

Construction Prior to Amendment — Construed in Favor of Taxpayer: The provision of this section, before the 1955 amendment, commanding a particular act to be done for the protection of the taxpayer, viz., assessment within 3 years, must be construed in favor of the taxpayer. State ex rel. Anderson v. St. Bd. of Equalization, 133 M 8, 319 P2d 221 (1957).

15-30-2606. Tolling of statute of limitations — consent to extend time to assess tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 313, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 2, Ch. 313, L. 2023, provided: "[This act] applies to written agreements to extend the time to propose an additional assessment executed on or after [the effective date of this act]." Effective October 1, 2023.

2021 Amendments — Composite Section: Chapter 108 in second sentence after "15-30-2619" inserted "or a federal adjustments report required under 15-30-3403 or 15-30-3404" and near end substituted "the final determination date or the date the amended federal return was filed" for "the date the federal changes become final or the amended federal return was filed". Amendment effective March 31, 2021.

Chapter 503 in last sentence inserted references to federal gross income in two places. Amendment effective January 1, 2024.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 308 substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

2009 Amendment: Chapter 470 in second sentence after "fails to file" deleted "a record of changes in federal taxable income or" and before "return" inserted "Montana"; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 11(1), Ch. 470, L. 2009, provided that this section applies to tax periods beginning after December 31, 2009.

Administrative Rules

ARM 42.9.111 Pass-through entities — statute of limitations for audit adjustments.

15-30-2607. Application for revision — appeal.

Compiler's Comments

2021 Amendment: Chapter 142 at end of last sentence" substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 308 substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

1993 Amendment: Chapter 520 in first sentence, after "5 years from the", substituted remainder of sentence concerning last day for filing return and second sentence authorizing taxpayer to revise revised return until liability for tax year is finally determined for "original due date of the return" and at end of third sentence, after "board", deleted "as provided therein, which shall have authority to grant the claim or any part thereof"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

Composite Section: This section was amended twice in 1973, once by Ch. 405 and once by Ch. 516. Because of the comprehensive nature of the amendment by Ch. 405, the earlier enactment, the changes made by Ch. 516 were no longer applicable. The compiler in 1973 used the language of Ch. 405.

Administrative Rules

ARM 42.9.111 Pass-through entities — statute of limitations for audit adjustments.

Case Notes

Filing of Claim: Respondent paid additional tax under protest on June 12, 1953. Within the 2 years granted by this section, prior to 1955 amendment, he applied for a revision, filing claim on July 24, 1954, setting forth the contended invalidity of the assessment. The claim was filed on a form provided by the Board of Equalization (now Department of Revenue) for refund of tax illegally collected. This was a sufficient compliance with the statute. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958).

15-30-2608. Judicial review.

Compiler's Comments

2021 Amendment: Chapter 142 in (1) near beginning of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1993 Amendment: Chapter 214 in (1) increased appeal time to 60 days from 30 days; and made minor changes in style.

1991 Amendment: In (1), in first sentence, reduced complaint filing deadline from 6 months to 30 days and at end substituted "notice of the determination" for "notice of the decision of the state tax appeal board".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Case Notes

Review of Reassessment: Under section 84-4923, R.C.M. 1947 (now repealed), when the Board of Equalization (now Department of Revenue) rejected claim of taxpayer, on August 18, 1954, for return of illegally collected tax, it constituted the determination of the Board upon the application for revision made by respondent and was reviewable by District Court under sec. 23, Ch. 181, L. 1933, when respondent applied for Writ of Certiorari on September 11, 1954, within the 30-day limitation provided in sec. 23. State ex rel. Conn v. Robinson, 133 M 549, 327 P2d 390 (1958).

Court Without Authority to Return Tax Paid Under Protest: Under section 84-4923, R.C.M. 1947 (now repealed), the court was without power to render a judgment for the return of the tax paid under protest. State ex rel. Davis v. St. Bd. of Equalization, 104 M 52, 64 P2d 1057 (1937).

15-30-2609. Credits and refunds — period of limitations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 314, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 314, L. 2023, provided: "[This act] applies to claims for a refund or credit received by the department of revenue on or after [the effective date of this act]." Effective October 1, 2023.

2021 Amendment: Chapter 108 inserted (2)(c) providing deadlines for filing a claim for refund or credit of tax. Amendment effective March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

2017 Amendment: Chapter 289 in (2)(a) substituted current language providing for a limitation on a refund or credit for "A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-2606 and 15-30-2607, the taxpayer files a claim or the department determines there has been an overpayment". Amendment effective May 4, 2017.

Retroactive Applicability: Section 4, Ch. 289, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

2015 Amendment: Chapter 308 in (2)(b) substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

2009 Amendment: Chapter 470 in (4)(a) in second sentence at beginning inserted exception clause; in third sentence near beginning substituted "by estimated tax payments" for "by estimate"; inserted (4)(b) providing that interest is payable from date return was filed; and made minor changes in style. Amendment effective October 1, 2009.

Applicability: Section 11(1), Ch. 470, L. 2009, provided that this section applies to tax periods beginning after December 31, 2009.

2005 Amendment: Chapter 594 in (4) in first sentence after "taxes" inserted "as provided in 15-1-216"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1995 Amendment: Chapter 572 in (4)(a) substituted "45 days" for "6 months". Amendment effective May 1, 1995.

Effective Date — Applicability: Section 11, Ch. 572, L. 1995, provided: "[This act] is effective on passage and approval [approved May 1, 1995] and applies to tax years beginning after December 31, 1995 and to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter."

1993 Amendment: Chapter 520 in (2)(a), before "15-30-146", deleted "15-30-145 and by" and after "15-30-146" substituted "and 15-30-147" for "during which the department may determine tax liability"; and made minor changes in style. Amendment effective April 24, 1993.

Effective Date — Applicability: Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

1991 Amendment: In (3) substituted last sentence relating to notice to taxpayer and review under 15-1-211 for "if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter"; in (4), at beginning of first sentence, deleted "Except as hereinafter provided for" and at end, after "taxes", deleted "due" and at beginning of second sentence inserted "Interest is payable"; and made minor changes in style.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1981 Amendment: In (2) substituted "(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145 and by 15-30-146 during which the department may determine tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back" for language that set a limit for claiming a credit or refund of 5 years from date for filing the return or 1 year from overpayment; near the beginning of (4) deleted a provision that the subsection was effective with taxable years ending on or after Dec. 31, 1962; substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (4).

Applicability: Section 4, Ch. 589, L. 1981, provided: "This act applies to claims for refunds or credits that were made within the time period for submission of claims that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired."

Interim Study Bill: House Bill 17 (Ch. 589, L. 1981) was the result of an interim study conducted by the Revenue Oversight Committee, reported in "Revenue Oversight Committee: Miscellaneous Studies", published by the Montana Legislative Council, November 1980.

Administrative Rules

ARM 42.4.303 Claiming elderly homeowner credit.
ARM 42.15.315 Original and amended returns.
ARM 42.15.328 Form of claim for refund.

Case Notes

Refund of Tax Illegally Collected From Reservation Indians: Although state law is not binding in refunding tax illegally collected from reservation Indians, the state's interest in an orderly tax collection procedure mandates an adherence to the state procedures as guidelines in fashioning a remedy. Dillon v. St., 451 F. Supp. 168 (D.C. Mont. 1978), reversed at 634 F2d 463 (9th Cir. 1980).

15-30-2616. Information agents' duties.

Compiler's Comments

2009 Amendment: Chapter 24 inserted (1)(d) requiring return of information regarding proceeds from certain real estate transactions; in (2) in first sentence after "under the" substituted "rules adopted by the department" for "regulations"; and made minor changes in style. Amendment effective March 17, 2009.

2003 Amendment: Chapter 114 in (1)(a) in two places after "Code" substituted a U.S.C. reference for "of 1965 or as that section may be amended"; in (1)(d) in temporary version substituted "United States department of the treasury" for "internal revenue service"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 461 inserted (1)(d) requiring reporting of proceeds from real estate transactions; in (2) in second sentence after first "form" substituted "should be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format" for "shall be as nearly identical to the comparable federal form as possible"; inserted (3) providing a penalty for an information agent who fails to file a return; and made minor changes in style. Amendment effective July 1, 2001, and terminates December 31, 2004.

Report to Interim Committee: Section 2, Ch. 461, L. 2001, provided: "The department of revenue shall monitor the reports filed pursuant to 15-30-301(1)(d) and report to the revenue and taxation interim committee, on a periodic basis, the results of requiring the reporting and any other factors the department may notice as a result of the required reporting."

1991 Amendment: Inserted (1)(b) requiring an information agent to report interest income in excess of $10 from obligations of another state or political subdivision of another state; in (1)(c) inserted reference to subsection (1)(b); and made minor changes in style. Amendment effective March 19, 1991.

Retroactive Applicability: Section 2, Ch. 89, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990."

1989 Amendment: In (1)(a) inserted "royalties"; and in (1)(b) deleted "royalties".

Applicability: Section 7, Ch. 289, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.9.102 Pass-through entity information returns.

ARM 42.17.122 Returns of information agents.

15-30-2617. Oaths administered by director of revenue and designated employees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

15-30-2618. Confidentiality of tax records.

Compiler's Comments

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550. Amendment effective May 3, 2023. The amendment did not affect the December 31, 2028, termination date of the Ch. 550, L. 2021, amendment to this section.

2021 Amendments — Composite Section: Chapter 503 deleted former (4) that read: "(4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year"; deleted former (8)(a) that read: "(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105"; and made minor changes in style. Amendment effective January 1, 2024.

Chapter 550 inserted (3)(d), (8)(b)(ii) (versions effective January 1, 2024, and on contingency), and (9)(c)(iii) (first temporary version) concerning annual job growth incentive tax credit; and made minor changes in style. Amendment effective July 1, 2021, and terminates December 31, 2028.

2015 Amendment Repealed — Termination Ineffective: Section 21, Ch. 480, L. 2021, repealed sec. 24, Ch. 457, L. 2015, which amended this section. This rendered ineffective the termination date imposed by sec. 33, Ch. 457, L. 2015, which would have terminated the amendments December 31, 2023. Effective October 1, 2021.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Section 22, Ch. 550, L. 2021, was a severability clause.

2019 Amendment: Chapter 415 in (1) in exception clause substituted "subsections (7) through (9)" for "subsections (8) and (9)"; inserted (7)(c) concerning income verification by the department of public health and human services; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2017 Amendments — Composite Section: Chapter 151 deleted former (9)(h) that read: "(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20"; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 380 inserted (9)(c)(ii) concerning employer and apprentice information needed for administering apprenticeship tax credit; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 8, Ch. 380, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 76 inserted (9)(i) regarding disclosure of tax information to the department of commerce; and made minor changes in style. Amendment effective February 27, 2015.

Chapter 220 in (9)(g) after "refund under" deleted "15-70-223 or" and after "as provided in" deleted "15-70-223 and"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 457 inserted (9)(j) regarding superintendent of public instruction; and made minor changes in style. Amendment effective January 1, 2016, and terminates December 31, 2023.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2013 Amendment: Chapter 21 inserted (4) regarding the disclosure of tax return information to a taxpayer's spouse; in (6) substituted "subsections (1) through (5)" for "subsections (1) through (4)"; and made minor changes in style. Amendment effective October 1, 2013.

Retroactive Applicability: Section 3, Ch. 21, L. 2013, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2012."

2007 Amendment: Chapter 70 in (1) near beginning in exception clause after "provided in" inserted "5-12-303, 15-1-106, 17-7-111"; in (5) near beginning of first sentence after "exceeding" substituted "$500" for "$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both" and in second sentence after "office" inserted "or employment", after "public office" inserted "or public employment", and at end inserted "or, in the case of a former officer or employee, for 1 year after conviction"; in (8) at beginning inserted "On written request to the director or a designee of the director"; in (8)(f) at end of first sentence inserted "15-1-106, and 17-7-111"; and made minor changes in style. Amendment effective March 27, 2007.

Retroactive Applicability: Section 31(2), Ch. 399, L. 2007, provided: "(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208 [33-22-2008, now repealed]."

2005 Amendment: Chapter 595 inserted (8)(h) related to small business health insurance tax credit. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in first sentence in (8)(g) after "transportation" deleted "the ratio of gross", after "farm income" substituted "information" for "to total gross income", and in two places after "15-70-223" inserted reference to 15-70-362. Amendment effective July 1, 1999, and terminates June 30, 2001.

1995 Amendments: Chapter 529 in (6), in introductory clause, inserted reference to taxpayer return information; in (6)(a) substituted "be used for the purpose of investigation and prevention of noncompliance, tax evasion" for "prevent and detect" and at end substituted "insurance laws" for "compensation program"; and in (6)(b) substituted "be used for the purpose of investigation and prevention of noncompliance" for "prevent and detect". Amendment effective April 25, 1995.

Chapter 546 in (8)(b) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 20 in (1), near beginning in exception clause, inserted reference to subsections (7) and (8) and after "unlawful" deleted "for the department or any deputy, assistant, agent, clerk, or other officer or employee"; in (1)(a), in two places, inserted "individual"; inserted (8)(f) regarding the furnishing of individual tax information to the Legislative Fiscal Analyst and the Office of Budget and Program Planning; and made minor changes in style.

Chapter 245 inserted (8)(g) allowing the Department of Transportation access to certain tax information to determine whether gasoline use qualifies as agricultural use for refund purposes; and made minor changes in style. Amendment effective April 1, 1993.

Chapter 410 inserted (6) stating that the section may not be construed to prohibit release of certain information by the Department to the Department of Labor and Industry and to the state workers' compensation fund to detect fraud and abuse in the unemployment compensation and workers' compensation programs; inserted (8)(c) requiring the Department to give the Department of Labor and Industry certain information for purposes of preventing fraud and abuse in unemployment and workers' compensation programs; and made minor changes in style.

Chapter 520 in (3)(c), after "15-30-311", deleted "and 15-30-322". Amendment effective April 24, 1993.

Style changes were slightly different in the chapters. In each case, the codifier chose the most appropriate.

Effective Dates — Applicability: Section 3, Ch. 245, L. 1993, provided: "[This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act]." Effective April 1, 1993.

Section 6, Ch. 520, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies to all tax years."

1989 Amendments: Chapter 358 inserted (7)(d) requiring Department to furnish to Board of Regents information required under 20-26-1111; and made minor change in phraseology.

Chapter 416 inserted (7)(c) relating to residency requirement information for Department of Fish, Wildlife, and Parks. Amendment effective April 3, 1989.

1985 Amendment: Inserted (7)(b) compelling release of information to prevent public assistance fraud.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed

2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

Statement of Intent: The statement of intent attached to Ch. 131, L. 1985, provided: "A statement of intent is necessary for this act in order to clarify the type of notice the legislature intends to be given to applicants for public assistance by the department of social and rehabilitation services [now department of public health and human services]. It is the intent of the legislature that the notice may be contained in the initial release of confidential information which an applicant signs when applying for public assistance. The notice shall be reasonably simple and specific as to the type of information obtainable.

It is the further intent of the legislature that rules adopted by the department of revenue to implement this act may not be burdensome to the department of social and rehabilitation services [now department of public health and human services] in obtaining the information so long as the notice has been given. The department of revenue shall cooperate with the department of social and rehabilitation services [now department of public health and human services] in achieving the purpose of this act, which is to allow easy access to information obtainable from other sources in order to reduce fraud in obtaining public assistance."

Administrative Rules

ARM 42.2.325 Access to information.

ARM 42.4.501 Definitions.

ARM 42.9.110 Pass-through entities — audit adjustments.

15-30-2619. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections — filing amended return required.

Compiler's Comments

2021 Amendment: Chapter 108 at beginning of second and third sentences inserted exception clause; at end of second sentence substituted "180 days after the final determination date" for "90 days after receiving notice of the change or correction"; near end of third sentence substituted "180 days" for "90 days"; and made minor changes in style. Amendment effective March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

1999 Amendments — Composite Section: Chapter 68 in second sentence substituted "the taxpayer shall file an amended Montana return with the department" for "the taxpayer shall report the change or correction to the department"; in third sentence substituted "an amended Montana return" for "an amended return"; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 184 deleted former second sentence that read: "Partners of a partnership, shareholders of a subchapter S. corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager received from the entity that reports income to the federal government for the corresponding year." Amendment effective March 26, 1999.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1995 Amendment: Chapter 172 inserted second sentence requiring persons with an interest in a partnership, subchapter S. corporation, or limited liability company who are subject to the workers' compensation old fund liability tax to attach to their Montana income tax return a copy of the schedule received from the business that reports income to the federal government; and made minor changes in style. Amendment effective March 20, 1995.

Severability: Section 4, Ch. 172, L. 1995, was a severability clause.

Retroactive Applicability: Section 5, Ch. 172, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Section Not Codified: Section 84-4941, R.C.M. 1947, which is a severability section, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 260, L. 1955.

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.4.4101 Individual, corporation, and property — alternative energy production — definitions.

ARM 42.15.314 Changes in federal returns or taxes.

ARM 42.30.102 Fiduciary — filing requirements.

15-30-2620. Department rules — conformance with Internal Revenue Code.

Compiler's Comments

2007 Amendment: Chapter 222 inserted (2) concerning meaning of undefined terms; and made minor changes in style. Amendment effective April 17, 2007.

Retroactive Applicability: Section 4, Ch. 222, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006."

Part of Section Not Codified: A part of section 84-4955, R.C.M. 1947, which grants rulemaking authority and is redundant with 15-30-305, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 14, Ch. 246, L. 1955, as amended by sec. 191, Ch. 516, L. 1973.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Title 42, chapter 4, ARM Tax credits.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

Title 42, chapter 9, ARM Pass-through entities.

Title 42, chapter 15, ARM General provisions and preparation of income tax return.

ARM 42.15.526 Small business liability funds.

ARM 42.15.527 Deduction provided under internal revenue code section 199A not allowed.

Title 42, chapter 17, ARM Withholding and estimated tax.

Case Notes

Common Carrier Employee Tax Information to Be Supplied to Department of Revenue: While 49 U.S.C. 11504 fixes the mandatory duties of employers engaged in interstate commerce to withhold taxes and to file reports respecting earnings in any particular state, that section does not prohibit the furnishing of earnings information at the request of the state or under a properly issued administrative subpoena. Therefore, the Department of Revenue may by administrative subpoena obtain information relating to Montana earnings from an interstate rail carrier respecting its employees, even though the carrier is not obliged to withhold Montana state income tax. Burlington N., Inc. v. Dept. of Revenue, 239 M 458, 781 P2d 1121, 46 St. Rep. 1830 (1989).

Attorney General's Opinions

Income Tax Surtax — Effective Date — Applicability: The income tax surtax enacted by Ch. 666, L. 1987, which was effective May 22, 1987, and terminated December 31, 1989, applies to tax liabilities for calendar years 1987 and 1988 but does not apply to tax liabilities for calendar year 1989. 42 A.G. Op. 130 (1988).

15-30-2621. Agreements with contiguous states.

Administrative Rules

ARM 42.17.134 Reciprocal agreement — North Dakota.

15-30-2622. Closing agreements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-30-2629. Authority to collect tax — offset — hearing.

Compiler's Comments

2017 Amendment: Chapter 72 in (5) in first sentence substituted "uniform dispute review available under 15-1-211 for disputing the offset of funds for collection of delinquent taxes" for "right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department intent to file a claim on behalf of a taxpayer" and at end after "notice" deleted "and such hearing, if requested, must be held within 20 days". Amendment effective March 2, 2017.

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.2.520 Collection of delinquent taxes or other funds through offset procedures.

Law Review Articles

A Legal Response to the Sovereign Citizen Movement, Kalinowski, 80 Mont. L. Rev. 153 (2019).

15-30-2630. Warrant for distraint.

Compiler's Comments

1981 Amendments: Both Ch. 439 and Ch. 570 deleted the exception in (1) that taxes imposed by 15-30-221 through 15-30-228 are not subject to this section.

Chapter 439 also substituted "any portion of such tax is not paid when due" for "any portion of such tax is not paid within 60 days after the same becomes due"; substituted "the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure where the department was required to issue a warrant directed to the sheriff to levy upon and sell the property of the taxpayer; deleted subsections (2), (3), and (4), the text of which may be found in sec. 1, Ch. 167, L. 1979.

Attorney General's Opinions

Collection of Delinquent Income Taxes of Nonresidents Employed by Foreign Corporation Doing Business in Montana: The salaries or wages of nonresidents employed by a foreign corporation doing business in Montana may be considered to be property within the state for the purpose of levying a warrant for distraint for unpaid state income taxes. Requiring the foreign corporation to honor the levy does not offend the notions of "fair play and substantial justice" which govern assertions of both jurisdiction in personam and jurisdiction in rem. 41 A.G. Op. 9 (1985).

15-30-2631. Jeopardy assessments.

Compiler's Comments

1981 Amendment: Added "including the issuance of a warrant for distraint as provided in Title 15, chapter 1, part 7" to the end of (2).

Administrative Rules

ARM 42.2.503 Jeopardy assessment and emergency execution.

15-30-2632. Deferment of taxes for person in military service — filing of return.

Compiler's Comments

2007 Amendment: Chapter 44 in (1) at beginning after "collection" inserted "of the tax imposed by 15-30-103" and near middle after "amended" deleted "of the tax imposed by 15-30-103"; in (3) near beginning after "person" deleted "and the person's spouse" and near middle after "operation" inserted "and of the person's spouse"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 30 in (1) near beginning substituted "section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended, of the tax imposed by 15-30-103" for "the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state on the income of such person" and near end after "deferred for" substituted "not more than 180 days" for "a period extending not more than 6 months"; inserted (3) specifying when individual income tax return for certain individuals serving in combat zone or participating in contingency operation is due; and made minor changes in style. Amendment effective March 18, 2005.

Retroactive Applicability: Section 3, Ch. 30, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2003."

Attorney General's Opinions

Servicepersons — Registration to Vote — Tax Liability: The fact that a member of the military service has registered to vote in Montana is evidence, though not conclusive proof, that he is a Montana resident and is thus not exempt, under the federal Soldiers' and Sailors' Civil Relief Act of 1940, from property and income taxation by Montana. Montana's election law requires one to be a resident of Montana before voting in the state's elections, so a serviceperson who has registered to vote in Montana (thereby claiming to be a resident) may not claim tax exemption under the federal Act without offering convincing evidence that he is in fact not a Montana resident after all. However, to claim he is not in fact a resident after having registered to vote in Montana would subject him to prosecution for the misdemeanor of fraudulent registration. 41 A.G. Op. 2 (1985).

15-30-2633. Stay of enforcement against military personnel.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-30-2634. Failure to file return or report — order to show cause — action by department.

Compiler's Comments

Code Commissioner Correction: In (5) in second sentence substituted "Rule 4(d)(3)" for "Rule 4D(1)(b)" and in third sentence substituted "Rule 4(d) through (m) or (n)" for "Rule 4D(2) or (3)" to reflect revisions adopted by Supreme Court Order No. AF 07-0157 dated April 26, 2011.

Case Notes

Taxpayer Properly Held in Contempt for Refusal to File Income Tax Returns — Privilege Against Self-Incrimination No Defense: Gillispie failed to file an income tax return for 4 years. The District Court ordered her to file the returns or to show cause why she should not be required to file them. At the hearing, the Department of Revenue introduced Gillispie's W-2 forms, which showed that she had made the minimum income necessary to require her to file returns. The District Court ordered her to file the returns or be found in contempt. When Gillispie failed to file the returns, the District Court held her in contempt, and Gillispie filed a petition for a writ of habeas corpus with the Supreme Court. The Supreme Court held that the District Court had jurisdiction to order Gillispie to file the returns and jurisdiction to hold Gillispie in contempt and that the District Court also had sufficient evidence to do so. The Supreme Court also held that Gillispie's privilege against self-incrimination does not justify the outright refusal to file a return and cannot be used as a method of evading payment of lawful taxes. The Supreme Court held that she must demonstrate the specific parts of the returns that would result in self-incrimination. Gillispie v. Sherlock, 279 M 21, 929 P2d 199, 53 St. Rep. 507 (1996).

Law Review Articles

A Legal Response to the Sovereign Citizen Movement, Kalinowski, 80 Mont. L. Rev. 153 (2019).

15-30-2642. Notice of additional assessment — penalty and interest for deficiency.

Compiler's Comments

2005 Amendment: Chapter 594 deleted former (1) and (2) that read: "(1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216. Except as otherwise provided in this subsection, the interest in all cases must be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest on the tax due, as provided in 15-1-216, from the time when the return was originally required to be filed to the time of payment"; and inserted (1) and (2) related to notice of additional tax and penalties and interest. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) substituted "the penalty imposed in 15-1-216(1)(c) must be added to the amount of the deficiency. Interest on the additional assessment must be computed as provided in 15-1-216" for "there shall be added to the amount of the deficiency 5% thereof; provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment"; in (2) substituted "on the tax due as provided in 15-1-216" for "thereon at the rate of 9% per annum"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1981 Amendment: Increased the time period for payment from 30 to 60 days in (1).

Administrative Rules

ARM 42.2.504 Penalties.

15-30-2643. Time limitations for prosecution.

Compiler's Comments

2019 Amendment: Chapter 28 substituted "15-1-216" for "15-30-2641". Amendment effective February 28, 2019.

2015 Amendment: Chapter 308 substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

Effective Date — Applicability: Section 5, Ch. 648, L. 1979, provided: "This act is effective on passage and approval but has no effect on prosecutions commenced prior to the effective date of this act." This act is codified as 15-30-101, 15-30-145, 15-30-321, and 15-30-324 and was approved May 7, 1979.

Case Notes

Failure to File Tax Returns — Statute of Limitations: Prosecution for failure to file state tax returns is a criminal prosecution differing from the civil action under 15-30-322 (now repealed) for collection of unpaid taxes. The failure to file tax returns is a misdemeanor, and as such is subject to the 1-year Statute of Limitations of 45-1-205. The state is barred from prosecuting for failure to file proper returns for the period prior to 1 year before commencing prosecution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Giving of Sandstrom Instruction as Error: The giving of the Sandstrom instruction which states that a person intends the ordinary consequences of his voluntary acts, was prejudicial and harmful in this case, concerning failure to file proper state tax returns. The instruction when read with the body of instructions could be interpreted as allowing the jury no discretion and directing them to find the element of intent. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Judge to Instruct Jury on Law — Testimony of Constitutional Expert Excluded: The interpretation and application of the U.S. Constitution was a question of law and not a fact in issue in a prosecution for failure to file proper state tax returns. It was a determination to be made by the trial judge within his statutory powers. Instructing the jury on the law necessary for the jury's rendering of a verdict in a criminal case is a duty within the exclusive province of the trial judge. It was proper to exclude the testimony of an expert on the U.S. Constitution. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Pleading Fifth Amendment as a Defense: State tax returns which are signed, but submitted with a blanket assertion of the persons' fifth amendment privilege, are not properly filed returns as provided by law. Neither is the blanket assertion of privilege under the fifth amendment a proper defense. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Proper Limitation on Voir Dire — Religious Beliefs: In a prosecution for failure to file proper tax returns, it was within the trial court judge's discretion to restrict defendant from inquiring into the religious beliefs of the prospective jurors. Given the wide discretion allowed a trial judge, the lack of relevancy of religion to the issues at bar, and the permitted inquiry into the jurors' general belief in God, the limitation was proper. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Tax Withholding Statement Irrelevant: In a prosecution for failure to file proper tax returns, it was proper for the court to refuse to admit into evidence tax withholding statement, although evidence of defendant's income was admitted. The payment of taxes by withholding was irrelevant to the issue of whether proper returns were filed and could have confused the jury. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Venue for Failure to File Tax Returns: Tax returns are required to be filed with the Department of Revenue. The Department is required to be located in Helena, Montana. Section 46-3-101 (renumbered 46-3-111) provides that in all criminal prosecutions, trial shall be in the county where the offense was committed. The offense charged here was failure to properly file tax returns, so that venue was properly with Lewis and Clark County where Helena is located. St. v. Poncelet, 187 M 528, 610 P2d 698 (1980).

Failure to File Tax Return — Venue: Venue of a criminal action charging intentional failure to file a properly completed Montana individual income tax return would lie in either Lewis and Clark County or the county in which defendants reside. But, since the complaint was filed in the former and no legal justification or prejudice was shown to support transfer, the Supreme Court reversed the District Court's change of venue from Lewis and Clark County. Dept. of Revenue v. Lane, 187 M 230, 609 P2d 300 (1980), following St. v. Bretz, 169 M 505, 548 P2d 949 (1976).

Inadvertent Failure to Pay When Filing Return: The provision of 15-30-2641 (now repealed), prior to the 1955 amendment, that any person failing to pay tax on due date was allowed 60 days in which to pay tax with only a 5% penalty did not prevent assessment of the 100% penalty after the termination of such period, notwithstanding the fact that the taxpayer failed to include payment due to mistake, inadvertence, and excusable neglect. Stewart v. St., 135 M 323, 340 P2d 151 (1959).

Constitutionality Prior to Amendment: The double penalty imposed under subsection (2) of 15-30-2641 (now repealed), before the 1955 amendment, did not violate Art. III, sec. 20 and 27, 1889 Mont. Const. (now Art. II, sec. 22 and 17, 1972 Mont. Const.) as an excessive fine or the taking of property without due process of law. State ex rel. Hardy v. St. Bd. of Equalization, 133 M 43, 319 P2d 1061 (1958).

15-30-2646. Relief from joint and several liability on joint return — limitations — rules.

Compiler's Comments

Effective Date: Section 10(2), Ch. 470, L. 2009, provided that this section is effective on passage and approval. Approved May 6, 2009.

Retroactive Applicability: Section 11(2), Ch. 470, L. 2009, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Case Notes

Innocent Spouse Tax Determination Not Preclusive — Marital Dissolution Proceeding: Prior to their divorce, the husband and wife accumulated over $90,000 in delinquent tax liabilities owed on two properties. The wife then obtained a determination from the IRS and the Montana Department of Revenue that she was an "innocent spouse" and was, therefore, not liable to the agencies for any of the delinquent tax liability. At the dissolution proceeding, the wife acknowledged that she and her family benefited from the income that created the tax liability and that she was aware that she and her husband had incurred income tax debt during the marriage. However, the wife argued that, because she had been adjudicated an "innocent spouse," the tax liability should not be considered marital debt. The District Court disagreed, holding that the "innocent spouse" tax determinations had no preclusive effect in the dissolution proceeding, that a dissolution proceeding primarily relates to equitably apportioning marital debt regardless of how and when it was acquired, that the "innocent spouse" administrative determinations were not subject to judicial review and did not raise the same issues, and that issue preclusion therefore did not apply. The Supreme Court affirmed, holding that the District Court used its broad discretion to apportion the marital estate in a manner equitable to each party under the circumstances. Rose v. Rose, 2016 MT 7, 382 Mont. 88, 364 P.3d 1244.

15-30-2651. Certified copies of tax returns to taxpayer — fee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.15.316 Extensions.

15-30-2660. Taxpayer integrity fees.

Compiler's Comments

2019 Amendment: Chapter 415 substituted current text in (1) and (2) concerning the amount of the taxpayer integrity fee for former text (see 2019 Session Law for former text); inserted (3), (4), and (5) concerning assessment of a fee for an entity organized under 26 U.S.C. 501(d) whose members are receiving medicaid coverage under Title 53, chapter 6, part 13; in (6) substituted current text requiring the provision of necessary information for administration of the section for former text that read: "The department shall coordinate with the department of public health and human services to obtain the information necessary to administer this section"; in (7) at end substituted "Montana HELP Act special revenue account provided for in 53-6-1315" for "general fund"; in (9) inserted definitions of agricultural land and manufacturer's suggested retail price and deleted definition of cash equivalent (see 2019 Session Law for former definition); and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Extension of Termination Date: Section 38, Ch. 415, L. 2019, amended sec. 28, Ch. 368, L. 2015, by extending the termination date imposed by Ch. 368 to June 30, 2025. Effective May 9, 2019.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

Nonseverability — Code Commissioner Correction: Section 26, Ch. 368, L. 2015, provided: "Except as provided in subsection (2), it is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

(2) If [section 19 or 20] is held unconstitutional, all other parts are valid."

Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that "[section 19 or 20]" should be replaced with "[section 19 or 21]" [25-3-106 or 27-2-205].

Termination: Section 28, Ch. 368, L. 2015, provided: "(1) [This act] terminates June 30, 2019.

(2) The department may reapply for the same waiver received to implement the Montana Health and Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019."

Part 30
Special Income Tax Applications

15-30-3001. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-3002. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-3003. Montana farm and ranch risk management account — deposits — exclusion from income.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) in first sentence near beginning after "eligible agricultural business may" substituted "hold" for "create" and near middle inserted "that is composed of contributions that were made to the account prior to January 1, 2024", and in middle of last sentence after "accounts that may be" substituted "held" for "created"; in (2) deleted former first sentence that read: "Deposits to the account may be excluded from adjusted gross income as provided in 15-30-2110 in an amount not to exceed the lesser of 20% of the taxpayer's net income attributable to agricultural business included in federal adjusted gross income or $20,000 a year" and at end of last sentence substituted "during a tax year beginning before January 1, 2024" for former (2)(a) and (2)(b) that read: "(a) during the tax year; or

(b) for a specific tax year if it is made within 3½ months after the close of the tax year"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 308 in (3) substituted "3 years" for "5 years". Amendment effective April 27, 2015.

Retroactive Applicability: Section 17(2), Ch. 308, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2014.

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-3004. Montana farm and ranch risk management account — creation — administration.

Compiler's Comments

2021 Amendment: Chapter 503 deleted former (2) that read: "(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under 15-30-3003"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2003 Amendment: Chapter 566 in (1) near middle of second sentence after "institution" inserted "other than an investment adviser"; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

15-30-3005. Montana farm and ranch risk management account — distributions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 420, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 503 in (3)(a) near middle after "not excluded from" substituted "income in calculating Montana individual income taxes for the tax year" for "adjusted gross income for the tax year". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Effective Date: This section is effective October 1, 2001.

Applicability: Section 8, Ch. 262, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Part 31
Tax Credit for Qualified Education Contributions

Part Compiler's Comments

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

Part Administrative Rules

Title 42, chapter 4, subchapter 8, ARM Education donation credits.

Part Law Review Articles

Espinoza v. Montana Department of Revenue: Pulling Back the Curtain on Tax Expenditure Spending, Lindberg, 82 Mont. L. Rev. 211 (2021).

Montana's Constitutional Prohibition on Aid to Sectarian Schools: "Badge of Bigotry" or National Model for the Separation of Church and State?, Dougherty, 77 Mont. L. Rev. 41 (2016).

Part Collateral References

Notice of Revenue and Transportation Interim Committee Poll of the Legislature on Proposed Rule Action by the Department of Revenue — Qualified Education Providers, 2015 Montana Administrative Register, pp. 2348-2349.

15-30-3101. Purpose.

Compiler's Comments

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480. Amendment effective May 18, 2023. The amendment did not affect the December 31, 2029, termination date of the 2021 amendment to this section.

2021 Amendment: Chapter 480 near end after "education with private" substituted "donations" for "contributions" and deleted former last sentence that read: "The tax credit for taxpayer donations under this part must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution". Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Administrative Rules

ARM 42.4.801 Definitions.

15-30-3102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 558, L. 2023. Amendment effective May 18, 2023, and terminates December 31, 2029.

Applicability: Section 11, Ch. 558, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendment: Chapter 480 inserted definitions of donation and innovative educational program; deleted definition of geographic region that read: ""Geographic region" has the meaning provided in 20-9-903"; deleted definition of large district that read: ""Large district" has the meaning provided in 20-9-903"; in definition of qualified education provider deleted former (d) that read: "(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:

(i) makes the results available to the child's parents or legal guardian; and

(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite results of the test to the office of public instruction for posting on its website;" in definition of student scholarship organization in (b) after "90% of its annual revenue" inserted "from donations eligible for the tax credit under 15-30-3111"; and made minor changes in style. Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021, provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Administrative Rules

Title 42, chapter 4, subchapter 8, ARM Education donation credits.

Collateral References

Notice of Revenue and Transportation Interim Committee Poll of the Legislature on Proposed Rule Action by the Department of Revenue — Qualified Education Providers, 2015 Montana Administrative Register, pp. 2348-2349.

15-30-3103. Requirements for student scholarship organizations.

Compiler's Comments

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480. Amendment effective May 18, 2023. The amendment did not affect the December 31, 2029, termination date of the 2021 amendment to this section.

2021 Amendment: Chapter 480 in (1)(a) in first sentence after "annual revenue" inserted "from donations eligible for the tax credit under 15-30-3111"; in (1)(a)(i) near middle and in (1)(a)(ii) in two places substituted references to contribution for references to donation; in (1)(d) near middle after "year that exceeds" deleted "50% of"; deleted former (1)(e) that read: "(e) shall ensure that the organization's average scholarship for an academic year does not exceed 30% of the per-pupil average of total public school expenditures calculated in 20-9-570"; and made minor changes in style. Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Administrative Rules

ARM 42.4.803 Student scholarship organization requirements.

15-30-3104. Tuition payment limitation.

Compiler's Comments

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480. Amendment effective May 18, 2023. The amendment did not affect the December 31, 2029, termination date of the 2021 amendment to this section.

2021 Amendment: Chapter 480 in (2) near middle of first sentence after "the awards exceeds" deleted "50% of". Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

15-30-3105. Reporting requirements for student scholarship organizations.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Administrative Rules

ARM 42.4.803 Student scholarship organization requirements.

15-30-3106. Student scholarship organizations — listing on website.

Compiler's Comments

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480. Amendment effective May 18, 2023. The amendment did not affect the December 31, 2029, termination date of the 2021 amendment to this section.

2021 Amendment: Chapter 480 deleted former (2) that read: "(2) The list must include:

(a) a statistical compilation of the information received from the student scholarship organizations; and

(b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly accessible private website or to the office of public instruction's website pursuant to 15-30-3102(7)(d)(ii)"; and made minor changes in style. Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Administrative Rules

ARM 42.4.803 Student scholarship organization requirements.

15-30-3110. Credit for providing supplemental funding to public schools — innovative educational program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 558, L. 2023. Amendment effective May 18, 2023, and terminates December 31, 2029.

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480 to December 31, 2029. Amendment effective May 18, 2023.

Applicability: Section 11, Ch. 558, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendments — Composite Section: (All versions) Section 6, Ch. 480, in (1) in first sentence near middle after "donations made to" substituted "a school district" for "the educational improvement account provided for in 20-9-905", near end after "supplemental funding to" substituted "the school district" for "public schools", and at end after "innovative educational programs" deleted "and technology deficiencies", deleted former second sentence that read: "The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b)", and inserted last sentence concerning district deposit into miscellaneous programs fund for innovative educational programs; in (4)(a)(i) substituted "$1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a)" for "$3 million beginning in tax year 2016"; in (4)(a)(ii) in first sentence near beginning after "Beginning in" substituted "2023, by December 31 of each year" for "2017, by August 1 of each year" and near middle after "department shall determine if" substituted "80% of the aggregate limit" for "$3 million or the aggregate limit", and near end of last sentence after "allowed must be increased by" substituted "20%" for "10%"; deleted former (4)(b) that read: "(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit"; inserted (4)(b) concerning aggregate limit applying to year in which a donation is made; in (6) deleted former first sentence that read: "After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation"; inserted (6)(a) through (6)(c) concerning school district preapproval and taxpayer providing copy of the receipt; and made minor changes in style. Amendment effective October 1, 2021, and terminates December 31, 2029.

(All versions except version effective on occurrence of contingency) Sections 7 through 11, Ch. 480, in (1) at end of second sentence after "the donation, not to exceed" substituted "$200,000" for "$150"; in (3) at end of first sentence after "the taxpayer's income tax liability" inserted "but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year"; deleted former (4) that read: "(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method"; and made minor changes in style. Amendment effective January 1, 2022, terminates on occurrence of contingency until June 30, 2025, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Contingent Termination: Section 25, Ch. 480, L. 2021 (repealed by sec. 8, Ch. 558, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)]terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)."

15-30-3111. Qualified education tax credit for donations to student scholarship organizations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 558, L. 2023. Amendment effective May 18, 2023, and terminates December 31, 2029.

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480 to December 31, 2029. Amendment effective May 18, 2023.

Applicability: Section 11, Ch. 558, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

2021 Amendments — Composite Section: (All versions) Section 12, Ch. 480, in (1) near middle of second sentence after "not direct or designate" substituted "donations" for "contributions"; in (2)(b) at beginning substituted "A donation" for "A contribution"; in (4)(a)(i) substituted "$1 million per year in tax year 2022 and $2 million per year in tax year 2023 and subsequent tax years except as provided in this subsection (4)(a)" for "$3 million beginning in tax year 2016"; in (4)(a)(ii) in first sentence near beginning after "Beginning in" substituted "2023, by December 31 of each year" for "2017, by August 1 of each year" and near middle after "department shall determine if" substituted "80% of the aggregate limit" for "$3 million or the aggregate limit", and in last sentence near middle after "the aggregate" substituted "limit of tax" for "amount of tax" and near end after "allowed must be increased by" substituted "20%" for "10%"; in (4)(a)(iii) after "the new limit as the" deleted "base"; deleted former (4)(b) that read: "(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit"; inserted (4)(b) concerning aggregate limit applying to year in which a donation is made; deleted former (6) that read: "The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution"; inserted (6)(a) and (6)(b) concerning preapproval; inserted (6)(c) concerning copy of receipt; and made minor changes in style. Amendment effective October 1, 2021, and terminates December 31, 2029.

(All versions except version effective on occurrence of contingency) Sections 13 through 17, Ch. 480, in (1) at end of last sentence after "the donation, not to exceed" substituted "$200,000" for "$150"; in (3) near end of first sentence after "the taxpayer's income tax liability" inserted "but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year"; deleted former (4) that read: "(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method"; and made minor changes in style. Amendment effective January 1, 2022, terminates on occurrence of contingency until June 30, 2025, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

Contingent Termination: Section 25, Ch. 480, L. 2021 (repealed by sec. 8, Ch. 558, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)]terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)."

Administrative Rules

ARM 42.4.801 Definitions.

ARM 42.4.804 Credit limitations and claims.

Case Notes

Tax Credit for Donations to Sectarian Schools — United States Supreme Court Reversal of Montana Supreme Court — Free Exercise Clause of Federal Constitution Overrides No-Aid

Provision of Montana Constitution: The Montana Supreme Court found that the portion of the tax credit program codified at 15-30-3111 constituted a violation of Art. X, sec. 6, Mont. Const., which prohibits the Legislature, counties, cities, towns, school districts, and public corporations from making any direct or indirect appropriation or payment from any public fund or money for any sectarian purpose or to aid any church, sect, or denomination. The court found that by reimbursing, dollar-for-dollar, the donation to a student scholarship organization that directly funded tuition scholarships at religiously affiliated schools, the Legislature impermissibly functioned as the entity providing aid to sectarian schools, and the provision was determined to be facially unconstitutional. Because SB 410 (Ch. 457, L. 2015), which enacted the tax credit program, contained a severability clause, the Montana Supreme Court concluded that 15-30-3111 must be severed from the remainder of SB 410. (Espinoza v. Dept. of Revenue, 2018 MT 306, 393 Mont. 446, 435 P.3d 603, certiorari granted, 139 S Ct 2777 (2019)). On appeal, the United States Supreme Court reversed the Montana Supreme Court on the grounds that the Montana Supreme Court's application of the no-aid provision in Art. X, sec. 6, Mont. Const., discriminated against religious schools and families whose children attend or hope to attend them, in violation of the free exercise clause of the federal constitution. Espinoza v. Mont. Dept. of Revenue, 591 US 464, 140 S. Ct. 2246 (2020).

Law Review Articles

Espinoza v. Montana Department of Revenue: Pulling Back the Curtain on Tax Expenditure Spending, Lindberg, 82 Mont. L. Rev. 211 (2021).

Montana's Constitutional Prohibition on Aid to Sectarian Schools: "Badge of Bigotry" or National Model for the Separation of Church and State?, Dougherty, 77 Mont. L. Rev. 41 (2016).

15-30-3112. Report to revenue interim committee — student scholarship organizations.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

2019 Amendment: Chapter 163 in first sentence substituted "revenue interim committee, in accordance with 5-11-210" for "revenue and transportation interim committee"; and made minor changes in style. Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

15-30-3113. Review determination — termination — confidentiality.

Compiler's Comments

Termination Provision Amended: Section 7, Ch. 558, L. 2023, amended sec. 24, Ch. 480, L. 2021, by revising the multiple termination dates imposed by Ch. 480. Amendment effective May 18, 2023. The amendment did not affect the December 31, 2029, termination date of the Ch. 480, L. 2021, amendment to this section.

2021 Amendments — Composite Section: Chapter 142 in (4) and (5) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Chapter 480 in (7) substituted "school districts to support innovative educational programs" for "the educational improvement account provided for in 20-9-905". Amendment effective October 1, 2021, and terminates December 31, 2029.

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Effective Date — Applicability: Section 23, Ch. 480, L. 2021 (amended by sec. 6, Ch. 558, L. 2023), provided: "(1) Except as provided in subsections (2) through (7), [this act] is effective July 1, 2021.

(2) [Sections 1 through 6, 12, 18, 19, and 21] [amendments to 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110 (all versions), 15-30-3111 (all versions), and 15-30-3113] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 7 and 13] [first temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2022, and apply to the income tax year beginning after December 31, 2021.

(4) [Sections 8 and 14] [second temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2023, and apply to the income tax year beginning after December 31, 2022.

(5) [Sections 9 and 15] [third temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2024, and apply to the income tax year beginning after December 31, 2023.

(6) [Sections 10 and 16] [fourth temporary amendments to 15-30-3110 (first version) and 15-30-3111 (first version)] are effective January 1, 2025, and apply to the income tax year beginning after December 31, 2024.

(7) [Sections 11 and 17] [final amendments to 15-30-3110 (last version) and 15-30-3111 (last version)] are effective July 1, 2025, and apply to income tax years beginning after June 30, 2025."

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Severability: Section 22, Ch. 480, L. 2021, was a severability clause.

15-30-3114. Rulemaking.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Case Notes

Supplemental Definition in Excess of Scope of Rulemaking Grant: The Department of Revenue believed that it could not constitutionally implement or administer the tax credit program of 15-30-3111. Instead, it created a definition through rulemaking in an attempt to cure the constitutional violation by excluding religiously affiliated schools from eligibility for donations under the program. The Supreme Court found that this rulemaking exceeded the grant of rulemaking authority conferred in 15-30-3114, noting that an "agency cannot transform an unconstitutional statute into a constitutional statute with an administrative rule". Espinoza v. Dept. of Revenue, 2018 MT 306, 393 Mont. 446, 435 P.3d 603, certiorari granted, 139 S Ct 2777 (2019), reversed and remanded on other grounds in Espinoza v. Mont. Dept. of Revenue, 591 US 464, 140 S. Ct. 2246 (2020).

Part 33
Small Business and Pass-Through Entities

15-30-3301. Definition of small business corporation.

Compiler's Comments

2013 Amendment: Chapter 268 in (2)(c) substituted "corporate income tax return" for "corporate license tax return". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2001 Amendment: Chapter 143 in (1) substituted definition of "small business corporation for "means a corporation that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue code. A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective." Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1991 Amendment: In (1), at beginning of first sentence, substituted exception clause for "For purposes of this part", after "corporation" deleted "doing business in Montana and", and after "Code" deleted "of 1954 and thereafter" and in second sentence substituted "A small business corporation shall attach" for "has filed", after "approved" inserted "federal", and after "with the" substituted "Montana return filed for the first taxable year the federal election is effective" for "department on or before the 15th day of the third month of the taxable year for which the election is to become effective or"; deleted (1)(b) that read: "(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter"; substituted (2) authorizing corporation that would otherwise be small business corporation to continue to be subject to taxes imposed by Title 15, chapter 31, under certain conditions and outlining conditions that must be met for former (2) that read: "(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for the taxable year and:

(a) has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter"; and made minor changes in style. Amendment effective December 31, 1991.

Conditional Grandfather Clause for Certain Montana Shareholders of Foreign Corporations That Have Elected Subchapter S. Corporation Status for Federal Tax Purposes: Section 11, Ch. 807, L. 1991, provided: "A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and that has elected subchapter S. corporation status for federal tax purposes may apply 15-30-111(3) as it read in 1989 for all tax years beginning on or before December 31, 1996, if the following conditions are met:

(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of 15-30-111(3) to the taxpayer's facts and circumstances.

(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

1989 Amendment: Inserted (1)(b) and (2)(b) to include, in alternative, a corporation that files copy of federal Subchapter S corporate tax return with tax return filed under this chapter; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 4, Ch. 534, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to all taxable years ending after July 1, 1989."

1983 Amendment: In (1) substituted "has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter has filed a copy thereof with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective" for "does not have:

(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate and other than a trust described in 15-31-207) who is not an individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock"; and in (2) substituted "under Subchapter S" for "under this part" and inserted at end the requirement of filing a copy of the election.

15-30-3302. Income or license tax involving pass-through entities — information returns required.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 6 in (5)(a) near beginning substituted "3rd month" for "4th month"; and in (5)(a)(i), (5)(b)(i), and (5)(c)(i) after "social security" inserted "number". Amendment effective February 13, 2017.

Chapter 268 inserted (6) requiring calculations pursuant to the allocation and apportionment provisions of Title 15, chapter 31, part 3, for certain partnerships, S. corporations, and disregarded entities with business activities occurring within and outside the state. Amendment effective January 1, 2018.

Retroactive Applicability: Section 3, Ch. 6, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

2015 Amendment: Chapter 397 in (5)(d)(i) inserted second sentence limiting penalty to $2,500 per tax period. Amendment effective October 1, 2015.

Applicability: Section 3, Ch. 397, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2011 Amendment: Chapter 269 at beginning of (5)(a) and (5)(b) inserted "Subject to the due date provision in 15-30-2604(1)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2009 Amendment: Chapter 401 inserted (4) providing publicly traded partnerships exemption from paying income taxes; and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 5, Ch. 401, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2003 Amendment: Chapter 225 in first sentence in (2) and in (4)(c)(i), (4)(d)(i), and (4)(d)(ii) before reference to member deleted reference to manager; in (2) in first sentence after "subsection (1)(c)" inserted "the first-tier pass-through entity" and after "individual" inserted "trust, or estate" and inserted second sentence subjecting owner of an entity that is a pass-through entity with Montana source income to taxes; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 143 in (1) at beginning substituted exception clause and (1)(a) providing partnership not subject to taxes imposed by Title 15, chapter 30 or 31, for former text that read: "Individuals carrying on a business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return"; inserted (1)(b) and (1)(c) regarding entities not subject to tax imposed in Title 15, chapter 30 or 31; inserted (2) regarding entities subject to taxes provided in Title 15, chapter 30 or 31; inserted (3) regarding taxation of financial institution; inserted (4) requiring certain entities to file information return; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.9.106 Composite return, withholding, or waiver for partners, shareholders, managers, and members that are second-tier pass-through entities.

ARM 42.9.107 Multitiered pass-through entity structures with Montana source income reporting requirements.

ARM 42.9.108 Inactive pass-through entities.

ARM 42.9.110 Pass-through entities — audit adjustments.

ARM 42.9.111 Pass-through entities — statute of limitations for audit adjustments.

ARM 42.9.112 Apportionable and nonapportionable income — apportionment or allocation — pass-through entities.

ARM 42.9.203 Computation of composite tax.

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.302 Electronic returns required for partnerships having more than 100 members.

ARM 42.9.303 Guaranteed payments to individual partners — sourcing, apportionment, and allocation.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.502 Disregarded entities — sourcing gain or loss on the sale of an interest.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.15.301 Who must file returns.

15-30-3311. Taxation of partners, shareholders, managers, and members.

Compiler's Comments

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.15.301 Who must file returns.

Law Review Articles

Master Limited Partnerships: A Step in the Renewable Direction, Gryder, 81 Mont. L. Rev. 97 (2020).

15-30-3312. Composite returns and tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 701, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

2021 Amendment: Chapter 503 in (1)(a) near beginning after "individual" inserted "a nonresident estate, a nonresident trust"; in (2)(a)(i) near beginning after "using the" substituted "rate" for "rates" and near middle after "subtracting the" substituted text concerning basic standard deduction of a single individual under the Internal Revenue Code for "allowable standard deduction for a single individual and one exemption allowance". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2013 Amendment: Chapter 268 in (5) in second sentence after "15-30-2604" substituted "a corporate income tax return" for "a corporation license tax return" and after "15-31-111, and" substituted "an alternative corporate income tax return" for "a corporation income tax return". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendment: Chapter 594 in (4)(d) after "payments" inserted reference to underpayment interest, substituted "15-30-241(5)(a)" for "15-30-241", and after "computed" substituted "on the composite tax liability" for "separately for each participant". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 225 in (1) and (1)(a) after "shareholder" substituted "member, or other owner" for "manager, or member"; near beginning of (1)(a) after "individual" inserted "a foreign C. corporation, or a pass-through entity"; at end of (5) after "15-30-144" inserted "a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403"; inserted (6)(b) including references to 15-31-101 and 15-31-121; inserted (6)(c) including reference to 15-31-403; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Administrative Rules

Title 42, chapter 9, subchapter 1, ARM Pass-through entities — general.
Title 42, chapter 9, subchapter 2, ARM Composite returns.
ARM 42.9.201 Composite return — election.
ARM 42.9.204 Composite returns — net operating loss.
Title 42, chapter 9, subchapter 3, ARM Partnerships.
Title 42, chapter 9, subchapter 4, ARM S. corporations.
Title 42, chapter 9, subchapter 5, ARM Disregarded entities.
ARM 42.15.301 Who must file returns.

15-30-3313. Consent or withholding — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

2019 Amendment: Chapter 3 in (8)(a)(i) after "social security" inserted "number". Amendment effective October 1, 2019.

2017 Amendment: Chapter 185 in (8)(a)(ii) substituted "an income tax return required under Title 15, chapter 30 or 31" for "a resident individual income tax return"; in (8)(b) inserted definition of domestic C. corporation and in definition of domestic second-tier pass-through entity inserted "domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana or any combination of interests held by resident individuals, domestic C. corporations, or any other entities, organizations, or accounts whose principal place of business or administration is located in the state of Montana"; and made minor changes in style. Amendment effective April 11, 2017.

Retroactive Applicability: Section 3, Ch. 185, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

2015 Amendment: Chapter 397 in (1) substituted "that reports a distributive share of income of $1,000 or more of Montana source income during the tax year to" for "that has" and after "a foreign C. corporation" substituted "or any other entity, organization, or account whose principal place of business or administration is outside the state of Montana or that is itself a pass-through entity" for "or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity"; deleted former (1)(c)(ii) that read: "(ii) file a statement of the pass-through entity partner, shareholder, member, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income tax, corporate income tax, or alternative corporate income tax returns filed with the state"; in (2) at end substituted "the taxpayer's behalf" for "the individual's behalf"; inserted (7)(b), (7)(c), (7)(d), and (8) regarding waivers for pass-through entities, providing a definition of domestic second-tier pass-through entity, and allowing revocation of waivers; inserted (10) providing rulemaking authority; and made minor changes in style. Amendment effective October 1, 2015.

Applicability: Section 3, Ch. 397, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2013 Amendment: Chapter 268 in (1)(b)(ii)(C) after "collection of" substituted "income taxes, corporate income taxes, and alternative corporate income taxes" for "corporation license and income taxes"; in (1)(c)(ii) near end after "individual" substituted "income tax, corporate income tax, or alternative corporate income tax" for "income or corporation license or income tax"; and in (3) near middle substituted "corporate income tax" for "corporation license tax" and substituted "alternative corporate income tax" for "corporation income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2009 Amendment: Chapter 401 inserted (7) regarding exemption for certain publicly traded partnerships from certain income tax requirements; and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 5, Ch. 401, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2003 Amendment: Chapter 225 in middle of (1) and in (5) after "shareholder" deleted "manager"; in (1) after "individual" inserted language regarding foreign C. corporation or pass-through entity with owner who is a nonresident individual; inserted (1)(a) concerning reporting requirements for partner, shareholder, member, or other owner who is a nonresident; at end of (1)(a)(i) after "return" deleted "with respect to the individual nonresident"; inserted (1)(b) concerning reporting requirements for partner, shareholder, member, or other owner that is a foreign C. corporation; inserted (1)(c) concerning reporting requirements for partner, shareholder, member, or other owner that is a pass-through entity or second-tier pass-through entity; inserted second sentence in (2) requiring pass-through entity to furnish a nonresident individual with record of tax paid on individual's behalf; inserted (3) requiring amount paid by pass-through entity on foreign C. corporation to be considered payment for corporation license tax and requiring pass-through entity to provide a foreign C. corporation with record of amount paid; inserted (4) requiring amount paid by pass-through entity as second-tier pass-through entity to be considered payment on account of individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and claimed as distributable share of refundable credit of pass-through entity partner, shareholder, member, or other owner and requiring pass-through entity to provide a second-tier pass-through entity with record of amount paid; in (5) substituted "subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii)" for "subsection (1)(c)"; inserted (6) requiring pass-through entity after notice of failure to file return or pay taxes to remit amount not included in pass-through entity's composite return for nonresident individual and foreign C. corporation; inserted (7) providing that section not intended to modify constitutional or statutory right of taxpayer to petition for fair representation of extent of taxpayer's business activity in Montana; and made minor changes in style. Amendment effective October 1, 2003.

Effective Dates: Section 18(1), Ch. 143, L. 2001, provided that [section 5], the temporary version of this section, is effective October 1, 2001.

Section 18(3), Ch. 143, L. 2001, provided that the permanent version of this section is effective January 1, 2003.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

Termination: Section 20, Ch. 143, L. 2001, provided: "[Section 5] [15-30-1113, the temporary version] terminates December 31, 2002."

Administrative Rules

ARM 42.9.104 Consent, composite return, or withholding for partners, shareholders, managers, and members who are nonresident individuals, estates, or trusts.

ARM 42.9.105 Consent, composite return, or withholding for partners, shareholders, managers, and members that are foreign C corporations.

ARM 42.9.106 Composite return, withholding, or waiver for partners, shareholders, managers, and members that are second-tier pass-through entities.

ARM 42.9.109 Partners, shareholders, managers, and members who are tax-exempt entities.

15-30-3314. Review of pass-through entity taxation by department.

Compiler's Comments

2005 Amendment: Chapter 318 deleted former (2) that read: "(2) The department shall report to the revenue and transportation interim committee at least once each year on the findings and recommendations of the review conducted under subsection (1)"; and made minor changes in style. Amendment effective April 21, 2005.

Effective Date: Section 18(1), Ch. 143, L. 2001, provided that this section is effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

15-30-3315. Electronic partnership return required — waiver — rulemaking.

Compiler's Comments

Severability: Section 3, Ch. 289, L. 2013, was a severability clause.

Effective Date: Section 4, Ch. 289, L. 2013, provided: "[This act] is effective July 1, 2013."

Applicability: Section 5, Ch. 289, L. 2013, provided: "[Section 1] [15-30-3315] applies to tax years beginning after [the effective date of this act]." Effective July 1, 2013.

Administrative Rules

ARM 42.9.302 Electronic returns required for partnerships having more than 100 members.

15-30-3321. Small business option unavailable on dissolution — exception.

Case Notes

Application: This section does not apply to the corporation license tax and therefore does not bar refund of a portion of the corporate license tax paid upon a gain realized by a corporation in the sale of its assets in liquidation. Barth v. St. Bd. of Equalization, 148 M 259, 419 P2d 484 (1966).

15-30-3325. Definitions.

Compiler's Comments

Effective Date: Section 8, Ch. 702, L. 2023, provided that this section is effective on passage and approval. Approved May 19, 2023.

Retroactive Applicability: Section 9, Ch. 702, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

15-30-3326. Pass-through entity tax.

Compiler's Comments

Effective Date: Section 8, Ch. 702, L. 2023, provided that this section is effective on passage and approval. Approved May 19, 2023.

Retroactive Applicability: Section 9, Ch. 702, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

15-30-3327. Making pass-through entity tax election.

Compiler's Comments

Effective Date: Section 8, Ch. 702, L. 2023, provided that this section is effective on passage and approval. Approved May 19, 2023.

Retroactive Applicability: Section 9, Ch. 702, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

15-30-3328. Pass-through entity tax — refundable credit — credit for taxes paid to another state.

Compiler's Comments

Effective Date: Section 8, Ch. 702, L. 2023, provided that this section is effective on passage and approval. Approved May 19, 2023.

Retroactive Applicability: Section 9, Ch. 702, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

Part 34

Partnership Audit Adjustments

Part Compiler's Comments

Effective Date: Section 17, Ch. 108, L. 2021, provided: "[This act] is effective on passage and approval." Approved March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

Part Law Review Articles

Master Limited Partnerships: A Step in the Renewable Direction, Gryder, 81 Mont. L. Rev. 97 (2020).

Part 37

Montana Entrepreneur Magnet Act

Part Compiler's Comments

Effective Date: Section 8, Ch. 458, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 11, 2021.

Retroactive Applicability: Section 9, Ch. 458, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

CHAPTER 31

CORPORATE INCOME TAX OR ALTERNATIVE CORPORATE INCOME TAX

Chapter Compiler's Comments

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Administrative Rules

Title 42, chapter 23, ARM Corporation income tax — general provisions.

Chapter Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Taxation of Montana's Financial Institutions, 1977-1978 Interim Report, Montana Legislative Council.

Montana Corporation License Tax, 1967-1968 Interim Report, Montana Legislative Council.

Montana Taxation, 1965-1966 Interim Report, Montana Legislative Council.

Part 1

Corporate Income Tax Rate and Return

Part Compiler's Comments

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Section Not Codified: Section 84-1519, R.C.M. 1947, which is a repealing and saving clause, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 15, Ch. 166, L. 1933.

15-31-101. Organizations subject to tax — incorporation of terms that mean corporate income tax.

Compiler's Comments

2013 Amendment: Chapter 268 in (3) in first sentence after "state treasurer" substituted "a corporate income tax" for "as a license fee" and in second sentence before "must be" substituted "corporate income tax" for "license fee"; in (4) in first sentence after "Montana" substituted "corporate income tax" for "corporation license tax"; and inserted (5) providing that the use of certain terms means corporate income tax. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2011 Amendment: Chapter 269 in third sentence of (3) following "15-31-502" inserted "and subject to the due date provision in 15-31-111(2)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2005 Amendment: Chapter 163 in (4) deleted former second sentence that read: "A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012." Amendment effective October 1, 2005.

2001 Amendment: Chapter 143 in (1) at end after "or the United States" inserted reference to any limited liability company or other entity that is not a disregarded entity that is treated as an association for tax purposes; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1997 Amendment: Chapter 382 in (3), at end of first sentence after "rate", substituted "set forth in this chapter" for "hereinafter set forth"; in (4) inserted second sentence providing that a chartered foreign capital depository is not subject to the corporation license tax; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 382, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department."

Severability: Section 87, Ch. 382, L. 1997, was a severability clause.

1989 Special Session Amendment: In (3), at beginning of third sentence, inserted exception clause. Amendment effective July 17, 1989.

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

1987 Amendments: Chapter 622 near beginning of (3) changed "33-2-705(6)" to "33-2-705(4)".

Chapter 659 at beginning of (3) substituted "Except as provided in 15-31-103 or 33-2-705(6) or as may be otherwise specifically provided, every corporation" for "Every corporation, except as hereinafter provided and except as provided in 33-2-705(6)".

Part of Section Not Codified: A part of section 84-1501.6, R.C.M. 1947, which provided an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 23, L. 1971.

A part of section 84-1501.7, R.C.M. 1947, which provided an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 3, Ch. 23, L. 1971.

Administrative Rules

ARM 42.9.108 Inactive pass-through entities.

ARM 42.9.109 Partners, shareholders, managers, and members who are tax-exempt entities.

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.23.101 Extent of tax liability.

ARM 42.23.102 Doing or engaging in business defined.

ARM 42.23.103 Exemptions.

ARM 42.23.312 Filing requirements for inactive corporation.

ARM 42.23.702 Taxation of limited liability company.

ARM 42.26.101 Alternative tax.

ARM 42.30.102 Fiduciary — filing requirements.

Case Notes

Imposition of Corporate License Tax on Tribally Chartered Corporation Conducting Business Entirely on Indian Reservation Considered Infringement of Tribal Sovereignty and Self-Government Authority: The Department of Revenue sought to impose the state corporate license tax on Flat Center Farms, Inc. (Flat Center). The District Court found that the tax may not be imposed on an Indian-owned corporation that does business entirely within the boundaries of an Indian reservation. The state appealed, but the Supreme Court affirmed. Flat Center was incorporated pursuant to the laws of Montana and chartered by the Fort Peck Tribe as a tribal corporation, with its sole business activity consisting of farming located entirely within the exterior boundaries of the Fort Peck Reservation. The corporation was wholly Indian owned, the beneficiaries of the corporate income were ultimately Indians, and the assets generating the income were Indian trust lands. The longstanding rule set out in Mescalero Apache Tribe v. Jones, 411 US 145 (1973), is that a state is without power to tax reservation lands and Indian income generated from on-reservation activities without the express authorization of Congress. Further, under Williams v. Lee, 358 US 217 (1959), the exercise of state jurisdiction over activities occurring entirely on Indian lands is an infringement on inherent tribal authority and is contrary to principles of self-government and tribal sovereignty. Nevertheless, the state contended that, as a nontribal member with a corporate identity distinct from its stockholders, Flat Center did not enjoy the shield from state taxation afforded to tribes and tribal members. However, under LaRoque v. St., 178 M 315, 583 P2d 1059 (1978), tribal membership is not essential to a determination of whether income earned on a reservation is taxable. Flat Center did not "carry on business in the state" because all of its activities were conducted in Indian country, so its income was not earned in Montana. The state's taxation authority is statutorily limited based on the situs of the activity from which income is earned. Thus, the District Court correctly concluded that the corporation license tax may not be imposed on a tribally chartered corporation that does business entirely within a reservation. Flat Center Farms, Inc. v. Dept. of Revenue, 2002 MT 140, 310 M 206, 49 P3d 578 (2002).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of 15-31-312 and ARM 42.26.264 expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Interest Income From Federal Obligations — Tax on Privilege and Income: Plaintiffs appealed from a summary judgment granted to defendant. Defendant had included the interest income from investments in several federal obligations in net income for purposes of computing plaintiffs' license tax. The District Court relied on 31 U.S.C. § 742, which contains an exception allowing states to levy a franchise tax on the income from federal obligations. The defendant contended that the Montana corporation license tax is a franchise tax on the privilege of doing business in Montana, with the tax based upon or measured by the net income of the taxpayer. The Supreme Court held that the tax is on the privilege and the net income. Defendant was attempting to tax indirectly income that it could not tax directly. The interest income from exempt federal obligations was not includable in net income for the purpose of calculating the Montana corporation license tax. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Value of Federal Obligations Deductible Under Bank Shares Tax: Under former law, neither the applicable Montana statutes nor administrative regulations expressly authorized a deduction for the value of federal obligations in computing the bank shares tax. However, the Montana statute must be construed as permitting such deduction and administrative regulations to the contrary must fall. Any other construction would violate the federal exemption statute and be unconstitutional under the Supremacy Clause of the United States Constitution. Mont. Bankers Ass'n v. Dept. of Revenue, 177 M 112, 580 P2d 909 (1978). However, see Mont. Bank of Roundup v. County Bd. of Comm'rs, 248 M 199, 810 P2d 1192, 48 St. Rep. 392 (1991), wherein it was held that under the doctrine of nonretroactivity, the exemption for federal obligations does not apply prior to 1978.

Tax Unenforceable Against Banks During 1972: Under former federal law, the state was precluded from collecting the corporation license tax on national banks during 1972, and since the intent of the Legislature in enacting a predecessor to this statute was to treat state and national banks equally, the state was also precluded from collecting the license tax from state banks during that year. Sec. Bank & Trust Co. v. Connors, 170 M 59, 550 P2d 1313 (1976).

Sale of Assets in Liquidation: Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. St. Bd. of Equalization, 148 M 259, 419 P2d 484 (1966).

Livestock Production Credit Association: When "Class A" stock that had been federally owned was retired and control of production credit association passed completely into the hands of individual stockholders, then the association ceased to be an instrumentality of the United States as provided under 12 U.S.C., section 1138c, and became subject to the state corporation license tax. Mont. Livestock Prod. Credit Ass'n v. St., 143 M 578, 393 P2d 50 (1964).

No Conflict With Property Tax: Under former law, there was no conflict between this section and 15-24-801, since they dealt with separate and distinct taxes. Home Bldg. & Loan Ass'n v. Fulton, 141 M 113, 375 P2d 312 (1962).

Interest on United States Obligations: Under the wording of this section prior to the 1974 amendment, interest on the obligations of the United States was included in computing the corporate license tax since the United States is a "resident" within the meaning of the former provision fixing the tax at a percentage of the net income received "from all sources within the state". Mont. Bank v. Casey, 135 M 104, 337 P2d 935 (1959).

Interest-Bearing Obligations of Nonresidents: Under the wording of this section prior to the 1974 amendment, which imposed the tax upon the net income received by domestic insurance company "from all sources, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise" of the state, interest accruing on obligations of nonresidents was excluded. Mont. Life Ins. Co v. Shannon, 106 M 500, 78 P2d 946 (1938).

Income From Lease on Indian Land: A corporation extracting oil from lands within the Blackfeet Indian Reservation under lease given by the tribe was subject to the payment of corporation license tax. British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936). See also Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 101 M 268, 54 P2d 117 (1936).

Constitutionality: Chapter 79, L. 1917, was not unconstitutional because of alleged discrimination between corporations whose business is wholly within this state and those whose business is not wholly within this state, such discrimination being necessary to attain reasonable equality of burdens between the two. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

Applicable to Every Corporation: The purpose of Ch. 79, L. 1917, being the imposition of a license fee of 1% upon the net income of every corporation in the state for the privilege of doing business as such, without regard to the character of the business, insurance corporations were intended to be within its purview. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

Effect of Other State Fees — No Double Taxation: Chapter 79, L. 1917, did not operate to repeal section 40-1302, R.C.M. 1947 (now repealed), requiring insurance corporations to pay certain license fees before commencing to do business in this state. The license fee required of insurance corporations by Ch. 79, L. 1917, and section 40-1302, R.C.M. 1947 (now repealed), did not constitute a case of double taxation, the impositions, though upon the same persons, not being for the same thing. Equitable Life Assurance Co. v. Hart, 55 M 76, 173 P 1062 (1918).

15-31-102. Organizations exempt from tax — unrelated business income not exempt.

Compiler's Comments

2013 Amendment: Chapter 268 in (2) after "determining the" substituted "corporate income tax imposed" for "license fee to be paid"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendment: Chapter 163 deleted former (1)(o) that read: "(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 114 in (1)(n) inserted "section 584(a) of the Internal Revenue Code"; and in (3) near beginning after "Internal Revenue Code" deleted "of 1954". Amendment effective October 1, 2003.

1997 Amendments — Composite Section: Chapter 42 in (1)(l) and (3) inserted parenthetical references to United States Code sections of the Internal Revenue Code; in (3) substituted "unrelated business taxable income" for "unrelated business income"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 368 inserted (1)(n) regarding a common trust fund; and made minor changes in style. Amendment effective April 23, 1997.

Chapter 382 inserted (1)(o) regarding a foreign capital depository; and made minor changes in style.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

1997 Statement of Intent: See statement of intent attached to Ch. 382, L. 1997, under compiler's comments to 15-31-101.

Effective Date — Retroactive Applicability: Section 2, Ch. 368, L. 1997, provided: "[This act] is effective on passage and approval [approved April 23, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1985 Amendment: Inserted (1)(m) exempting farmers' market associations.

1981 Amendment: Inserted (1)(l) exempting DISC corporations with valid IRC section 991 elections.

Administrative Rules

ARM 42.23.103 Exemptions.

ARM 42.30.102 Fiduciary — filing requirements.

Case Notes

Church Society Engaged in Agriculture Not Exempt: A corporation described as an international church society which devotes itself to farming, stock growing, and all other branches of agriculture, in which members live communal lives in colonies, which is devoted exclusively to agricultural pursuits for the livelihood of its members, and in which income is used to provide for the needs of its members and for the acquisition of additional property, is not exempt from the corporation license tax on the basis of the exemption granted to corporations organized exclusively for religious purposes or the exemption to corporations exclusively organized for holding title to and collecting income from property, or under the exemption granted to labor, agricultural, or horticultural organizations. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

15-31-103. Research and development firms exempt from taxation — application.

Compiler's Comments

2019 Amendment: Chapter 271 in (2)(b)(ii) at end after "incorporation" deleted "in 35-1-216"; and in (2)(b)(iv) after "secretary of state" deleted "as required in 35-1-215". Amendment effective June 1, 2020.

2007 Amendment: Chapter 240 substituted (2)(b)(iii) concerning information required by 35-7-105(1) for former text that read: "the address of its initial registered office required for the purpose of incorporation as required in 35-1-216"; and made minor changes in style. Amendment effective October 1, 2008.

1991 Amendment: At end of (2)(b)(ii) and (2)(b)(iii) substituted "35-1-216" for "35-1-202"; and at end of (2)(b)(iv) substituted "35-1-215" for "35-1-203". Amendment effective January 1, 1992.

Administrative Rules

ARM 42.23.112 Research and development — application and eligibility.

ARM 42.23.113 Research and development firm — exemption period.

ARM 42.23.114 Reorganizations.

ARM 42.23.116 Unrelated income.

15-31-110. Electronic corporate income tax return required — waiver — rulemaking.

Compiler's Comments

Effective Date: Section 3, Ch. 225, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 24, 2023.

Applicability: Section 4, Ch. 225, L. 2023, provided: "[This act] applies to tax periods beginning after December 31, 2022."

15-31-111. Return to be filed — penalty and interest.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) in first sentence before "imposed" substituted "corporate income tax" for "license tax"; and in (4) in first sentence before "imposed" and in second sentence before "due" substituted "corporate income tax" for "license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2011 Amendment: Chapter 269 at beginning of (2)(a) inserted exception clause; inserted (2)(b) regarding filing when due date falls on holiday or when taxpayers are affected by disaster; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2005 Amendment: Chapter 594 in (1) in second sentence after "income" substituted "disclosed by the return" for "returned"; in (3)(a) in second and third sentences inserted reference to penalty and at end of third sentence substituted "15-31-510(2)" for "15-31-510"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1997 Amendment: Chapter 51 in (3)(a), in second sentence at end, substituted "15-31-510" for "15-31-510(3)". Amendment effective March 13, 1997.

1995 Amendment: Chapter 54 throughout section substituted "license tax" for "license fee"; in (3)(a) substituted second and third sentences regarding payment of tax and interest for former second sentence that read: "The application is to be made on such forms as the department shall prescribe"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 54, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Administrative Rules

ARM 42.9.301 Pass-through entity information returns for partnerships.

ARM 42.9.401 Pass-through entity information returns for S. corporations.

ARM 42.9.501 Pass-through entity information returns for single-member LLC treated as disregarded entity.

ARM 42.9.510 Pass-through entity information returns for partnerships electing IRC 761.

ARM 42.9.520 Pass-through entity information returns for qualified subchapter S. subsidiaries.

ARM 42.9.530 Pass-through entity information returns for qualified REIT subsidiaries.

ARM 42.9.540 Pass-through entity returns for REMIC.

ARM 42.23.301 Period covered by return.

ARM 42.23.302 Extension of filing time.

ARM 42.23.312 Filing requirements for inactive corporations.

Case Notes

Statute of Limitations Applicable to Claims for Corporate License Tax Refunds: The statutory time limit within which to claim a refund of corporate license taxes, as provided in 15-31-509, begins running on the date established in subsection (2) of this section. Although this section allows a taxpayer to automatically extend for up to 6 months the period of time for filing, the extension is not included in determining when the limitations period begins to run. The extension simply gives the taxpayer additional time to prepare the return; it does not change the day prescribed for filing the return. Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460, 48 St. Rep. 569 (1991).

Power of Corporation Failing to Comply: The fact that a corporation does not comply with this section and has ceased to do business does not prevent it from redeeming its property sold at delinquent tax sale. Stensvad v. Ottman, 123 M 158, 208 P2d 507 (1949).

15-31-112. Taxable period.

Compiler's Comments

2013 Amendment: Chapter 268 in first sentence near beginning substituted "corporate income tax must" for "license fee shall"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

15-31-113. Gross income and net income.

Compiler's Comments

2013 Amendment: Chapter 268 in (1)(a)(ii) near middle after "income or" substituted "corporate income tax" for "license tax"; and in (3) in three places substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

1995 Amendment: Chapter 278 in (1)(a)(i), at end, inserted "and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered"; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1981 Amendment: In (1)(a) substituted "including" for "but shall include"; inserted subsection (1)(a)(ii) including gain from liquidation of corporations not recognized under federal law; and inserted subsection (1)(b) excluding gain from liquidation of corporations recognized under federal law.

Statement of Intent: The statement of intent attached to HB 415 (Ch. 483, L. 1981) provided: "House Bill 415 is intended to address a problem that arises under the Montana individual income tax laws and corporation license and income tax laws due to the relationship between the Montana adjusted gross income under the federal income tax laws. Under present law the liquidation of a corporation holding property in Montana can cause gain on the sale of the property to pass through to the stockholders of the corporation. If the stockholders are not subject to Montana tax on this gain passing through, the state loses the revenue on what is essentially a state transaction, namely the sale of Montana property. This result occurs because of operation of the federal tax laws relating to corporation liquidations. House Bill 415 addresses this situation by requiring the liquidating corporation to recognize that portion of the gain from a corporate liquidation under sections 331 or 337 [331 through 337] of the Internal Revenue Code that passes through to stockholders, either individual or corporate, who are not subject to Montana tax, either individual income tax or corporate license tax, on the gain passed through pursuant to federal law. Because the provisions of House Bill 415 require recognition of gain at the corporate level, it is also necessary to remove this gain from the income of the stockholders, in order to avoid the possibility of double taxation.

For the example we have a corporation L that owns property in Montana. The stockholders of L are an out-of-state corporation, S; an out-of-state individual, I; and a resident individual, R, each with an equal interest. Corporation L sells the property with a gain of $3,000,000 and liquidates pursuant to sections 331 through 337 of the Internal Revenue Code. Under present law, R, as a resident, would pay tax on $1,000,000, but S and I would not be subject to Montana tax on the $1,000,000 passing through to them pursuant to federal law. Corporation L would not be subject to Montana tax. Under House Bill 415, R would remain subject to tax on $1,000,000, but Corporation L would now become subject to tax on the $2,000,000 (that portion of the gain passing through to persons not subject to Montana income or license tax)."

Administrative Rules

ARM 42.23.106 Treatment of gains from certain liquidation.

Case Notes

Dividend Deduction Not Prohibited by Amendment — Incorporation of Federal Law: Where the appellants, six holding companies, each owning 80% or more of the voting stock of a commercial bank, appealed a decision of the District Court reversing a decision of the State Tax Appeal Board (now Montana Tax Appeal Board) allowing the appellants to deduct the dividends received from their subsidiaries, the Supreme Court held that a 1973 amendment to the corporation license tax law did not alter the interrelationship found to exist in such cases as Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972), between the corporation license tax law and the Internal Revenue Code. The deductions claimed by the appellants are allowed by the Internal Revenue Code, which has been incorporated by reference into the corporation license tax law. Because those deductions are not specifically prohibited by that law, they must be allowed. Baker Bancorporation, Inc. v. Dept. of Revenue, 202 M 94, 657 P2d 89, 39 St. Rep. 2350 (1982).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Cooperative Corporations — Patronage Dividends: Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Ass'n, 140 M 523, 374 P2d 231 (1962).

15-31-114. Deductions allowed in computing income.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 157, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 268 in (1)(c) in third sentence before "purposes" substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2003 Amendments — Composite Section: Chapter 114 in (1)(g) near end inserted "26 U.S.C. 170"; and in (3) near beginning substituted "851(g)" for "851(h)" and after references to Internal Revenue Code inserted references to U.S.C. sections. Amendment effective October 1, 2003.

Chapter 482 in (1)(g)(i) near middle after "subsection (1)(g)(ii)" inserted "or (1)(g)(iii)"; inserted (1)(g)(iii) providing that only a qualified charitable gift annuity, as defined in 33-20-701, is deductible; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 11, Ch. 482, L. 2003, provided: "[This act] applies to charitable contributions made after [the effective date of this act]." Effective April 24, 2003.

2001 Amendment: Chapter 574 inserted (1)(h) concerning per capita livestock fees; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 278 inserted (3) regarding allowable deductions for certain dividends paid by a regulated investment company or fund; adjusted subsection references; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1989 Amendments: Chapter 538 at end of (2)(b) substituted reference to 15-31-119 for language stating method of computing net operating loss deduction (see 1987 MCA for text). Amendment effective April 14, 1989.

Chapter 617 in (2)(a) inserted last sentence prohibiting depreciation or amortization deduction on title plant as defined in 33-25-105(15).

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Applicability: Section 6, Ch. 617, L. 1989, provided: "[This act] applies to taxable years beginning after December 31, 1989."

1987 Amendment: Deleted former (6) that read: "(6) Light vehicle license fees, as provided by 61-3-532, and fees in lieu of taxes for motorcycles and quadricycles, as provided by 61-3-541, paid within the year"; and made corresponding changes to internal references.

1985 Amendment: In (6) after "61-3-532", inserted "and fees in lieu of taxes for motorcycles and quadricycles, as provided by 61-3-541" (effective January 1, 1986).

1983 Amendment: Inserted (9) allowing a deduction for computer equipment donated to Montana schools.

1981 Amendments: Chapter 574 inserted (8) allowing charitable contribution deduction.

Chapter 614 inserted (6) allowing deduction for light vehicle license fees.

Administrative Rules

Title 42, chapter 23, subchapter 4, ARM Deductions.
ARM 42.23.418 Deductions for corporate donations of computer equipment to schools.
ARM 42.23.801 Net operating losses.
ARM 42.23.804 Treatment of mergers and consolidations.

Case Notes

Premerger Net Operating Loss Deduction by Corporation — Prohibition Constitutional: Petitioner GBN appealed from a District Court order upholding a decision by the Department of Revenue, which, pursuant to this section (prior to 1989 amendment), disallowed a deduction from taxable income by the surviving corporation of the net operating losses sustained by the merged corporations prior to the date of the merger. The Supreme Court held that the provision was a reasonable tax classification that did not unconstitutionally discriminate against the surviving corporation in a merger of corporations. The provision applied equally to all entities falling within the same classification and prevented all merged corporations from deducting premerger net operating losses. GBN, Inc. v. Dept. of Revenue, 249 M 261, 815 P2d 595, 48 St. Rep. 715 (1991).

Multistate Taxpayers Engaged in Unitary Business: The Supreme Court held that when corporate taxpayers are engaged in a unitary business, sales by the corporation of temporary cash investments are not to be reported by them for Montana's corporation license tax or income tax purposes as included in gross sales; except for the net gain from such sales, the total amounts of these sales should be excluded from the formula determining the unitary business's income for corporation license tax reporting. Am. Tel. & Tel. Co. v. St. Tax Appeal Bd., 241 M 440, 787 P2d 754, 47 St. Rep. 403 (1990).

Retroactive Calculation of Tax — Unconstitutional: Plaintiffs contended that a change in net operating loss law was unconstitutionally retroactive. Plaintiff, Havre Federal Savings and Loan Association, had incurred a net operating loss in each of the 5 years from 1974 through 1978. The challenged portion of the statute was enacted in 1979. Under the previous law, the plaintiff carried forward its net operating losses and applied them to its 1979 return, which resulted in no net income for that year. The Department of Revenue, acting under the authority of the challenged subsection, recalculated plaintiff's net income for the years 1974 through 1978, which resulted in no net operating losses to carry forward. The Supreme Court held that the change in law was retroactive in effect and therefore unconstitutional. The State cannot change a law in 1979 and compel a recalculation of tax returns filed for 1974 through 1978 based on the new law effective for the first time in 1979. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Bond Reserve Account Disallowed Under Bank Shares Tax: Under former law, when bank had suffered no actual loss in its bond account, or actively traded or sold its bonds, it was improper for the bank to create a reserve for possible bond losses and segregate this amount from its undivided profits for bank shares tax purposes, as a bank may not claim a deduction for a bond loss reserve account on the principle that a liability does not accrue as long as it remains contingent. Mont. Nat'l Bank of Roundup v. Dept. of Revenue, 167 M 429, 539 P2d 722 (1975).

Bad Debt as Loss — Deduction — Reserve: A bad debt sustained and charged off within a year is a loss under this section. Although federal law authorizes a deduction from gross income for a reserve for bad debts, when the Code attempted to specifically deal with a particular deduction and restricted bad debt deductions to only those sustained and charged off within a year, there could be no deduction by a bank of a bad debt reserve. First Fed. S & L Ass'n v. St. Tax Appeal Bd., 167 M 33, 535 P2d 183 (1975).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Dividends of Building and Loan Associations: Dividends paid by building and loan associations are deductible from gross income in determining corporation license taxes. Home Bldg. & Loan Ass'n v. Fulton, 141 M 113, 375 P2d 312 (1962).

Cooperative Corporations — Patronage Dividends:
Cooperative corporations doing business in Montana and subject to corporation license tax may exclude or deduct from gross income any amounts paid as patronage dividends. Fulton v. Farmers Union Grain Terminal Ass'n, 140 M 523, 374 P2d 231 (1962).

Dividends paid on capital stock outstanding are not a proper deduction in determining the net income of a cooperative association organized under Title 35, ch. 15, for taxation purposes, such dividends being neither an expense nor a payment of interest on indebtedness, but patronage dividends which it must pay under 35-15-411 in apportioning its earnings, are in effect refunds or rebates to customers whether stockholders or not, and are to be treated as a necessary expense in computing net income upon which to pay a license tax. Gallatin Farmers Co. v. Shannon, 109 M 155, 93 P2d 953 (1939).

Deduction of Refund to Government: When a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an allowable deduction as an expense incurred in computing the state corporation license tax of the contractor on the accrual basis although the exact amount was not known or presently due during the taxable year but such amount was determined later and the adjustment made. Birch & Sons Constr. Co. v. Porter, 117 M 232, 157 P2d 777 (1945).

Accounting Methods: Keeping accounts and making returns on the accrual basis, as distinguished from cash basis, import that it is the right to receive and not the actual receipt that determines inclusion of the amount in gross income. Birch & Sons Constr. Co. v. Porter, 117 M 232, 157 P 777 (1945).

Doing Business in State: Under former law, a Minnesota corporation engaged in the coal mining business in Montana was entitled to certain deductions under section 2297, R.C.M. 1921, although it maintained its general office in Minneapolis, where the meetings of the stockholders and directors were held and from where the business was directed, to which office money was sent for deposit and where it received interest and dividends from invested funds and disbursed same to its stockholders. The State Treasurer was in error in claiming that the corporation, by reason of the above facts, was partly engaged in business in Montana and partly in Minnesota, and therefore subject to a higher fee. Cottonwood Coal Co. v. Junod, 73 M 392, 236 P 1080 (1925).

15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporate income tax purposes.

Compiler's Comments

2013 Amendment: Chapter 268 at end substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendment: Chapter 130 deleted former second sentence that read: "Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax." Amendment effective October 1, 2005.

Preamble: The preamble to Ch. 673, L. 1983, provided: "WHEREAS, the Montana Corporation License Tax Act (Title 15, chapter 31, part 1) was intended, after the enactment of Chapter 634, Laws of 1979, to require all corporations to report and pay a tax upon all income derived from obligations of the United States or its agencies or instrumentalities as permitted by Title 31, section 742, United States Code; and

WHEREAS, the Montana Supreme Court on September 23, 1982 (petition for rehearing denied December 6, 1982), decided in the case cited below that such income must be excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana Supreme Court's decision in the case of First Federal Savings and Loan Association, a Federally Chartered Association, et al., Plaintiffs and Appellants v. Department of Revenue, et al., Defendants and Respondents, Cause No. 81-528, and has filed, through its Revenue Oversight Committee, an Amicus Curiae brief in support of the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking to have the United States Supreme Court review the matter, and at this time other decisions are also being reviewed by the United States Supreme Court that might have a bearing on the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the taxability of such income and claims for refund of tax and returns of income will be made by corporations based upon the exclusion of such income; and

WHEREAS, the Legislature desires to maintain approximately the current level of revenue to state and local government; and

WHEREAS, immediate legislative action is necessary.

THEREFORE, it is the intent of the Legislature to proportionately reduce the allowable deductions to all corporations for all taxable periods for which interest income is excluded or claim for refund of tax is made upon such exclusion under claim of right under federal law."

Retroactive Effect: Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Sections 1 and 3 of this act [codified to 15-31-115 and 15-31-116 (15-31-116 now repealed)] apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law."

Case Notes

Interest Income From Federal Obligations — Tax on Privilege and Income: Plaintiffs appealed from a summary judgment granted to defendant. Defendant had included the interest income from investments in several federal obligations in net income for purposes of computing plaintiffs' license tax. The District Court relied on 31 U.S.C. § 742, which contains an exception allowing states to levy a franchise tax on the income from federal obligations. The defendant contended that the Montana corporation license tax is a franchise tax on the privilege of doing business in Montana, with the tax based upon or measured by the net income of the taxpayer. The Supreme Court held that the tax is on the privilege and the net income. Defendant was attempting to tax indirectly income that it could not tax directly. The interest income from exempt federal obligations was not includable in net income for the purpose of calculating the Montana corporation license tax. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

15-31-117. Tax deductibility.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) and (2) substituted "corporate income tax or alternative corporate income tax" for "corporate license tax or corporate income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Administrative Rules

ARM 42.15.526 Small business liability funds.

15-31-118. Taxable liability on termination of independent liability fund.

Compiler's Comments

2001 Amendment: Chapter 111 substituted "33-27-119(3)" for "33-27-119(2)". Amendment effective October 1, 2001.

Administrative Rules

ARM 42.15.526 Small business liability funds.

15-31-119. Net operating losses — carryovers and carrybacks — limit.

Compiler's Comments

2017 Amendment: Chapter 409 throughout section substituted "tax period" for "taxable period"; in (3) substituted "ending before January 1, 2018" for "beginning after December 31, 1970" and at end substituted "seven tax periods" for "five taxable periods"; in (4) substituted "tax period beginning after December 31, 2017" for "taxable period ending after December 31, 1975", after "carryover to each of the" substituted "10 tax periods" for "seven taxable periods", and inserted last sentence limiting amount of a net operating loss carryback to $500,000 per tax period; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 2, Ch. 409, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

1995 Amendment: Chapter 278 in (6)(c) and (10) deleted obsolete dates; inserted (12) disallowing the net operating loss deduction in the case of a regulated investment company or fund; and made minor changes in style. Amendment effective March 29, 1995.

Effective Date — Retroactive Applicability: Section 5, Ch. 278, L. 1995, provided: "[This act] is effective on passage and approval [approved March 29, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

Administrative Rules

ARM 42.23.802 Carryover of net operating losses.
ARM 42.23.803 Filing in connection with net operating losses.
ARM 42.23.805 Treatment of net operating losses spanning a change in reporting methods.

Case Notes

Premerger Net Operating Loss Deduction by Corporation — Prohibition Constitutional: Petitioner GBN appealed from a District Court order upholding a decision by the Department of Revenue, which, pursuant to 15-31-114 (prior to 1989 amendment), disallowed a deduction from taxable income by the surviving corporation of the net operating losses sustained by the merged corporations prior to the date of the merger. The Supreme Court held that the provision was a reasonable tax classification that did not unconstitutionally discriminate against the surviving corporation in a merger of corporations. The provision applied equally to all entities falling within the same classification and prevented all merged corporations from deducting premerger net operating losses. GBN, Inc. v. Dept. of Revenue, 249 M 261, 815 P2d 595, 48 St. Rep. 715 (1991).

Retroactive Calculation of Tax — Unconstitutional: Plaintiffs contended that a change in net operating loss law was unconstitutionally retroactive. Plaintiff, Havre Federal Savings and Loan Association, had incurred a net operating loss in each of the 5 years from 1974 through 1978. The challenged portion of the statute was enacted in 1979. Under the previous law, the plaintiff carried forward its net operating losses and applied them to its 1979 return, which resulted in no net income for that year. The Department of Revenue, acting under the authority of the challenged subsection, recalculated plaintiff's net income for the years 1974 through 1978, which resulted in no net operating losses to carry forward. The Supreme Court held that the change in law was retroactive in effect and therefore unconstitutional. The State cannot change a law in 1979 and compel a recalculation of tax returns filed for 1974 through 1978 based on the new law effective for the first time in 1979. First Fed. S&L Ass'n v. Dept. of Revenue, 200 M 358, 654 P2d 496, 39 St. Rep. 1802 (1982).

Net Operating Loss — Incorporation of Federal Law: Prior to the 1971 amendment to 15-31-114 that specifically provided for a net operating loss deduction, a net operating loss deduction was allowable since 15-31-113 incorporates section 172 of the Federal Internal Revenue Code for the purposes of determining net income. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

Net Operating Loss — No Retroactive Repeal: The 1971 amendment to 15-31-114 did not retroactively repeal the net operating loss deduction allowed under the definition of net income in 15-31-113. Lazy JD Cattle Co. v. St. Bd. of Equalization, 161 M 40, 504 P2d 287 (1972).

15-31-121. Rate of tax — minimum tax — distribution of revenue.

Compiler's Comments

2009 Amendment: Chapter 2 deleted former (4) that read: "(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:

(a) $375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and

(b) the balance in the state general fund". Amendment effective October 1, 2009.

2003 Amendment: Chapter 521 inserted (4) providing that portion of tax collections from water's-edge corporations be allocated to department of public health and human services for fiscal year 2005; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

1999 Amendment: Chapter 51 in (1) deleted second and third sentences that read: "The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971"; deleted former (4) that read: "(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state"; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, in (4) substituted "for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7%" for "for tax year 1988, 4%"; and inserted (5) concerning deposit of surtax proceeds.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Retroactive Applicability — Termination: Section 39(1), Ch. 15, Sp. L. July 1992, provided that this section applies to tax years beginning after December 31, 1991, and before January 1, 1994. This section terminates upon receipt of taxes for tax year 1993.

1989 Special Session Amendment: In (4) substituted "as a surtax, 5%" for "as a surtax for tax year 1988, 4%". Amendment effective August 11, 1989, and terminates January 1, 1991.

Applicability — Termination: (1) Section 99(4), Ch. 11, Sp. L. June 1989, provided that this section applies to tax years and tax revenues collected on or after January 1, 1990.

(2) Section 102, Ch. 11, Sp. L. June 1989, provided that the amendment to this section terminates January 1, 1991.

1987 Amendment: At beginning of (1) inserted exception clause and in second sentence substituted "subsection (1)" for "part"; inserted (2) relating to tax rate for water's-edge election; and inserted (4) relating to surtax. Amendment applicable to taxable years beginning after December 31, 1987.

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.9.203 Computation of composite tax.

ARM 42.23.101 Extent of tax liability.

15-31-122. Alternative gross sales tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

Administrative Rules

ARM 42.26.101 Alternative tax.

15-31-141. Consolidated returns — computation and procedure — penalty and interest.

Compiler's Comments

2011 Amendment: Chapter 269 in (6)(a) at beginning of second sentence inserted "Subject to the due date provision in 15-31-111(2)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

2005 Amendment: Chapter 594 in (6)(b)(i) in second and third sentences inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 124 in (6)(a) in first and second sentences substituted "tax period" for "taxable year"; substituted (6)(b)(i) allowing affiliated group filing consolidated return an automatic 6-month time extension for filing return, requiring tax and interest to be paid when return is filed, and requiring interest to be added as statutorily provided for former language that read: "A 1-month to 6-month extension of time is automatically allowed for filing a return if on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department"; inserted (6)(b)(ii) authorizing department to grant additional time extension for filing tax return whenever department judges good cause exists; and made minor changes in style. Amendment effective March 25, 2003.

Applicability: Section 3, Ch. 124, L. 2003, provided: "[This act] applies to tax returns due after [the effective date of this act]." Effective March 25, 2003.

1997 Amendment: Chapter 369 in (2), at end of first sentence after "department", deleted "of revenue"; in (2)(b), near beginning after "group", deleted "are incorporated and"; deleted former (6) that read: "(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section"; and made minor changes in style. Amendment effective April 23, 1997.

Retroactive Applicability: Section 4(2), Ch. 369, L. 1997, provided: "[Section 1] [amending 15-31-141] applies retroactively, within the meaning of 1-2-109, to tax years after December 31, 1996."

1991 Amendment: Inserted (7) providing a procedure for filing a short-period corporation license tax return by corporations permitted to file a consolidated return. Amendment effective March 18, 1991.

Retroactive Applicability: Section 2, Ch. 86, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

1987 Amendment: In (2), near middle of first sentence, inserted exception clause; inserted (2)(b) relating to corporations in affiliated group operating exclusively in Montana; inserted (3) regarding binding nature of election; in (6)(b) changed reference to subsection (5)(a) to reference to subsection (6)(a); and made minor changes in phraseology.

Applicability of Subsection (5): Section 6, Ch. 673, L. 1983, provided, in pertinent part: "Section 2 of this act [codified as 15-31-141(5)] applies to taxable periods beginning after December 31, 1982."

Administrative Rules

ARM 42.23.311 Filing requirements upon merger or consolidation.

Case Notes

Consolidated Returns — Discretion: The plaintiffs, parent-subsidiary corporations, were not conducting a unitary business as defined by this section. Furthermore, since this section is permissive rather than mandatory, defendant did not abuse its discretion in denying a request for permission to file a consolidated return. Baker Nat'l Ins. Agency v. Dept. of Revenue, 175 M 9, 571 P2d 1156 (1977).

15-31-142. Reports upon merger of corporations.

Administrative Rules

ARM 42.23.311 Filing requirements upon merger or consolidation.

15-31-143. Return and payment on corporate dissolution.

Compiler's Comments

2013 Amendment: Chapter 268 in (2) in two places substituted "corporate income" for "corporation license". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

1999 Amendment: Chapter 69 in (1) at beginning of first sentence substituted "Each corporation" for "It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation"; in (2) substituted "ceases to do business in Montana shall, upon the dissolution" for "cease to do business in Montana at any time during any year shall, before such dissolution"; and made minor changes in style. Amendment effective March 15, 1999.

Administrative Rules

ARM 42.23.313 Filing requirements upon dissolution, withdrawal, or cessation of business.

Case Notes

Period Covered by Tax: Under former law, when foreign corporation engaged in business in the state from April 1934, continuously until December 1937, when it ceased doing business, having paid the corporation license tax fee in 1935, 1936, and 1937, refusing to pay in 1938 on the ground that its 1937 payment was for 1937, the state erroneously contended the 1937 payment was for 1936. Under this section (before amendment), the tax is an excise or license and not an income tax, the tax paid in 1937 being for the year 1937 measured by the company's business done in 1936, and not having done any business in 1938 it owed nothing to the state. St. v. J. C. Maguire Constr. Co., 113 M 324, 125 P2d 433 (1942).

15-31-151. Credit for preservation of historic buildings.

Compiler's Comments

Applicability: Section 4, Ch. 545, L. 1997, provided: "[Sections 1 and 2] [15-31-151 and 15-30-180] apply to tax years beginning after December 31, 1997."

Administrative Rules

ARM 42.4.2902 Computation of tax credit for preservation of historic properties.

ARM 42.4.2903 Computation of tax credit for preservation of historic property for married taxpayers.

ARM 42.4.2904 Ownership of historic property.

ARM 42.4.2905 Claiming the historic preservation credit.

15-31-158. Credit for providing supplemental funding to public schools — corporate tax credit — innovative educational program.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

15-31-159. Qualified education corporate credit for contributions to student scholarship organization.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

Law Review Articles

Espinoza v. Montana Department of Revenue: Pulling Back the Curtain on Tax Expenditure Spending, Lindberg, 82 Mont. L. Rev. 211 (2021).

Montana's Constitutional Prohibition on Aid to Sectarian Schools: "Badge of Bigotry" or National Model for the Separation of Church and State?, Dougherty, 77 Mont. L. Rev. 41 (2016).

15-31-161. Credit for contribution by corporations to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 690, L. 2023. Amendment effective January 1, 2024.

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

2013 Amendment: Chapter 268 in (2)(a) at end substituted "corporate income tax or alternative corporate income tax" for "corporation license tax or corporation income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

Extension of Termination Date: Sections 2 through 4, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 266, L. 2001, and sec. 7, Ch. 4, L. 2005, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

Termination: Section 7(2), Ch. 208, L. 2007, provided: "Sections 1 through 4, Chapter 226, Laws of 2001 [amending 15-30-165, 15-30-166, 15-31-161, and 15-31-162], terminate December 31, 2013." Effective April 17, 2007.

2005 Amendment: Chapter 4 inserted (2) regarding requirements if a charitable gift is recovered by a corporation during any tax year; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in first sentence reduced percentage of gift credit from 20% to 13.3% and in second sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in first sentence increased percentage of gift credit from 20% to 26.7% and in second sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near middle of first sentence after "equal to" substituted "20% of a charitable gift" for "50% of a charitable gift". Amendment effective October 1, 2001.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Preamble: The preamble attached to Ch. 537, L. 1997, provided: "WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act] [15-30-166, 15-30-167, 15-31-161, and 15-31-162], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

15-31-162. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment — recapture of credit — deduction included as income.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 690, L. 2023. Amendment effective January 1, 2024.

Termination Provision Repealed: Section 5, Ch. 690, L. 2023, repealed sec. 9, Ch. 537, L. 1997; sec. 5, Ch. 226, L. 2001; sec. 7, Ch. 4, L. 2005; sec. 2, Ch. 208, L. 2007, sec. 3, Ch. 208, L. 2007, sec. 4, Ch. 208, L. 2007, and sec. 7, Ch. 208, L. 2007; sec. 2, Ch. 317, L. 2013, sec. 3, Ch. 317, L. 2013, sec. 4, Ch. 317, L. 2013, sec. 5, Ch. 317, L. 2013, sec. 6, Ch. 317, L. 2013, sec. 7, Ch. 317, L. 2013, sec. 8, Ch. 317, L. 2013, and sec. 11, Ch. 317, L. 2013; and sec. 1, Ch. 254, L. 2019, sec. 2, Ch. 254, L. 2019, sec. 3, Ch. 254, L. 2019, sec. 4, Ch. 254, L. 2019, sec. 5, Ch. 254, L. 2019, sec. 6, Ch. 254, L. 2019, sec. 7, Ch. 254, L. 2019, sec. 8, Ch. 254, L. 2019, sec. 9, Ch. 254, L. 2019, sec. 10, Ch. 254, L. 2019, sec. 11, Ch. 254, L. 2019, sec. 12, Ch. 254, L. 2019, sec. 13, Ch. 254, L. 2019, sec. 14, Ch. 254, L. 2019, and sec. 15, Ch. 254, L. 2019, which terminated this section December 31, 2025. Effective May 19, 2023.

2021 Amendment: Chapter 503 in (1) at end of third sentence after "in a year is $10,000" deleted "subject to the limitations in 15-30-2328(2)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Extension of Termination Date: Sections 1 through 15, Ch. 254, L. 2019, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, secs. 2 through 4 and 7, Ch. 208, L. 2007, and secs. 2 through 8 and 11, Ch. 317, L. 2013, by extending the termination dates imposed by those sections to December 31, 2025. Effective October 1, 2019.

Extension of Termination Date: Sections 2 through 8, Ch. 317, L. 2013, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 226, L. 2001, sec. 7, Ch. 4, L. 2005, and secs. 2, 3, 4, and 7, Ch. 208, L. 2007, by extending the termination dates imposed by those sections to December 31, 2019. Effective April 26, 2013.

Extension of Termination Date: Sections 2 through 4, Ch. 208, L. 2007, amended sec. 9, Ch. 537, L. 1997, sec. 5, Ch. 266, L. 2001, and sec. 7, Ch. 4, L. 2005, by extending the termination dates imposed by those sections to December 31, 2013. Effective April 17, 2007.

Termination: Section 7(2), Ch. 208, L. 2007, provided: "Sections 1 through 4, Chapter 226, Laws of 2001 [amending 15-30-165, 15-30-166, 15-31-161, and 15-31-162], terminate December 31, 2013." Effective April 17, 2007.

2005 Amendment: Chapter 4 in (1) in second sentence after "members" deleted "or managers" and in third sentence after "member" deleted "or manager"; inserted (2) regarding requirements of a small business corporation, partnership, or limited liability company if a charitable gift is recovered by the entity during any tax year; and made minor changes in style. Amendment effective February 23, 2005, and terminates December 31, 2007.

Retroactive Applicability: Section 6, Ch. 4, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Deletion of Termination Date and Repeal of July 1, 2003, Version: Section 1, Ch. 205, L. 2003, amended sec. 11, Ch. 24, Sp. L. August 2002, by deleting the April 30, 2004, termination date applicable to the version of this section that was to be effective July 1, 2003. Section 2, Ch. 205, L. 2003, repealed the version of this section that was to be effective July 1, 2003. Amendment effective April 2, 2003.

2002 Amendment: (Temporary version) Chapter 24 in third sentence reduced maximum credit from $10,000 to $6,600. Amendment effective August 28, 2002, and terminates June 30, 2003.

(Version applicable July 1, 2003) Chapter 24 in third sentence increased maximum credit from $10,000 to $13,400. Amendment effective August 28, 2002, and terminates April 30, 2004.

Applicability: Section 10, Ch. 24, Sp. L. August 2002, provided: "(1) [Sections 1, 3, 5, and 7] [temporary versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162] apply to charitable gifts made on or after [the effective date of this act]." Effective August 28, 2002.

"(2) [Sections 2, 4, 6, and 8] [versions of 15-30-166, 15-30-167, 15-31-161, and 15-31-162 applicable on July 1, 2003] apply to charitable gifts made on or after July 1, 2003."

2001 Amendment: Chapter 226 near end of first sentence after "as defined in 35-8-102" inserted "carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity". Amendment effective October 1, 2001.

The amendments to this section made by Ch. 143, L. 2001, were rendered void by sec. 6, Ch. 226, L. 2001, a coordination section.

Extension of Termination Date: Section 5, Ch. 226, L. 2001, amended sec. 9, Ch. 537, L. 1997, by extending the termination date imposed by Ch. 537 to December 31, 2007.

Applicability: Section 8, Ch. 226, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001, and to contributions to qualified endowments made after December 31, 2001."

Effective Date — Retroactive Applicability: Section 8, Ch. 537, L. 1997 provided: "[This act] is effective on passage and approval [approved May 5, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Termination: Section 9, Ch. 537, L. 1997 provided: "[This act] terminates December 31, 2001."

Administrative Rules

Title 42, chapter 4, subchapter 27, ARM Individual and corporation — qualified endowment.

15-31-163. Capital gain exclusion from sale of mobile home park.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 437 in (1) at beginning substituted "Any capital gains income realized" for "The following amount of the gain recognized"; deleted former (1)(a) that excluded from income 100% of the recognized gain for a mobile home park with 50 or fewer lots; deleted former (1)(b) that excluded from income 50% of the recognized gain for a mobile home park with more than 50 lots; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 503 in (1) near end after "is excluded from" substituted "Montana taxable income" for "adjusted gross income". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Effective Date: Section 4, Ch. 389, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 28, 2009.

Retroactive Applicability: Section 5, Ch. 389, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

15-31-164. Notification of mobile home park owners.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

15-31-165. Account for notification of mobile home park owners.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

15-31-172. Small business corporation — deduction for donation of computer equipment to schools.

Compiler's Comments

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

1991 Amendment: In first sentence substituted "as defined in 15-31-201" (renumbered 15-30-1101) for "electing to be taxed under the provisions of 15-31-202". Amendment effective December 31, 1991.

Effective Dates — Applicability: Section 12, Ch. 807, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purpose of promulgating administrative rules to implement [sections 1 through 10] [15-30-111, 15-30-117, 15-30-126, 15-30-136, 15-30-161 (now repealed), 15-31-201 (renumbered 15-30-1101), 15-31-202 (now repealed), 15-31-204 (now repealed), and 90-8-202], [this act] is effective on passage and approval." Approved May 17, 1991.

Administrative Rules

ARM 42.15.414 Deduction for small business donations of computer equipment to schools.

15-31-173. Tax credit for hiring registered apprentices or veteran apprentices.

Compiler's Comments

Effective Date: Section 7, Ch. 380, L. 2017, provided: "[This act] is effective January 1, 2018."

Applicability: Section 8, Ch. 380, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.4.2202 Employer apprenticeship tax credit.

15-31-174. Corporate income tax credit for trades education and training.

Compiler's Comments

Extension of Termination Date: Section 2, Ch. 576, L. 2023, amended sec. 7, Ch. 248, L. 2021, by extending the termination date imposed by Ch. 248 to December 31, 2028. Effective May 18, 2023.

Effective Date: Section 5, Ch. 248, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 19, 2021.

Retroactive Applicability: Section 6, Ch. 248, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Termination: Section 7, Ch. 248, L. 2021, provided: "[This act] terminates December 31, 2026."

15-31-175. Grow Montana jobs — annual job growth incentive tax credit.

Compiler's Comments

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550 to December 31, 2028. Amendment effective May 3, 2023.

Contingent Termination Provision Repealed: Section 5, Ch. 391, L. 2023, repealed sec. 25, Ch. 550, L. 2021, which terminated this section on occurrence of a contingency. Effective May 3, 2023.

Effective Dates — Applicability: Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Termination: Section 24, Ch. 550, L. 2021 (amended by sec. 4, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] [including last enactment of 15-30-2361, 15-31-175, and 39-11-404] terminates December 31, 2028.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2022.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2023.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2024.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate December 31, 2025.

(6) [Section 25] terminates January 1, 2025."

Severability: Section 22, Ch. 550, L. 2021, was a severability clause.

Contingent Termination: Section 25, Ch. 550, L. 2021 (repealed by sec. 5, Ch. 391, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] [first, second, third, and fourth enactments of 15-30-2361, 15-31-175, and 39-11-404] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] [first, second, third, and fourth enactments of 15-30-2361, 15-31-175, and 39-11-404] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)." Effective July 1, 2021, and terminates January 1, 2025.

Part 3
Allocation and Apportionment of Income

Part Administrative Rules

ARM 42.23.211 Use of separate accounting method.

ARM 42.23.212 Basis for disposition of property.

Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission allocation and apportionment regulations.

ARM 42.26.233 Consistency in reporting with respect to property.

Title 42, chapter 26, subchapter 5, ARM Public law 86-272.

Title 42, chapter 26, subchapter 6, ARM Railroads.
Title 42, chapter 26, subchapter 7, ARM Trucking.
Title 42, chapter 26, subchapter 8, ARM Airlines.
Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.
Title 42, chapter 26, subchapter 10, ARM Publishing companies — apportionment.
Title 42, chapter 26, subchapter 11, ARM Television and radio broadcasting.

Part Case Notes

Department Decision to Include Overflight Mileage in Apportionment Formula—Noncompliance With MAPA: The unilateral administrative decision of a Department of Revenue auditor to include an airline's nonstop flyover mileage in the numerator of the statutory apportionment formula qualified as a rule under 2-4-102 and was subject to the notice and hearing requirements of 2-4-302 in order to be valid under the Montana Administrative Procedure Act. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Inapplicable if Gross Business Within the State Not Determined: Under former law, the predecessor to this part did not apply to an action to recover taxes paid by a domestic corporation where controversy was whether interest on obligations of nonresidents, collected outside the state and forwarded to the principal office in Montana should be considered as income within the state, since, until the interest payments had been determined to be income within or without the state, the gross business within and without the state could not be established, and until these two factors were known, the method of segregation formerly provided by the statute could not be applied. Mont. Life Ins. Co. v. Shannon, 106 M 500, 78 P2d 946 (1938).

15-31-301. Corporations subject to allocation and apportionment.

Compiler's Comments

2017 Amendment: Chapter 268 in (2) and in (3) in two places substituted "apportionable income" for "business income". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.9.107 Multitiered pass-through entity structures with Montana source income reporting requirements.
ARM 42.26.203 Consistency and uniformity in reporting required.
ARM 42.26.205 Two or more businesses of a single taxpayer.
ARM 42.26.210 Income taxable in another state.
ARM 42.26.260 Application of the Finnigan rule.
Title 42, chapter 26, subchapter 7, ARM Trucking.
Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.
Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.
Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Water's-Edge Election — Multinational Corporations Permitted to Exclude Foreign Operations' Income or Loss From Apportionable Income: In general, the State of Montana imposes an income tax on corporations and similar entities. A corporation with business activities that are taxable both inside and outside the state must allocate and apportion its net income to the state to determine its income subject to state taxation. Notwithstanding, a multinational corporation may make a water's-edge election and file taxes on behalf of a combined group of affiliated corporations. This provision allows the corporation to exclude its foreign operations' income or loss from its apportionable income and therefore exclude the foreign subsidiaries' income from the group's Montana taxes. Exxon Mobil Corp. v. Dept. of Revenue, 2019 MT 156, 396 Mont. 298, 444 P.3d 407.

Unitary Business Assessment Upheld: After the Supreme Court's decision upholding the State Tax Appeal Board's ruling that assessment as a unitary business was proper, in Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 4147 (1981), Ward was purchased by Russell Stover Candies, Inc. Russell Stover appealed to the U.S. Supreme Court, which vacated judgment and remanded to Montana for further consideration in light of two recent cases in which the U.S. Supreme Court held subsidiaries to be separate businesses, and since no relationship existed between the subsidiary and the transaction of business in the taxing state, due process was violated. The Montana court distinguished the cases, saying the Montana ranches were active operations of Ward and were formally part of the Ward corporation. The most important factor, however, was that the ranches had very little independence from the overall Ward operation. They had no capacity to operate independently. All bookkeeping and all major decisions were controlled by the home office. The state was correct in taxing Ward, based on appropriation of Ward's total income. Russell Stover Candies, Inc. v. Dept. of Revenue, 204 M 122, 665 P2d 198, 40 St. Rep. 712 (1983).

Federal Due Process Not Violated: The state's taxation of income derived in interstate commerce meets federal due process requirements since the corporation availed itself of the privilege of doing business within the state and was a unitary business within and without the state; citing Mobil Oil Corp. v. Comm'r of Taxes, 445 US 425, 63 L Ed 2d 510, 100 S Ct 1223 (1980). Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Similar Administrative Rule in Effect Before 1974: Although subsection (2) of 15-31-301 was created by a 1974 amendment, it applies to the period of dispute (1971-1975) because a similar administrative rule was in effect prior to the amendment and the rule was not inconsistent with the section as it existed prior to amendment. Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Unitary Business — Cattle Ranches and Paper Products Operation: A corporation consisted of seven divisions; five divisions outside the state produced and marketed paper products; two divisions within the state operated cattle ranches. The corporation was considered a unitary business within and without the state for purposes of apportionment of business income. The in-state operations were dependent upon the out-of-state operations for administrative services, management decisions, and financial assistance when ranch funds were insufficient; they contributed to out-of-state operations by providing short-term investment income and tax writeoffs. Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 2147 (1981).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-302. Definitions.

Compiler's Comments

2017 Amendment: Chapter 268 inserted definitions of apportionable income, nonapportionable income, and receipts; deleted definition that read: ""Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations"; deleted definition that read: ""Nonbusiness income" means all income other than business income"; and deleted definition that read: ""Sales" means all gross receipts of the taxpayer not allocated under 15-31-304". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.202 Definitions.

ARM 42.26.206 "Business" and "nonbusiness" income defined.

ARM 42.26.207 Determination of business and nonbusiness income.

ARM 42.26.241 through 42.26.244 Treatment of "compensation".

ARM 42.26.251 through 42.26.254 Treatment of "sales".

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Statutory Transactional Test and Functional Test for Determining Business Income: The definition of business income in subsection (1) of this section includes both a transactional test, established in the phrase "income arising from transactions and activity in the regular course of the taxpayer's trade or business", and an independent functional test, established in the phrase "income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations." Gannett Satellite Information Network, Inc. v. St., 2009 MT 5, 348 M 333, 201 P3d 132 (2009). See also Hoechst Celanese Corp. v. Franchise Tax Bd., 22 P3d 324 (Cal. Rep. 2001).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-303. When taxable in another state.

Compiler's Comments

2017 Amendment: Chapter 268 substituted "as provided in Article IV, subsection (3), of 15-1-601" for "if:

(1) by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state does or does not subject the taxpayer to a net income tax". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

1985 Amendment: At end of (2) inserted "subject the taxpayer to a net income tax".

Administrative Rules

ARM 42.26.209 and 42.26.211 When taxpayer "subject to" tax in another state.

ARM 42.26.210 Income taxable in another state.

ARM 42.26.212 State taxing jurisdiction.

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

15-31-304. Allocation of nonapportionable income.

Compiler's Comments

2017 Amendment: Chapter 268 substituted current language for former language that read: "(1) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent they constitute nonbusiness income, shall be allocated as provided in subsections (2) through (5) of this section.

(2) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(5) (a) Patent and copyright royalties are allocable to this state if and to the extent that:

(i) the patent or copyright is utilized by the payer in this state; or

(ii) the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located." Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.208 Proration of deductions.

ARM 42.26.260 Application of the Finnigan rule.

ARM 42.26.307 Apportionment and allocation generally.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-305. Apportionment of apportionable income.

Compiler's Comments

2017 Amendment: Chapter 268 substituted current language for former language that read: "All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3." Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.23.211 Use of separate accounting method.

ARM 42.23.212 Basis for disposition of property.

Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission income allocation and apportionment regulations.

ARM 42.26.204 Combined report for affiliated corporations.

ARM 42.26.208 Proration of deductions.

ARM 42.26.260 Application of the Finnigan rule.

ARM 42.26.307 Apportionment and allocation generally.

ARM 42.26.308 Apportionment formula.

ARM 42.26.401 Special rules related to installment sales.

ARM 42.26.402 Unreported income on installment obligation in year of dissolution.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board (now Montana Tax Appeal Board) properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of 15-31-312 and ARM 42.26.264 expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

Unitary Business Assessment Upheld: After the Supreme Court's decision upholding the State Tax Appeal Board's (now Montana Tax Appeal Board) ruling that assessment as a unitary business was proper, in Ward Paper Box Co. v. Dept. of Revenue, 196 M 87, 638 P2d 1053, 38 St. Rep. 4147 (1981), Ward was purchased by Russell Stover Candies, Inc. Russell Stover appealed to the U.S. Supreme Court, which vacated judgment and remanded to Montana for further consideration in light of two recent cases in which the U.S. Supreme Court held subsidiaries to be separate businesses, and since no relationship existed between the subsidiary and the transaction of business in the taxing state, due process was violated. The Montana court distinguished the cases, saying the Montana ranches were active operations of Ward and were formally part of the Ward corporation. The most important factor, however, was that the ranches had very little independence from the overall Ward operation. They had no capacity to operate independently. All bookkeeping and all major decisions were controlled by the home office. The state was correct in taxing Ward, based on appropriation of Ward's total income. Russell Stover Candies, Inc. v. Dept. of Revenue, 204 M 122, 665 P2d 198, 40 St. Rep. 712 (1983).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-306. Definition of property factor.

Compiler's Comments

2017 Amendment: Chapter 268 substituted "provided for in Article IV, subsection (10), of 15-1-601" for "a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.231 Property factor in general.

ARM 42.26.232 Property used to produce business income.

ARM 42.26.233 Consistency in reporting with respect to property.

ARM 42.26.260 Application of the Finnigan rule.

ARM 42.26.262 Special computations related to property factor.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

15-31-307. Values used for property factor.

Compiler's Comments

2017 Amendment: Chapter 268 substituted "as provided in Article IV, subsections (11) and (12), of 15-1-601" for "at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(2) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property"; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.235 Valuation of owned property.

ARM 42.26.236 Valuation of rented property.

ARM 42.26.237 Averaging property values.

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

15-31-308. Definition of payroll factor.

Compiler's Comments

2017 Amendment: Chapter 268 substituted "provided for in Article IV, subsection (13), of 15-1-601" for "a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.244 Numerator of payroll factor.

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

15-31-309. Payroll factor for compensation in this state.

Compiler's Comments

2017 Amendment: Chapter 268 substituted "as provided in Article IV, subsection (14), of 15-1-601" for "if:

(1) the individual's service is performed entirely within the state;

(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) some of the service is performed in the state and:

(a) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(b) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.244 Numerator of payroll factor.

ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

15-31-310. Definition of receipts factor.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

2017 Amendment: Chapter 268 substituted current language for former language that read: "The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period." Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.245 Numerator of receipts factor — sales other than sales of tangible personal property — market based sourcing.

ARM 42.26.246 Numerator of receipts factor — sale, rental, lease, or license of real property.

ARM 42.26.247 Numerator of receipts factor — rental, lease, or license of tangible personal property.

ARM 42.26.248 Numerator of receipts factor — sale of a service.

ARM 42.26.249 Numerator of receipts factor — license or lease of intangible property.

ARM 42.26.250 Numerator of receipts factor — sale of intangible property.

ARM 42.26.251 through 42.26.254 Sales factor in general.

ARM 42.26.259 Sale of tangible and intangible property — computation of sales factor.

ARM 42.26.260 Application of the Finnigan rule.

ARM 42.26.263 Special computations related to sales factor.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board (now Montana Tax Appeal Board) properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

15-31-311. Receipts factor for receipts in this state.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

2017 Amendment: Chapter 268 in (1) at beginning substituted "Receipts from the sale" for "Sales" and at end substituted "as provided for in Article IV, subsection (16), of 15-1-601" for "if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or"

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser"; in (2) at beginning substituted "Receipts, other than receipts provided for in subsection (1)" for "Sales, other than sales of tangible personal property" and at end substituted "as provided for in Article IV, subsection (17), of 15-1-601" for "if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance". Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.245 Numerator of receipts factor — sales other than sales of tangible personal property — market based sourcing.

ARM 42.26.246 Numerator of receipts factor — sale, rental, lease, or license of real property.

ARM 42.26.247 Numerator of receipts factor — rental, lease, or license of tangible personal property.

ARM 42.26.248 Numerator of receipts factor — sale of a service.
ARM 42.26.249 Numerator of receipts factor — license or lease of intangible property.
ARM 42.26.250 Numerator of receipts factor — sale of intangible property.
ARM 42.26.251 Sales factor in general.
ARM 42.26.255 Sales of tangible personal property.
ARM 42.26.256 Sales of tangible personal property to federal government.
ARM 42.26.257 Sales other than sales of tangible personal property.
ARM 42.26.259 Sale of tangible and intangible property — computation of sales factor.
ARM 42.26.260 Application of the Finnigan rule.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Use of State-to-State Method in Calculating Sales Factor Applicable to Delivery of Intrastate Packages: The State Tax Appeal Board (now Montana Tax Appeal Board) properly applied the state-to-state revenue analysis method, although misnamed the adjusted revenue method, in calculating the sales factor applicable in determining revenue earned from intrastate packages both picked up and delivered in Montana. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

15-31-312. Apportionment formula — unitary business provisions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

2017 Amendment: Chapter 268 in (1)(a) at end deleted "For purposes of this part, a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses"; deleted former (2) through (4) that read: "(2) the exclusions of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income"; inserted (1)(b) regarding application of the provisions of Article IV, subsections (18)(a)(ii) through (18)(a)(iv), of 15-1-601; inserted (2) concerning application of the provisions of Article IV, subsection (18)(b), of 15-1-601; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 16, Ch. 268, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Administrative Rules

ARM 42.26.245 Numerator of receipts factor — sales other than sales of tangible personal property — market based sourcing.
ARM 42.26.246 Numerator of receipts factor — sale, rental, lease, or license of real property.
ARM 42.26.247 Numerator of receipts factor — rental, lease, or license of tangible personal property.
ARM 42.26.248 Numerator of receipts factor — sale of a service.
ARM 42.26.249 Numerator of receipts factor — license or lease of intangible property.
ARM 42.26.250 Numerator of receipts factor — sale of intangible property.
ARM 42.26.260 Application of the Finnigan rule.
ARM 42.26.264 Special computations related to freight and passenger carriers.
ARM 42.26.308 Water's-edge — apportionment formula.

Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Title 42, chapter 26, subchapter 12, ARM Telecommunication services for corporation license taxes.

Title 42, chapter 26, subchapter 13, ARM Corporate multistate activities — financial institutions.

Case Notes

Mileage Method as Inequitable Representation of State Business Activity: This section requires an equitable representation of a taxpayer's business activity in the state. However, in this case, the mileage method promulgated in an administrative rule implementing this section was not an equitable method of calculating defendant's income-producing activity for the sales factor portion of the formula. Defendant's petition for an alternative method of apportionment under this section was appropriate. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Multistate Taxpayers Engaged in Unitary Business: The Supreme Court held that when corporate taxpayers are engaged in a unitary business, sales by the corporation of temporary cash investments are not to be reported by them for Montana's corporation license tax or income tax purposes as included in gross sales; except for the net gain from such sales, the total amounts of these sales should be excluded from the formula determining the unitary business's income for corporation license tax reporting. Am. Tel. & Tel. Co. v. St. Tax Appeal Bd., 241 M 440, 787 P2d 754, 47 St. Rep. 403 (1990).

Nonstop Flyover Miles — No Authority for Inclusion in Numerator of Apportionment Formula: The language of this section and an administrative rule implementing it expresses no intent to consider activity other than that in Montana; therefore, the Department of Revenue had no statutory authority to include in the numerator of the apportionment formula those miles flown by an airline as nonstop flights that did not take off or land in Montana or have contact with the state. NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676, 43 St. Rep. 959 (1986).

15-31-313. Rules.

Administrative Rules

ARM 42.23.211 Use of separate accounting method.

ARM 42.23.212 Basis for disposition of property.

ARM 42.23.313 Filing requirements upon dissolution, withdrawal, or cessation of business.

Title 42, chapter 26, subchapter 2, ARM Multistate Tax Commission allocation and apportionment regulations.

ARM 42.26.307 through 42.26.309 Water's-edge — apportionment.

Title 42, chapter 26, subchapter 5, ARM Public law 86-272.

Title 42, chapter 26, subchapter 6, ARM Railroads.

Title 42, chapter 26, subchapter 7, ARM Trucking.

Title 42, chapter 26, subchapter 8, ARM Airlines.

Title 42, chapter 26, subchapter 9, ARM Special rules for construction contracts.

Title 42, chapter 26, subchapter 10, ARM Publishing companies — apportionment.

Title 42, chapter 26, subchapter 11, ARM Television and radio broadcasting.

Case Notes

Mileage Method as Inequitable Representation of State Business Activity: Section 15-31-312 requires an equitable representation of a taxpayer's business activity in the state. However, in this case, the mileage method promulgated in an administrative rule implementing 15-31-312 was not an equitable method of calculating defendant's income-producing activity for the sales factor portion of the formula. Defendant's petition for an alternative method of apportionment under 15-31-312 was appropriate. Dept. of Revenue v. United Parcel Serv., Inc., 252 M 476, 830 P2d 1259, 49 St. Rep. 20 (1992).

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

15-31-321. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

Title 42, chapter 26, subchapter 3, ARM Water's-edge.

Case Notes

Water's-Edge Election — Multinational Corporations Permitted to Exclude Foreign Operations' Income or Loss From Apportionable Income: In general, the State of Montana imposes an income tax on corporations and similar entities. A corporation with business activities that are taxable both inside and outside the state must allocate and apportion its net income to the state to determine its income subject to state taxation. Notwithstanding, a multinational corporation may make a water's-edge election and file taxes on behalf of a combined group of affiliated corporations. This provision allows the corporation to exclude its foreign operations' income or loss from its apportionable income and therefore exclude the foreign subsidiaries' income from the group's Montana taxes. Exxon Mobil Corp. v. Dept. of Revenue, 2019 MT 156, 396 Mont. 298, 444 P.3d 407.

15-31-322. Water's-edge election.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

2019 Amendment: Chapter 163 in (2) after "biennially" inserted "in accordance with 5-11-210" and substituted "revenue interim committee" for "revenue and transportation interim committee"; and made minor changes in style. Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2009 Amendment: Chapter 11 in (1)(f) in list of countries considered tax havens deleted Maldives and Tonga and inserted Cyprus, Malta, Mauritius, and San Marino; and made minor changes in style. Amendment effective March 13, 2009.

Retroactive Applicability: Section 3, Ch. 11, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2003 Amendment: Chapter 521 inserted (1)(f) identifying tax havens; inserted (2) requiring department to biennially update countries that may be considered tax havens; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.301 Water's-edge election.
ARM 42.26.310 Disregarding or modifying water's-edge election.
ARM 42.26.311 Certain corporations includable in water's-edge combined return.

Case Notes

Water's-Edge Election — Multinational Corporations Permitted to Exclude Foreign Operations' Income or Loss From Apportionable Income: In general, the State of Montana imposes an income tax on corporations and similar entities. A corporation with business activities that are taxable both inside and outside the state must allocate and apportion its net income to the state to determine its income subject to state taxation. Notwithstanding, a multinational corporation may make a water's-edge election and file taxes on behalf of a combined group of affiliated corporations. This provision allows the corporation to exclude its foreign operations' income or loss from its apportionable income and therefore exclude the foreign subsidiaries' income from the group's Montana taxes. Exxon Mobil Corp. v. Dept. of Revenue, 2019 MT 156, 396 Mont. 298, 444 P.3d 407.

15-31-323. Apportionment factors.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

2003 Amendment: Chapter 521 near beginning of (1) substituted "15-31-322(1)(a) through (1)(e)" for "15-31-322(1) and (5)"; inserted (2) providing that income shifted to tax haven is subject to apportionment; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.307 Apportionment and allocation generally.
ARM 42.26.308 Apportionment formula.
ARM 42.26.309 Apportionment factors.

15-31-324. Water's-edge election period — consent — change of election.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

2003 Amendment: Chapter 521 in (1) inserted last sentence requiring disclosure of identity of taxpayer and affiliated corporation in which taxpayer owns controlling interest, including corporation incorporated in tax haven; in (2) inserted exception clause; deleted former (2)(a) that read: "(a) No water's-edge election may be made for an income year beginning before October 1, 1987"; inserted (4) allowing taxpayer to rescind election for tax periods after October 1, 2003; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

Title 42, chapter 26, subchapter 3, ARM Water's-edge.
ARM 42.26.301 Water's-edge election.
ARM 42.26.302 Procedure.
ARM 42.26.303 Revocation or nonrenewal of water's-edge elections.
ARM 42.26.310 Disregarding or modifying water's-edge election.
ARM 42.26.313 Reorganizations of water's-edge taxpayers.

15-31-325. Treatment of dividends.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.312 Treatment of dividends for purposes of water's-edge combined return.

Case Notes

Corporations Allowed to Deduct Actual Dividends Received From 80/20 Corporations: Exxon Mobil Corporation filed its State of Montana taxes utilizing a water's-edge election. It claimed a 100% deduction for dividends received from its 80/20 corporations under section 243 of the federal Internal Revenue Code. The District Court found that the dividends at issue were expressly apportionable as income under this section and that Exxon Mobil was therefore entitled to only an 80% exclusion for the dividends. On appeal, the Supreme Court reversed, finding that unless the Legislature expressly provides otherwise, corporations are entitled to all Internal Revenue Code deductions when filing their state taxes. Because this section does not expressly mention either section 243 of the code or the type of actual dividends at issue, then Exxon Mobil could avail itself of section 243 and deduct 100% of the actual dividends for purposes of Montana taxation. Exxon Mobil Corp. v. Dept. of Revenue, 2019 MT 156, 396 Mont. 298, 444 P.3d 407.

Water's-Edge Election — Multinational Corporations Permitted to Exclude Foreign Operations' Income or Loss From Apportionable Income: In general, the State of Montana imposes an income tax on corporations and similar entities. A corporation with business activities that are taxable both inside and outside the state must allocate and apportion its net income to the state to determine its income subject to state taxation. Notwithstanding, a multinational corporation may make a water's-edge election and file taxes on behalf of a combined group of affiliated corporations. This provision allows the corporation to exclude its foreign operations' income or loss from its apportionable income and therefore exclude the foreign subsidiaries' income from the group's Montana taxes. Exxon Mobil Corp. v. Dept. of Revenue, 2019 MT 156, 396 Mont. 298, 444 P.3d 407.

15-31-326. Domestic disclosure spreadsheet.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 750, L. 2023. Amendment effective May 22, 2023.

Retroactive Applicability: Section 8, Ch. 750, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022."

2003 Amendment: Chapter 521 inserted (2) allowing department to require disclosure for tax havens; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 7, Ch. 521, L. 2003, provided: "[This act] applies to tax periods beginning after December 31, 2003."

Applicability: Section 11, Ch. 616, L. 1987, provided: "This act applies to taxable years beginning after December 31, 1987."

Severability: Section 10, Ch. 616, L. 1987, was a severability section.

Administrative Rules

ARM 42.26.304 Domestic disclosure spreadsheet.

Part 4
Alternative Corporate Income Tax

Part Law Review Articles

Montana's Tax Appeals Process: A Guide Through the Maze, Woodgerd, 51 Mont. L. Rev. 190 (1990).

15-31-401. Application of corporate income tax and alternative corporate income tax.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) in first sentence substituted "corporate income tax" for "corporation license tax" and in second sentence before "income tax" inserted "alternative corporate"; in (2) near middle substituted "corporate income tax" for "corporation license tax" and near end substituted "alternative corporate income tax" for "corporation income tax"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

1987 Amendment: In (1), at beginning of second sentence, inserted exception clause; and inserted (2) exempting certain net income of research and development firms.

15-31-402. Short title — administration of part.

Compiler's Comments

2013 Amendment: Chapter 268 in first sentence substituted "Alternative Corporate Income Tax" for "Corporation Income Tax"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

15-31-403. Rate of tax imposed — income from sources within state defined — alternative tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 51, L. 2023. Amendment effective January 1, 2025.

Applicability: Section 12, Ch. 51, L. 2023, provided: "[This act] applies to tax years beginning after December 31, 2024."

1987 Amendment: At beginning of (1) inserted exception clause.

15-31-404. Offset for corporate income taxes — alternative corporate income tax collected considered corporate income tax.

Compiler's Comments

2013 Amendment: Chapter 268 in first sentence substituted "alternative corporate income tax" for "corporation income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2003 Amendment: Chapter 114 in three places deleted part 2 from the parts of chapter referred to; and made minor changes in style. Amendment effective October 1, 2003.

15-31-405. Information return — period for assessment of tax.

Compiler's Comments

2003 Amendment: Chapter 114 in second sentence deleted part 2 from the parts of chapter referred to. Amendment effective October 1, 2003.

15-31-406. Corporate income tax sections incorporated by reference.

Compiler's Comments

2023 Amendment Not Codified: Section 9, Ch. 51, L. 2023, was not codified because the changes made by that section to update a span of section references were unnecessary and the span remains accurate as originally written. See 2023 Session Law for amendment made by sec. 9, Ch. 51, L. 2023.

2013 Amendment: Chapter 268 in (2) near middle inserted ""corporate income tax"" and at end before "income tax" inserted "alternative corporate"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

1993 Amendment: Chapter 135 in (2), in list of statutory references, deleted references to 15-31-507 and 15-31-508 and inserted reference to 15-31-511; and made minor changes in style.

1989 Amendment: In (2) inserted reference to 15-31-119. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 6, Ch. 538, L. 1989, provided: "[This act] is effective on passage and approval [approved April 14, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendment: Changed "15-31-541 through 15-31-543" to "15-31-541 and 15-31-543".

Additional Sections Incorporated by Reference: Sections 10, 11, 15, and 18 of Ch. 564, L. 1987, were codified in Title 15, chapter 31, pursuant to the codification instruction in sec. 22(3), Ch. 564, L. 1987. Because these sections apply to both corporation license taxes and corporation income taxes, the Code Commissioner codified the sections in Title 15, chapter 31, part 1 (corporation license taxes), as 15-31-117 and 15-31-118 and included them in Title 15, chapter 31, part 4 (corporation income taxes), by adding 15-31-117 and 15-31-118 to the list of sections in 15-31-406 incorporated by reference in part 4.

1981 Amendment: Substituted "15-31-525, 15-31-526" for "15-31-525 through 15-31-527" in (2).

Commissioner Correction: Section 84-6906, R.C.M. 1947, contained a reference to section 84-1501.4, R.C.M. 1947, which had been repealed by sec. 2, Ch. 23, L. 1971. In recodification this reference was deleted. See the Official Report of the Code Commissioner, 1979.

Part 5
Administration and Collection

Part Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the corporation license tax from the State Treasurer to the Department of Revenue, was not codified. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

15-31-501. Department rules — conformance with Internal Revenue Code.

Compiler's Comments

2007 Amendment: Chapter 222 inserted (2) concerning meaning of undefined terms; and made minor changes in style. Amendment effective April 17, 2007.

Retroactive Applicability: Section 4, Ch. 222, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006."

Administrative Rules

ARM 42.2.304 Definitions.

ARM 42.2.310 Voluntary disclosure program for nonfiling taxpayers.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Title 42, chapter 4, ARM Tax credits.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

ARM 42.4.4105 Alternate renewable energy generation facilities exemption — less than one megawatt.

ARM 42.4.4106 Appeal rights.

ARM 42.4.4107 Commercial use for income tax.

Title 42, chapter 9, subchapter 3, ARM Partnerships.

Title 42, chapter 9, subchapter 4, ARM S. corporations.

Title 42, chapter 9, subchapter 5, ARM Disregarded entities.

ARM 42.15.526 Small business liability funds.

Title 42, chapter 23, ARM Corporation income tax — general provisions.

Title 42, chapter 26, ARM Corporation income tax — multistate activities.

Case Notes

Authority to Adopt Regulations: The Department of Revenue had the authority to adopt rules concerning the apportionment of corporate net income derived from sources both within and without the state based on a "business vs. nonbusiness" test. Dept. of Revenue v. Am. Smelting & Ref. Co., 173 M 316, 567 P2d 901 (1977).

Review of Rules by Writ of Prohibition Improper: A Writ of Prohibition issued by a District Court is improper as a means of reviewing regulations promulgated under the authority of this section. State ex rel. Fulton v. District Court, 139 M 573, 366 P2d 435 (1961).

15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments.

Compiler's Comments

2011 Amendment: Chapter 269 in (2)(a) at beginning of second sentence inserted "Subject to the due date provision in 15-31-111(2)(b)"; and made minor changes in style. Amendment effective April 21, 2011.

Retroactive Applicability: Section 10, Ch. 269, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010."

1993 Amendment: Chapter 92 in (2)(a), in first sentence before "$5,000", substituted "is" for "can reasonably be expected to be"; in (2)(a)(i) and (2)(a)(ii) substituted installment due date schedules for former (2)(a) that set forth in table format the percentage of estimated tax due for each quarter; substituted (2)(b) clarifying annual required payments for former (2)(b) that read: "If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:

(i) the difference between:

(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and

(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had been made when the first estimate was made:

(ii) by the number of installments remaining to be paid on or after the date on which the new estimate was made"; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

1989 Special Session Amendment: In (1) deleted second and third sentences that read: "If the tax is not paid on or before the due date, there shall be assessed a penalty of 10% of the amount of the tax unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted or otherwise, interest shall be added thereto at the rate of 12% per annum from the due date until paid"; inserted (2) requiring quarterly estimated payments by taxpayers subject to corporate license or income tax who have annual state tax liabilities of or in excess of $5,000; inserted (3) providing that applicability of section to taxable years of less than 12 months is pursuant to Department rules; inserted (4) allowing corporation election to pay estimated tax before due date; and made minor change in phraseology. Amendment effective July 17, 1989.

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

1981 Amendment: Increased the interest on delinquent corporate license tax from 9% to 12%.

Applicability: Section 2, Ch. 182, L. 1981, provided: "This act applies to corporate taxes under Title 15, chapter 31, that become due on or after May 15, 1981, or that become due prior to May 15, 1981, and remain unpaid on or after May 15, 1981. The 12% rate is applied to unpaid tax commencing on May 15, 1981."

Administrative Rules

ARM 42.2.501 Application of partial payments.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

ARM 42.23.606 Quarterly estimated tax payments.

ARM 42.23.608 Basis for not waiving quarterly estimated tax underpayment interest.

ARM 42.23.609 Short period returns.

15-31-503. Deficiency assessment — notice — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) in first sentence at beginning inserted reference to penalty and after "assessment" substituted "is calculated" for "shall bear interest", inserted second sentence related to adding penalty and interest to deficiency, and in third sentence substituted "subsection (1)" for "this subsection"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, inserted second sentence relating to review under 15-1-211, and deleted remainder of subsection that read: "Within 30 days after the mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If such protest is filed, the department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer"; and in (2) deleted first sentence that read: "When a deficiency is determined and the tax becomes final, the department shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.2.508 Adjustments to penalty and interest.

Case Notes

Evidentiary Hearing Not Contemplated: Section 15-31-503 does not contemplate an evidentiary hearing but merely an opportunity for the taxpayer to request a review of the administrative procedures used to calculate the assessment and to present evidence in support of his tax calculations. Thus, the Department of Revenue is not entitled to further discovery after entering a deficiency assessment and before the protest hearing, and the MAPA does not apply. W.R. Grace & Co. v. Dept. of Revenue, 173 M 339, 567 P2d 913 (1977).

15-31-506. Copy of federal return required — report of amended federal return.

Compiler's Comments

2021 Amendment: Chapter 108 at beginning of second and last sentences inserted exception clause; at end of second sentence substituted "180 days after the final determination date" for "90 days after receiving official notice of the change or correction"; near end of last sentence substituted "180 days" for "90 days"; and made minor changes in style. Amendment effective March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

1999 Amendment: Chapter 68 in second sentence substituted "the corporation shall file an amended Montana return with the department" for "the corporation shall report such proposed change or correction to the department"; in third sentence substituted "an amended Montana return" for "an amended return"; and made minor changes in style. Amendment effective March 15, 1999.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Administrative Rules

ARM 42.23.303 Change in federal tax or return.

Case Notes

Failure to Report Change in Federal Taxable Income — When Federal Changes Become Final: The Internal Revenue Service (IRS) determined through an audit that plaintiff owed additional federal taxes for 1995 and 1996. Plaintiff appealed the assessment, but the Ninth Circuit Court of Appeals affirmed the decision in 2003. The state Department of Revenue received two IRS reports in 2004 reflecting the changes in plaintiff's 1995 and 1996 taxable income and in 2004 issued plaintiff an assessment of additional state taxes due. Plaintiff appealed the assessment, arguing that the assessment had been issued beyond the statute of limitations in 15-31-509, but the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) concluded that because plaintiff failed to file an amended Montana return at the time that it filed an amended federal return, the Department was allowed to assess tax liability under 15-31-544 and that the assessment was not barred by the statute of limitations. The District Court affirmed the STAB decision, and plaintiff appealed, but the Supreme Court affirmed. Under the 1995 version of 15-31-506 in effect at the time, plaintiff was required to report the change in its 1995 and 1996 federal taxable income to the state within 90 days of receiving notice of the change. Plaintiff did not file the required report, but argued on appeal that the statute of limitations expired prior to the state's issuance of an assessment for those years. The District Court erred in concluding that the assessment was not barred by the statute of limitations in 15-31-544 because that provision applies only when a taxpayer fails to file a return or files a fraudulent return. However, under 15-31-509, the limitations prescribed for giving notice of a proposed assessment of an additional tax does not apply when a taxpayer fails to file a report of changes in federal taxable income as required by 15-31-506 until 5 years after the federal changes become final. In this case, the federal changes became final when the Ninth Circuit Court issued its opinion in 2003, so the Department's 2004 assessment was issued well within the 5-year limitation period and was not barred by the statute of limitations. Frontier Chevrolet v. Dept. of Revenue, 2008 MT 191, 344 M 18, 186 P3d 219 (2008).

15-31-509. Periods of limitation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 314, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 314, L. 2023, provided: "[This act] applies to claims for a refund or credit received by the department of revenue on or after [the effective date of this act]." Effective October 1, 2023.

2021 Amendment: Chapter 108 in (1)(a)(ii) substituted "final determination date or the date an amended federal return is filed" for "federal changes have become final or an amended federal return is filed"; in (1)(b) after "15-31-506" inserted "or a federal adjustments report as provided in 15-30-3403 or 15-30-3404 and near end substituted "final determination date or the date the amended federal return was filed" for "federal changes become final or the amended federal return was filed"; inserted (3) providing deadlines for filing a claim for refund or credit of tax; and made minor changes in style. Amendment effective March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

2017 Amendment: Chapter 289 in (2) near middle of first sentence substituted "date of the overpayment or filing, whichever is later" for "date of the overpayment, whichever period expires the later"; and made minor changes in style. Amendment effective May 4, 2017.

Retroactive Applicability: Section 4, Ch. 289, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016."

1999 Amendment: Chapter 68 in (1)(b) substituted "an amended Montana return" for "a report of changes in federal taxable income or an amended return"; and made minor changes in style. Amendment effective March 15, 1999.

Retroactive Applicability: Section 6, Ch. 68, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

1997 Amendment: Chapter 51 in (1), in first sentence, in (1)(b), and in (2) decreased "5 years" to "3 years"; inserted (3) providing for the claim period for a refund or credit based upon an overpayment attributable to a net loss carryback adjustment; inserted (4) pertaining to the period for which a claim for a net operating loss will remain open; and made minor changes in style. Amendment effective March 13, 1997.

1983 Amendments: Chapters 79 and 222 both changed "15-31-542" to "15-31-544" near beginning of (1).

Administrative Rules

ARM 42.23.303 Change in federal tax or return.
ARM 42.23.601 Refunds and credits.
ARM 42.23.803 Filings in connection with net operating losses.

Case Notes

Failure to Report Change in Federal Taxable Income — When Federal Changes Become Final: The Internal Revenue Service (IRS) determined through an audit that plaintiff owed additional federal taxes for 1995 and 1996. Plaintiff appealed the assessment, but the Ninth Circuit Court of Appeals affirmed the decision in 2003. The state Department of Revenue received two IRS reports in 2004 reflecting the changes in plaintiff's 1995 and 1996 taxable income and in 2004 issued plaintiff an assessment of additional state taxes due. Plaintiff appealed the assessment, arguing that the assessment had been issued beyond the statute of limitations in 15-31-509, but the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) concluded that because plaintiff failed to file an amended Montana return at the time that it filed an amended federal return, the Department was allowed to assess tax liability under 15-31-544 and that the assessment was not barred by the statute of limitations. The District Court affirmed the STAB decision, and plaintiff appealed, but the Supreme Court affirmed. Under the 1995 version of 15-31-506 in effect at the time, plaintiff was required to report the change in its 1995 and 1996 federal taxable income to the state within 90 days of receiving notice of the change. Plaintiff did not file the required report, but argued on appeal that the statute of limitations expired prior to the state's issuance of an assessment for those years. The District Court erred in concluding that the assessment was not barred by the statute of limitations in 15-31-544 because that provision applies only when a taxpayer fails to file a return or files a fraudulent return. However, under 15-31-509, the limitations prescribed for giving notice of a proposed assessment of an additional tax does not apply when a taxpayer fails to file a report of changes in federal taxable income as required by 15-31-506 until 5 years after the federal changes become final. In this case, the federal changes became final when the Ninth Circuit Court issued its opinion in 2003, so the Department's 2004 assessment was issued well within the 5-year limitation period and was not barred by the statute of limitations. Frontier Chevrolet v. Dept. of Revenue, 2008 MT 191, 344 M 18, 186 P3d 219 (2008).

Statute of Limitations Applicable to Claims for Corporate License Tax Refunds: The 5-year statutory time limit within which to claim a refund of corporate license taxes (as provided in this section prior to 1997 amendment) begins running on the date established in 15-31-111(2). Although 15-31-111 allows a taxpayer to automatically extend for up to 6 months the period of time for filing, the extension is not included in determining when the limitations period begins to run. The extension simply gives the taxpayer additional time to prepare the return; it does not change the day prescribed for filing the return. Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460, 48 St. Rep. 569 (1991).

Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960), had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Limitation of Powers of Department — Extension Agreement: An agreement to extend the 5-year (now 3-year under 1997 amendment) period to give notice of a tax deficiency does not permit the Department of Revenue to give notice after expiration of the extension period. This section acts as a limitation on the powers of the Department and is not solely a Statute of Limitations that may be tolled simply by filing a notice of tax deficiency during the applicable period or an extension thereof. Anaconda Co. v. Dept. of Revenue, 178 M 254, 583 P2d 421 (1978).

Limitation on Action of Board: Under 15-31-526, prior to the 1963 amendment, the Board of Equalization (now Department of Revenue) was limited to going back no more than 5 (now 3 years under 1997 amendment) years to recover corporation license taxes alleged to be due. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

15-31-510. Estimated payments — tax returns — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) near end substituted "is assessed interest as provided in 15-1-216" for "there is charged interest in the amount of 12% a year"; in (2) at beginning substituted "In addition to the interest assessed" for "Except as provided", substituted "15-31-111" for "15-31-545", and inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) substituted "there is charged interest in the amount of 12% a year calculated" for "there is assessed a 20% a year underpayment interest penalty calculated"; in (1)(b) and (1)(d) near beginning substituted "interest" for "the interest penalty" and after "installment may not be" substituted "charged" for "imposed"; in (2) at beginning inserted exception clause; and at end substituted "as provided in 15-1-216" for "at the rate of 12% a year from the due date until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 51 deleted former (2) that read: "If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect"; in (2) substituted "as provided in 15-31-545" for "under 15-31-111(2)"; and made minor changes in style. Amendment effective March 13, 1997.

Retroactive Applicability: Section 8, Ch. 51, L. 1997, provided: "[Sections 1 and 4] [15-31-545, now repealed, and 15-31-510] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1995 Amendment: Chapter 54 at beginning of (1)(a) deleted "For purposes of this subsection (a)"; in (2), near middle after "15-31-111(2)", inserted "or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3)"; in (3), near beginning, substituted "chapter" for "section" and after "when due" inserted "under 15-31-111(2)"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 54, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

1993 Amendment: Chapter 92 in (1)(a), near beginning after "underpayment is", substituted "the amount of the required installment set forth in 15-31-502 that exceeds the amount" for "in excess of the amount of the installment that would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for the year over the amount"; in (1)(b), after "tax were", deleted "the lesser of the following"; deleted former (1)(b)(i) and (1)(b)(ii) precluding payment of the interest penalty if the estimated tax required to be paid was the lesser of the tax shown on the return of the corporation for the preceding taxable year if a return showing a liability for tax was filed for the preceding taxable year and the preceding year was a taxable year of 12 months or an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; and made minor changes in style.

Applicability: Section 4(1), Ch. 92, L. 1993, provided: "[This act] applies to tax years beginning after December 31, 1993."

Rulemaking Authority: Section 4(2), Ch. 92, L. 1993, provided: "The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993."

Severability: Section 13, Ch. 9, Sp. L. June 1989, was a severability clause.

Effective Date: Section 16, Ch. 9, Sp. L. June 1989, provided that this section is effective July 17, 1989.

Applicability: Section 15, Ch. 9, Sp. L. June 1989, provided that this section applies to taxable years beginning after December 31, 1989.

Administrative Rules

ARM 42.2.501 Application of partial payments.
ARM 42.2.508 Adjustments to penalty and interest.
ARM 42.23.607 Computation of quarterly estimated tax underpayment interest.
ARM 42.23.608 Basis for not waiving quarterly estimated tax underpayment interest.

Case Notes

Interest Calculable From Date Outstanding Tax Balance Due: Plaintiff's tax liability for 1999 totaled $906,844, due on May 15, 2000. As of May 15, 2000, plaintiff had paid $1,361,802 in taxes for 1999. The Department of Revenue issued a refund of $824,112 on June 7, 2001, for the overpayment. On December 16, 2002, plaintiff filed an amended 1999 tax return reporting an additional tax liability of $368,654 and enclosed a payment of $435,012 with the amended return, which covered the additional tax liability plus $66,358 in interest. The Department contended that interest should have been assessed from the original return due date of May 15, 2000, and claimed that plaintiff owed an additional $51,610 in interest. Plaintiff argued that no tax was due pursuant to this section until June 7, 2001, and that no debt was owed, even in light of the additional tax liability that was discovered later, because plaintiff had overpaid taxes by such a significant amount. The Supreme Court agreed. Once the Department issued the refund, a deficit was created, although the deficit was not discovered until the amended return was filed. After the refund, plaintiff's total taxes paid for 1999 was $538,190, so as of June 7, 2001, plaintiff had an outstanding balance of $368,654. Thus, the date that the outstanding tax balance became due for purposes of this section was June 7, 2001, and interest on the outstanding balance should have been calculated from that date forward. U.S. West, Inc. v. Dept. of Revenue, 2008 MT 125, 343 M 1, 183 P3d 16 (2008).

15-31-511. Confidentiality of tax records.

Compiler's Comments

Termination Provision Amended: Section 4, Ch. 391, L. 2023, amended sec. 24, Ch. 550, L. 2021, by revising the multiple termination dates imposed by Ch. 550. Amendment effective May 3, 2023. The amendment did not affect the December 31, 2028, termination date of the Ch. 550, L. 2021, amendment to this section.

2021 Amendment: Chapter 550 inserted (3)(e) and (4)(d)(ii) concerning annual job growth incentive tax credit; and made minor changes in style. Amendment effective July 1, 2021, and terminates December 31, 2028.

2015 Amendment Repealed — Termination Ineffective: Section 21, Ch. 480, L. 2021, repealed sec. 25, Ch. 457, L. 2015, which amended this section. This rendered ineffective the termination date imposed by sec. 33, Ch. 457, L. 2015, which would have terminated the amendments December 31, 2023. Effective October 1, 2021.

Effective Date — Applicability: Section 23, Ch. 550, L. 2021 (amended by sec. 3, Ch. 391, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 through 3] [first enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021.

(3) [Sections 4 through 6] [second enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2022, and apply to the income tax year beginning after December 31, 2022.

(4) [Sections 7 through 9] [third enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2023, and apply to the income tax year beginning after December 31, 2023.

(5) [Sections 10 through 12] [fourth enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2024, and apply to the income tax year beginning after December 31, 2024.

(6) [Sections 13 through 15] [last enactment of 15-30-2361, 15-31-175, and 39-11-404] are effective October 1, 2025, and apply to income tax years beginning after December 31, 2025."

Severability: Section 22, Ch. 550, L. 2021, was a severability clause.

2019 Amendment: Chapter 415 inserted (4)(f) concerning providing information to the department of public health and human services; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2017 Amendments — Composite Section: Chapter 151 deleted former (3)(f) that read: "(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20." Amendment effective October 1, 2017.

Chapter 380 inserted (4)(e) concerning exchange of taxpayer and apprentice information with department of labor; and made minor changes in style. Amendment effective January 1, 2018.

Applicability: Section 8, Ch. 380, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 76 inserted (4)(c) regarding disclosure of tax information to the department of commerce; and made minor changes in style. Amendment effective February 27, 2015.

Chapter 457 inserted (4)(d) regarding superintendent of public instruction; and made minor changes in style. Amendment effective January 1, 2016, and terminates December 31, 2023.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2013 Amendment: Chapter 268 in (4)(b) near beginning before "information" substituted "corporate income tax and alternative corporate income tax" for "corporation income tax"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2007 Amendment: Chapter 70 in (4) at beginning substituted "On written request to the director or a designee of the director, the department shall" for "The department shall on request"; in (4)(b) in first sentence at beginning substituted "provide corporation income tax information, including any information that may be required under Title 15, chapter 30, part 11" for "deliver corporation income tax data", near middle after "analyst" inserted "as provided in 5-12-303 or 15-1-106", and at end inserted "as provided in 15-1-106 or 17-7-111"; in (5) in first sentence substituted "not to exceed $500" for "not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both", in second sentence at beginning substituted "If a public officer or public employee" for "If a public servant, as defined in 45-2-101", near middle after "person" substituted "is dismissed from office or employment" for "forfeits office", and at end before "conviction" inserted "dismissal or, in the case of a former officer or employee, for 1 year after"; and made minor changes in style. Amendment effective March 27, 2007.

Retroactive Applicability: Section 31(2), Ch. 399, L. 2007, provided: "(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208 [33-22-2008, now repealed]."

2005 Amendment: Chapter 595 inserted (3)(f) related to small business health insurance tax credit; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

Administrative Rules

ARM 42.2.325 Access to information.

ARM 42.9.110 Pass-through entities — audit adjustments.

Case Notes

Prohibition on Access to Corporate Tax Records Affirmed Absent Constitutional Challenge: A state senator requested certain corporate tax information from the Legislative Auditor, and the auditor compiled the information for tax year 2002 after receiving information from the Department of Revenue. The senator disclosed the information to the public. The senator subsequently requested that the Department provide similar information for other tax years, but the Department declined, citing the prohibition against disclosure of corporate tax information in this section. The senator petitioned the District Court to order disclosure of the information, but the court denied the petition. On appeal, the senator asserted that the records were subject to disclosure pursuant to the public's constitutional right to know and, without challenging the statute, dismissed the statutory prohibition on grounds that the statute must yield to constitutional law. The Supreme Court agreed with this cardinal premise, but noted that a statute is presumed constitutional unless unconstitutionality is demonstrated beyond a reasonable doubt. Absent a direct constitutional challenge to this section, the court declined to disturb the statutory prohibition against disclosure of corporate tax records. Elliott v. Dept. of Revenue, 2006 MT 267, 334 M 195, 146 P3d 741 (2006).

15-31-521. Closing agreements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Section Not Codified — Merger: Section 84-6909, R.C.M. 1947, which authorizes closing agreements with respect to liability for the corporation income tax, was merged with this section and was not codified as a separate section in the MCA. Citation may be made to sec. 3, Ch. 353, L. 1977.

15-31-522. When immediate payment demanded.

Compiler's Comments

2013 Amendment: Chapter 268 in first sentence before "statute" substituted "corporate income tax" for "corporation license tax"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.23.603 Jeopardy assessment.

15-31-523. Suspension or forfeiture on delinquency.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) in second sentence in two places substituted references to corporate income tax for references to corporation license tax and in third sentence after "delinquent" substituted "taxes" for "corporation licenses"; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: In (2), inserted "when" before "such record" in the last sentence.

15-31-524. Reviver of corporation after suspension or forfeiture.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In two places increased fee to $15 from $5.

Administrative Rules

ARM 42.2.402 Tax certificates — requirements.

Case Notes

Contract Made During Suspension: Statute providing that reviver shall be without prejudice to any action, defense, or right that has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. Mfr. Acceptance Corp. v. Krsul, 151 M 28, 438 P2d 667 (1968).

15-31-525. Levy upon and sale of property.

Compiler's Comments

1981 Amendment: Substituted "tax is not paid when due" for "tax is not paid within 60 days after the same becomes due" near the beginning of the section; substituted "the department of revenue may issue a warrant for distraint as provided in Title 15, chapter 1, part 7" for a procedure that required the department to issue a warrant directly to the sheriff commanding him to levy and sell the property of the taxpayer.

15-31-526. Action by attorney general.

Compiler's Comments

1983 Amendment: After "Action may be brought", deleted "at any time".

Case Notes

Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960), had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

Limitation: Under this section, prior to the 1963 amendment, the Board of Equalization (now Department of Revenue) was limited to going back no more than 5 years to recover corporation license taxes alleged to be due. St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960).

15-31-531. Credit for overpayment — interest on overpayment.

Compiler's Comments

2013 Amendment: Chapter 268 in (4) after "actual" substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendment: Chapter 594 in (2) near middle inserted reference to 15-1-216; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1981 Amendment: Substituted "interest shall be allowed on overpayments at the same rate as is charged on delinquent taxes due" for "interest shall be allowed on overpayments at the rate of 6% per annum" near the beginning of (2).

Applicability: Section 4, Ch. 589, L. 1981, provided: "This act applies to claims for refunds or credits that were made within the time period for submission of claims that is permitted under this act even though the claim may have been submitted after the 5-year period provided in 15-30-149, prior to amendment, had expired."

Interim Study Bill: House Bill 17 (Ch. 589, L. 1981) was the result of an interim study conducted by the Revenue Oversight Committee, reported in "Revenue Oversight Committee: Miscellaneous Studies", published by the Montana Legislative Council, November 1980.

Case Notes

Time of Taxpayer Delay Added to Period for Which No Interest Due on Refund Overpayment: This section establishes a 6-month period from the date that a return is due or filed, whichever is later, during which no interest is allowed on a refund. Plaintiff filed a return on October 13, 2000. According to the 6-month "safe harbor" period, if the Department of Revenue issued a refund to plaintiff by April 13, 2001, then plaintiff would not have been entitled to any interest on the overpayment. However, the refund was not issued until June 7, 2001, so plaintiff claimed to be entitled to interest. The Department contended that because plaintiff delayed the processing of the return by 84 days after the Department requested additional information, the 6-month period should be extended by that amount of time, which would place the June 7, 2001, payment within the safe harbor period and preclude the payment of interest on the refund. The Supreme Court agreed. When a taxpayer fails to respond to the Department's request for information within 30 days, interest will not accrue during the delay, and the running of the 6-month safe harbor is tolled during the delay. Thus, plaintiff was not entitled to interest on its overpayment. U.S. West, Inc. v. Dept. of Revenue, 2008 MT 125, 343 M 1, 183 P3d 16 (2008).

15-31-532. Application for refund — appeal from denial.

Compiler's Comments

1991 Amendment: At end of first sentence, after "notify the taxpayer", substituted "as provided in 15-1-211" for "accordingly", deleted former second and third sentences that read: "At the expiration of 30 days from the mailing of the notice, the department's action shall become final unless within the 30-day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211.

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-31-543. Forfeiture of right to engage in business — penalties.

Compiler's Comments

2013 Amendment: Chapter 268 in (1) in first sentence near end substituted "corporate income tax" for "license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendment: Chapter 594 deleted former (1) that read: "(1) If a corporation fails to file a return at the time specified in 15-31-502 or files a false or fraudulent return, the corporation is liable to a penalty of not more than $5,000 to be recovered by an action in a court of competent jurisdiction"; in (1) in first sentence near end substituted "license tax" for "license fee" and after "penalties" inserted "interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) at end substituted "not more than $5,000 to be recovered by an action in a court of competent jurisdiction" for "not exceeding $5,000"; in (2) at beginning of first sentence inserted "A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return" and in last sentence after "may be enforced" deleted "by the attorney general"; in (3) in first sentence substituted "is liable for the penalty imposed by 15-1-216" for "shall be liable to a penalty of not more than $100"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-31-544. Action on false or fraudulent return.

Compiler's Comments

2021 Amendment: Chapter 108 in middle after "file the return" inserted "including a federal adjustments report under 15-30-3403 or 15-30-3404"; and made minor changes in style. Amendment effective March 31, 2021.

Applicability: Section 18, Ch. 108, L. 2021, provided: "[This act] applies to tax adjustments made after [the effective date of this act]." Effective March 31, 2021.

1983 Amendment: Deleted former (1), which read: "Except as provided in subsection (2), an action to collect a past-due tax imposed pursuant to this chapter or to enforce a provision of this chapter must be brought within 5 years of the due date of the tax or the date of filing the return, whichever is later."; near beginning, after "taxpayer" inserted "files a fraudulent return or"; and after "fails to file the return" substituted "the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment" for "an action to collect the tax may be brought at any time. Whenever a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department."

Applicability: Section 3, Ch. 222, L. 1983, provided: "This act applies to tax years beginning after December 31, 1982, and to all prior tax years for which the liability for taxes has not been discharged by statute."

Severability: Section 3, Ch. 222, L. 1983, was a severability clause.

Case Notes

Failure to Report Change in Federal Taxable Income — When Federal Changes Become Final: The Internal Revenue Service (IRS) determined through an audit that plaintiff owed additional federal taxes for 1995 and 1996. Plaintiff appealed the assessment, but the Ninth Circuit Court of Appeals affirmed the decision in 2003. The state Department of Revenue received two IRS reports in 2004 reflecting the changes in plaintiff's 1995 and 1996 taxable income and in 2004 issued plaintiff an assessment of additional state taxes due. Plaintiff appealed the assessment, arguing that the assessment had been issued beyond the statute of limitations in 15-31-509, but the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board) concluded that because plaintiff failed to file an amended Montana return at the time that it filed an amended federal return, the Department was allowed to assess tax liability under 15-31-544 and that the assessment was not barred by the statute of limitations. The District Court affirmed the STAB decision, and plaintiff appealed, but the Supreme Court affirmed. Under the 1995 version of 15-31-506 in effect at the time, plaintiff was required to report the change in its 1995 and 1996 federal taxable income to the state within 90 days of receiving notice of the change. Plaintiff did not file the required report, but argued on appeal that the statute of limitations expired prior to the state's issuance of an assessment for those years. The District Court erred in concluding that the assessment was not barred by the statute of limitations in 15-31-544 because that provision applies only when a taxpayer fails to file a return or files a fraudulent return. However, under 15-31-509, the limitations prescribed for giving notice of a proposed assessment of an additional tax does not apply when a taxpayer fails to file a report of changes in federal taxable income as required by 15-31-506 until 5 years after the federal changes become final. In this case, the federal changes became final when the Ninth Circuit Court issued its opinion in 2003, so the Department's 2004 assessment was issued well within the 5-year limitation period and was not barred by the statute of limitations. Frontier Chevrolet v. Dept. of Revenue, 2008 MT 191, 344 M 18, 186 P3d 219 (2008).

Corporate License Tax — Limitations on Assessment Where No Return — No Revival of Impliedly Repealed Section by Internal Reference: The 2-year Statute of Limitations in 27-2-211 applied to the assessment of corporate license tax for corporations that failed to file a return for the reason that the Supreme Court in St. v. King Colony Ranch, 137 M 145, 350 P2d 841 (1960), had held that sec. 1, Ch. 209, L. 1945 (amending 15-31-526), had superseded sec. 9, Ch. 166, L. 1933 (enacting 15-31-542), as to the time limitation and the Legislature, in sec. 2, Ch. 186, L. 1963 (enacting 15-31-509), though referencing 15-31-542 on an exception, had not used language to revive it; therefore 15-31-542 remained superseded or repealed. (But see 15-31-544.) Caterpillar Tractor Co., Inc. v. Dept. of Revenue, 194 M 537, 633 P2d 618, 38 St. Rep. 1245 (1981).

15-31-551. Certified copies of corporate income tax returns to taxpayer — fee.

Compiler's Comments

2013 Amendment: Chapter 268 substituted "corporate income tax" for "corporation license tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished.

Compiler's Comments

2021 Amendment: Chapter 471 deleted former (3) that read: "(3) For an authorized insurance company regulated under Title 33, the commissioner of insurance may furnish the certificate verifying that the corporation has filed all applicable returns and that taxes have been paid through and including the corporation's final year of existence in Montana". Amendment effective July 1, 2021.

2019 Amendments — Composite Section: (Both versions) Chapter 117 inserted (3) regarding the commissioner of insurance furnishing a certificate verifying filing of returns and payment of taxes. Amendment effective July 1, 2019.

(Version effective June 1, 2020) Chapter 271 in (1) near beginning after "dissolution as set forth in" substituted "Title 35" for "35-1-944". Amendment effective June 1, 2020.

1999 Amendment: Chapter 69 in (1) at beginning inserted "For purposes of voluntary withdrawal or dissolution as set forth in 35-1-944" and substituted "a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal" for "a certificate to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter"; inserted (2) providing for issuance of a tax clearance certificate; and made minor changes in style. Amendment effective March 15, 1999.

1991 Amendment: After "Upon request of a corporation" deleted "and upon the payment of $1". Amendment effective April 26, 1991.

Retroactive Applicability: Section 4, Ch. 658, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to January 1, 1991.

Administrative Rules

ARM 42.2.402 Tax certificates — requirements.

15-31-553. Fees to reimburse department for costs — deposit in general fund.

Compiler's Comments

2019 Amendment: Chapter 117 in (1) near middle of first sentence inserted "and the commissioner of insurance"; and made minor changes in style. Amendment effective July 1, 2019.

Part 6
Lists of Corporations

15-31-603. List of entities furnished by secretary of state.

Compiler's Comments

2005 Amendment: Chapter 273 in introductory clause near beginning of first sentence substituted "the 15th day of each month" for "December 31 of each year" and after "shall" substituted "provide a list of all new corporations" for "direct a list of all corporations"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 143 in introductory clause in first sentence at beginning inserted "On or before December 31 of each year", near middle after "all corporations" inserted "limited partnerships, limited liability companies, and limited liability partnerships", and near end inserted references to Title 35, chapters 4, 5, 8, 9, 10, and 12; in (1) and (2) at end substituted "entity" for "corporation"; in (3) near end substituted "agent of the entity in Montana, if applicable" for "agent of the corporation in Montana"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 19, Ch. 143, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to tax years beginning after December 31, 2001.

(2) [Section 8] [15-30-124] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000.

(3) [Section 6] [15-30-1113, the January 1, 2003, version] applies to tax years beginning after December 31, 2002."

1989 Amendment: In (4), after "department", inserted "of revenue" and at end deleted "to administer the purposes of this part"; and made minor changes in phraseology.

Part 10

Montana Economic Development Industry Advancement Act

Part Compiler's Comments

Effective Date: Section 19, Ch. 352, L. 2019, provided that this part is effective July 1, 2019.

Applicability: Section 20, Ch. 352, L. 2019, provided: "(1) Except as provided in subsection (2), [this act] applies to tax years beginning after December 31, 2020.

(2) The tax credit in [section 7] [15-31-1007] applies after June 30, 2019, as provided in [section 7(1)] [15-31-1007(1)]."

Severability: Section 18, Ch. 352, L. 2019, was a severability clause.

15-31-1003. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 642, L. 2023, in definition of postproduction company in (a)(iii) after "requirements of 15-31-1005(4)" deleted "in the tax year for which the postproduction company claims the tax credit provided for in 15-31-1009". Amendment effective October 1, 2023.

Section 6, Ch. 701, L. 2023, in definition of compensation in (c) near middle of first sentence substituted "at the highest marginal rate in effect under 15-30-2103" for "at the rate of 6.9%". Amendment effective January 1, 2024.

Applicability: Section 4, Ch. 642, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

Administrative Rules

ARM 42.4.3401 Definitions.
ARM 42.4.3402 Media production tax credits — determination of credit base.
ARM 42.4.3407 Tax credit for postproduction wages — credit base.
ARM 42.4.3411 Media production tax credit application.
ARM 42.4.3412 Postproduction tax credit application.

15-31-1005. Submission of costs — fee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 642, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 642, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Administrative Rules

ARM 42.4.3403 Required income tax withholding on compensation paid to a loan-out company.
ARM 42.4.3406 Base investment requirement — election to combine nonqualifying productions.
ARM 42.4.3408 Credit year.
ARM 42.4.3411 Media production tax credit application.
ARM 42.4.3412 Postproduction tax credit application.
ARM 42.4.3417 Validation of tax credit — appeal rights.

15-31-1006. Production expenditure verification report.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 642, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 642, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Administrative Rules

ARM 42.4.3411 Media production tax credit application.
ARM 42.4.3412 Postproduction tax credit application.
ARM 42.4.3413 Certified public accountant verification report.

15-31-1007. Tax credit for media production.

Compiler's Comments

2021 Amendment: Chapter 503 in (8) near end after "the credit was computed" inserted "in determining Montana taxable income under 15-30-2120 or" and after "as a deduction under" deleted "15-30-2131 or". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment — Coordination: Pursuant to sec. 16, Ch. 352, L. 2019, a coordination instruction, in (1) near beginning of first sentence inserted "and through the tax year ending December 31, 2029". Amendment effective July 1, 2019.

Applicability: Section 20, Ch. 352, L. 2019, provided: "(1) Except as provided in subsection (2), [this act] applies to tax years beginning after December 31, 2020.

(2) The tax credit in [section 7] [15-31-1007] applies after June 30, 2019, as provided in [section 7(1)] [15-31-1007(1)]."

Administrative Rules

ARM 42.4.3403 Required income tax withholding on compensation paid to a loan-out company.
ARM 42.4.3406 Base investment requirement — election to combine nonqualifying productions.
ARM 42.4.3418 Claim of tax credits on an income tax return.
ARM 42.4.3419 Carryover period.

15-31-1008. Transfer of tax credit for media production — transfer fee.

Administrative Rules

ARM 42.4.3419 Carryover period.
ARM 42.4.3420 Transfer of production tax credit.

15-31-1009. Tax credit for postproduction wages.

Compiler's Comments

2019 Amendment — Coordination: Pursuant to sec. 17, Ch. 352, L. 2019, a coordination instruction, in (1) at beginning inserted "Through the tax year ending December 31, 2029"; and made minor changes in style. Amendment effective July 1, 2019.

Administrative Rules

ARM 42.4.3418 Claim of tax credits on an income tax return.
ARM 42.4.3419 Carryover period.

15-31-1010. Limitation of tax credits.

Compiler's Comments

2021 Amendment: Chapter 509 in (2)(a) near end after "may not exceed" substituted "$12 million" for "$10 million". Amendment effective January 1, 2022, January 1, 2023, January 1, 2024, January 1, 2025, and July 1, 2025, and terminates on occurrence of contingency until July 1, 2025.

Effective Dates — Applicability: Section 7, Ch. 509, L. 2021, provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Section 1] [first temporary amendment to 15-31-1010(2)(a)] is effective January 1, 2022, and applies to the income tax year beginning after December 31, 2021.

(3) [Section 2] [second temporary amendment to 15-31-1010(2)(a)] is effective January 1, 2023, and applies to the income tax year beginning after December 31, 2022.

(4) [Section 3] [third temporary amendment to 15-31-1010(2)(a)] is effective January 1, 2024, and applies to the income tax year beginning after December 31, 2023.

(5) [Section 4] [fourth temporary amendment to 15-31-1010(2)(a)] is effective January 1, 2025, and applies to the income tax year beginning after December 31, 2024.

(6) [Section 5] [final permanent amendment to 15-31-1010(2)(a)] is effective July 1, 2025, and applies to income tax years beginning after June 30, 2025."

Severability: Section 6, Ch. 509, L. 2021, was a severability clause.

Administrative Rules

ARM 42.4.3408 Credit year.

15-31-1011. Report to legislature.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 20, Ch. 163, L. 2019, in (1) and in (4) in two places the code commissioner changed "revenue and transportation interim committee" to "revenue interim committee".

15-31-1012. Rulemaking.

Administrative Rules

Title 8, chapter 119, subchapter 3, ARM MEDIAA tax credits.

CHAPTER 32
ENERGY-RELATED AND ECOLOGICAL TAX INCENTIVES

Part 1
Investment in Energy Conservation or Alternative Energy

Part Compiler's Comments

Transition — Carryover of Credits: Section 66, Ch. 503, L. 2021, provided: "A credit allowed a taxpayer prior to January 1, 2022, under the provisions of law in effect prior to January 1, 2022, that may be carried forward for a specified number of years is not impaired by [this act], and a taxpayer may claim the credit for the taxes specified for the period established in the section at the time the credit was first allowed. This section applies to all tax credits that are removed or repealed by [this act]."

Coordination: Section 8, Ch. 576, L. 1977, read: "If House Bill 70 [Ch. 566] is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 [Ch. 566] shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in building for an energy conservation purpose." House Bill 70 was enacted by Ch. 566, L. 1977, thus giving effect to sec. 8, Ch. 576, L. 1977.

15-32-101. Purpose.

Compiler's Comments

2021 Amendment: Chapter 11 deleted last sentence that read: "This part allows but does not require a public utility to extend credit for energy conservation investments." Amendment effective October 1, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-32-102. Definitions.

Compiler's Comments

2009 Amendment: Chapter 334 in definition of low-emission wood or biomass combustion device inserted (a)(ii) including an outdoor hydronic heater and inserted (c) including a masonry heater; and made minor changes in style. Amendment effective April 24, 2009.

Retroactive Applicability: Section 4, Ch. 334, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to masonry heaters installed after December 31, 2008, and to tax years beginning after December 31, 2008."

2003 Amendment: Chapter 155 in definition of low emission wood or biomass combustion device after "means a" substituted "wood-burning appliance:

(a) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; or

(b) that uses wood pellets as its primary source of fuel" for "noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203". Amendment effective March 26, 2003.

Saving Clause: Section 3, Ch. 155, L. 2003, was a saving clause.

Retroactive Applicability: Section 5, Ch. 155, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001."

2001 Amendment: Chapter 591 inserted definition of alternative energy system; in definition of recognized nonfossil forms of energy generation in (a) after "sources" inserted "including electricity", inserted (a)(v) through (a)(vii) concerning geothermal energy, fuel cells, and alternative energy systems, and in (b) after "from" inserted "biomass or"; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Applicability: Section 30, Ch. 591, L. 2001, provided: "[Sections 6 through 12 and 14] [15-6-225, 15-24-1401, 15-31-124 (now repealed), 15-32-102, 15-32-109 (now repealed), 15-32-115 (now repealed), 15-32-201 (now repealed), and 15-32-402 (now repealed)] apply to tax years beginning after December 31, 2001."

1997 Amendments: Chapter 42 rearranged definitions in alphabetical order; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 200 in definition of building, after "mobile home", inserted "or manufactured home". Amendment effective January 1, 1998.

1995 Amendment: Chapter 418 in (6)(a)(ii), (6)(a)(iii), and (6)(b) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendments: Chapter 467 in definition of low emission wood or biomass combustion device, in introductory clause, substituted reference to noncatalytic stove or furnace for reference to stove or furnace or a catalytic converter added to a stove or furnace, at beginning of (a)(i) inserted "is specifically designed to burn", after "wood" inserted "pellets", and after "biomass" inserted "pellets", in (a)(ii), before "emission", inserted "a particulate" and decreased allowable emission rate from 6 to 4.1 grams per hour, inserted (a)(iii) regarding air-to-fuel ratio, and inserted (b) establishing emission rate for a noncatalytic stove or furnace that burns wood or other nonfossil biomass; in definition of recognized nonfossil forms of energy generation deleted former (c) that read: "(c) a low emission wood or biomass combustion device"; and made minor changes in style. Amendment effective April 17, 1991.

Chapter 646 inserted definition of geothermal system. Amendment effective April 26, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 467, L. 1991, provided: "A statement of intent is required for this bill because it is anticipated that rulemaking proceedings will be required for implementation.

Montana currently has nine communities that exceed the state and federal ambient air quality standards for particulate matter smaller than 10 microns in diameter (PM-10) and two communities that exceed carbon monoxide standards. Several other communities have PM-10 concentrations approaching the ambient standards.

It is the intention of the legislature that the tax credit available for the cost of purchasing and installing a low emission wood or biomass combustion device be restricted to only the most efficient devices available on the market. While replacing older wood stoves with newer low-emission wood stoves may reduce ambient levels of PM-10, carbon monoxide, and other pollutants, the legislature finds that the current tax incentives do not encourage the improvements in efficiency and reductions in pollutants that will be required in the future to improve air quality.

While it restricts the availability of these tax incentives, the legislature finds it appropriate to increase the amount of the incentive available for those devices that qualify. This action is intended to stimulate the availability of the more efficient devices and further promote their use. Changes are also being made, as appropriate, to preserve the application of other incentives to the installation and production of these devices."

Applicability: Section 5, Ch. 467, L. 1991, provided: "[This act] applies to taxable years beginning after December 31, 1991, and before January 1, 1996."

Retroactive Applicability: Section 4, Ch. 646, L. 1991, provided that the amendment to this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: At beginning of (6)(b) inserted "a system"; at beginning of (6)(c) substituted "low-emission" for "low emission" and at end deleted "and also means"; and reoutlined subsection (6) and made minor changes in punctuation and phraseology.

1985 Amendment: Inserted definition of "Low emission wood or biomass combustion device"; and in (6) after "solid wood wastes", inserted "a low emission wood or biomass combustion device".

Administrative Rules

ARM 42.4.104 Energy generating systems.

ARM 42.4.105 Standard components and passive solar systems.

ARM 42.19.1104 Property tax exemption for nonfossil energy system.

Attorney General's Opinions

"Nonresidential Structure" to Refer to Entire System: The exemption given to each "nonresidential structure" in 15-6-201 refers to each energy generating system, not to its individual parts. The reference to nonfossil forms of energy generation is defined in 15-32-102 to be a system for capturing or converting energy into usable sources. The legislative intent behind 15-6-201 indicates the intention of encouraging, through tax incentives, the development of alternative energy systems. Whether a single structure contains all the components that generate energy, thereby making it a system, must be made on a case-by-case basis. 40 A.G. Op. 6 (1983).

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-32-103. Deduction for energy-conserving investments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (2), after "approval of the department", deleted "of an application".

1981 Amendment: Deleted "adjusted gross individual income allowed in computing taxable income under chapter 30 or from" after "deductions from" near the beginning of (1).

Administrative Rules

ARM 42.23.421 Deduction for investment for energy conservation.

ARM 42.23.422 Determination of capital investment for energy conservation.

ARM 42.23.423 Types of appropriate investments for energy conservation purposes.

15-32-104. Limitations on deduction and credit.

Compiler's Comments

2021 Amendment: Chapter 503 near beginning after "under 15-32-103" deleted "and 15-32-109". Amendment effective January 1, 2022.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2003 Amendment: Chapter 524 deleted former (1) that read: "(1) capital investments made after January 1, 1975"; deleted former (3) that read: "(3) a ceiling of $100,000 in tax savings per year to any one person or firm"; and made minor changes in style. Amendment effective April 26, 2003.

1981 Amendment: Inserted "and 15-32-109" after "15-32-103" in the first sentence.

15-32-105. Application to new construction — rules.

Compiler's Comments

1981 Amendment: Inserted "or credit" after "no deduction" in the first sentence of (1).

Commissioner Correction: Because of rearrangement by codification, the language in subsection (2) was modified by the Code Commissioner, 1979.

Statement of Intent: The statement of intent attached to HB 534 (Ch. 652, L. 1979) provided: "In adopting rules to determine the eligibility for tax credits of recognized nonfossil forms of energy generation that produce passive solar heat, the department shall rely on the standards adopted, if any, by the Internal Revenue Service pursuant to the National Energy Act and on those adopted by the states of California and New Mexico. The department of revenue shall adapt these standards to fit passive solar systems suited for Montana's climate.

A passive solar system includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building. Thus, the conventional amount of south-facing windows or a standard mass wall could not be included as part of a passive solar system, but additional south-facing windows or additional thickenings to a standard mass wall used for solar heat storage could be included."

Administrative Rules

ARM 42.4.104 Energy generating systems.

ARM 42.4.105 Standard components and passive solar systems.

Title 42, chapter 4, subchapter 41, ARM Individual, corporation, and property — alternative energy production.

15-32-106. Procedure for obtaining benefit of deduction.

Compiler's Comments

2021 Amendment: Chapter 503 throughout section in four places after "a deduction" deleted "or credit", deleted former first sentence that read: "The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109", and near middle of first sentence after "15-32-103" deleted "or 15-32-109". Amendment effective January 1, 2022.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2003 Amendment: Chapter 338 in fourth sentence in two places substituted "department of labor and industry" for "department of administration". Amendment effective October 1, 2003.

1995 Amendment: Chapter 418 in third sentence, in two places, substituted "department of environmental quality" for "department of natural resources and conservation"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In first sentence substituted "a tax credit" for "tax treatment" and deleted a reference to 15-32-103; deleted former second sentence that read: "Application shall be made to the department of revenue"; in second sentence substituted "a deduction or credit under 15-32-103 or 15-32-109" for "an application"; and in each of the last three sentences substituted "a deduction or credit" for "an application".

1981 Amendment: Inserted "or 15-32-109" after "15-32-103" at the end of the first sentence.

Part 3
Tax Deduction for Purchasing Montana-Produced Organic Fertilizer and Inorganic Fertilizer Produced as Byproduct

15-32-301. Purpose.

Compiler's Comments

1997 Amendment: Chapter 218 near middle, after "municipalities", inserted "and inorganic matter produced as byproducts of industrial or mining activity"; after "fertilizer" inserted "and inorganic fertilizer produced as a byproduct"; and at end inserted "commercially produced".

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

15-32-302. Definitions.

Compiler's Comments

1997 Amendment: Chapter 218 inserted definition of inorganic fertilizer produced as a byproduct; and made minor changes in style.

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

15-32-303. Deduction for purchase of Montana-produced organic or inorganic fertilizer.

Compiler's Comments

1997 Amendment: Chapter 218 near end, after "organic fertilizer", inserted "and inorganic fertilizer produced as a byproduct".

Effective Date — Retroactive Applicability: Section 5, Ch. 218, L. 1997, provided: "[This act] is effective on passage and approval [approved April 8, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

1993 Amendment — Rejected: The amendments made by Ch. 634, L. 1993 (House Bill No. 671), were removed from this section because House Bill No. 671 was rejected by the electorate in a referendum held November 8, 1994.

Part 6

Recycling of Material

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 542, L. 1995, provided: "This bill extends by 6 years the termination date for the recycling tax credit provided for in 15-32-602 and the recycling tax deduction provided for in 15-32-610. It also expands the application of the credit to include investments in equipment used to treat soils contaminated by hazardous wastes. In order to implement the tax credit for capital investments in property purchased to collect or process reclaimed material, including soil that has been contaminated by hazardous wastes, provided for under 15-32-602, the department of revenue shall make a determination about the equipment and processes that qualify. It is the intent of the legislature that the department of health and environmental sciences [now department of environmental quality], upon request, assist the department of revenue in making that determination."

Effective Date — Applicability — Rulemaking: Section 8, Ch. 712, L. 1991, provided: "(1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purposes of promulgating administrative rules to implement [sections 1 through 5], [this act] is effective on passage and approval."

15-32-601. Definitions.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 deleted former (4)(a)(ii) that read: "(ii) soil that has been contaminated by hazardous wastes to the extent that treatment of those wastes is required as defined in 75-10-403"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 inserted definition of process; in definition of reclaimable material inserted (a)(ii) regarding contaminated soil; and made minor changes in style. Amendment terminates December 31, 1997.

Extension of Termination Date: Section 4, Ch. 542, L 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination: Section 5(1), Ch. 542, L. 1995, provided: "[Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

1993 Amendment: Chapter 568 inserted definition of postconsumer material; in definition of reclaimable material inserted second sentence that read: "Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material"; and in definition of recycled material, before "reclaimed", deleted "at least 90%" and at end inserted "as provided in 15-32-609".

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

Administrative Rules

ARM 42.4.2601 Definitions.

15-32-602. Amount and duration of credit — how claimed.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 in (2) near beginning after "Subject to" deleted "15-32-603(3) and" and deleted former last sentence that read: "If qualifying property was purchased prior to January 1, 1992, but on or after January 1, 1990, a taxpayer is entitled to a credit for tax year 1992"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 in (2), at beginning of first sentence, substituted "15-32-603(3)" for "15-32-603(2)", inserted reference to subsection (4) of this section, and near middle, after "credit", substituted "as provided in subsection (3) for" for "in an amount equal to 25% of"; inserted (3) and (4) regarding credit that may or may not be claimed for investments in depreciable property; and made minor changes in style. Amendment terminates December 31, 1997.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination: Section 5(1), Ch. 542, L. 1995, provided: "[Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

Administrative Rules

ARM 42.4.2605 Period covered for reclamation and recycling credit.

15-32-603. Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch.

398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

2001 Amendment: Chapter 398 deleted former (2) and (3) that read: "(2) A credit for depreciable property that treats soil contaminated by hazardous wastes applies only to property that treats contaminated soil and not to auxiliary property.

(3) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 2002"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 8, Ch. 398, L. 2001, provided: "[This act] applies to tax years beginning after December 31, 2001."

Extension of Termination and Exception: Section 1, Ch. 411, L. 1997, amended sec. 5, Ch. 542, L. 1995, by extending the termination date imposed by that section and by extending the exception to the termination date to December 31, 2001. Effective April 28, 1997.

1995 Amendment: Chapter 542 inserted (2) regarding a credit for depreciable property that treats contaminated soil; in (3), at end, substituted "before January 1, 1998" for "on or after January 1, 1990, but before January 1, 1996"; and made minor changes in style.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination — Exception: Section 5, Ch. 542, L. 1995, provided: "(1) [Sections 1 through 3] [amending 15-32-601 through 15-32-603] terminate December 31, 1997.

(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, 1998.", is deleted in its entirety on December 31, 1997."

Applicability: Section 6, Ch. 542, L. 1995, provided: "[This act] applies to tax years beginning and to depreciable property purchased after December 31, 1995."

1993 Amendment: Chapter 568 inserted (1)(d)(i) and (1)(d)(ii) providing exceptions for reclaimed material that is industrial waste; and made minor changes in style.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

Administrative Rules

ARM 42.4.2602 Additional deduction for purchase of recycled material.

ARM 42.4.2604 Credit for investments in depreciable equipment or machinery to collect, process, or manufacture product from reclaimed material or process soils contaminated by hazardous wastes.

15-32-604. Limitation of credit.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

15-32-609. Recycled material qualifying for deduction — purpose — rulemaking.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 568, L. 1993, provided: "A statement of intent is included in this bill because [section 2] [15-32-609] requires rulemaking by the department of revenue. The department is to conduct rulemaking to define the recycled materials that qualify for a tax deduction under 15-32-610.

The goal of amending 15-32-601 and of adopting rules to implement the amendment is to reduce solid waste and pollution. The greater the quantity of material reclaimed, the longer landfills will last and the less pollution they will create. The best way to reduce landfill material is to reclaim postconsumer material for reuse. The rules of the department should provide for using the maximum postconsumer reclaimed material content possible when defining the reclaimed material eligible for additional tax deduction.

It is intended that the department keep abreast of the recycling industry and try to encourage maximum use of recycled materials through the use of the tax deduction. The department should define recycled material by the amount and type of reclaimable material, as defined in 15-32-601, that it contains. The amount of material may be measured by volume, weight, fiber content, or other applicable standard. Recycled material may also be defined by the type of reclaimed material it contains, such as postconsumer, de-inked, or other applicable type.

The amounts and types of reclaimed material should follow industry standards so that industry labeling, as certified by appropriate bodies, can be used by purchasers to ensure that the products they are purchasing meet departmental deductibility definitions."

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Administrative Rules

ARM 42.4.2601 Definitions.

ARM 42.4.2602 Additional deduction for purchase of recycled material.

ARM 42.4.2604 Credit for investments in depreciable equipment or machinery to collect, process, or manufacture a product from reclaimed material, or process soils contaminated by hazardous wastes.

ARM 42.4.2605 Period covered for the reclamation and recycling credit.

15-32-610. Deduction for purchase of recycled material.

Compiler's Comments

2021 Amendment: Chapter 503 near beginning after "other deductions from" substituted "Montana taxable income" for "adjusted gross individual income". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

1993 Amendment: Chapter 568 near middle increased allowable deductible amount from 5% to 10% of the taxpayer's expenditures.

Retroactive Applicability: Section 6, Ch. 568, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

Administrative Rules

ARM 42.4.2601 Definitions.

ARM 42.4.2602 Additional deduction for purchase of recycled material.

ARM 42.4.2604 Credit for investments in depreciable equipment or machinery to collect, process, or manufacture a product from reclaimed material, or process soils contaminated by hazardous wastes.

ARM 42.4.2605 Period covered for the reclamation and recycling credit.

15-32-611. Department to make rules.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 159, L. 2009, repealed sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, secs. 4, 5, 6, and 7, Ch. 398, L. 2001, sec. 8, Ch. 516, L. 2001, secs. 3 and 5, Ch. 129, L. 2005, and secs. 1, 2, 3, 4, 5, 6, 7, and 8, Ch. 569, Laws of 2005, which terminated this section December 31, 2011. Effective July 1, 2009.

Extension of Termination Date: Sections 1 through 8, Ch. 569, L. 2005, amended sec. 9, Ch. 712, L. 1991, secs. 4 and 5, Ch. 542, L. 1995, sec. 1, Ch. 411, L. 1997, and secs. 4, 5, 6, and 7, Ch. 398, L. 2001, by extending the termination date of this section to December 31, 2011. Amendment effective July 1, 2005.

1995 Statement of Intent: The statement of intent attached to Ch. 542, L. 1995, provided: "This bill extends by 6 years the termination date for the recycling tax credit provided for in 15-32-602 and the recycling tax deduction provided for in 15-32-610. It also expands the application of the credit to include investments in equipment used to treat soils contaminated by hazardous wastes. In order to implement the tax credit for capital investments in property purchased to collect or process reclaimed material, including soil that has been contaminated by hazardous wastes, provided for under 15-32-602, the department of revenue shall make a determination about the equipment and processes that qualify. It is the intent of the legislature that the department of health and environmental sciences [now department of environmental quality], upon request, assist the department of revenue in making that determination."

Extension of Termination Date: Section 4, Ch. 542, L. 1995, amended sec. 9, Ch. 712, L. 1991, to read: "[This act] terminates December 31, 2001." The effect of the amendment is to extend the termination date of this section from December 31, 1995, to December 31, 2001.

1991 Statement of Intent: The statement of intent attached to Ch. 712, L. 1991, provided: "A statement of intent is necessary for this bill because [section 5] [section 6 after amendment, now this section] grants rulemaking authority to the department of revenue. This bill allows rulemaking to proceed prior to the effective date of the act to allow the department ample time prior to the time the bill goes into effect to hold hearings and elicit the views of taxpayers, the public, and groups interested in the reclamation and recycling of materials.

The legislature expects the department to adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, processing, and reuse of reclaimable and recycled materials by businesses.

The bill addresses four levels of business involvement in the reclamation and recycling of materials:

(1) Retail businesses are encouraged to purchase equipment to collect reclaimable material from consumers.

(2) Recyclers are encouraged to purchase equipment to collect reclaimable material from businesses and other sources and process the material.

(3) Manufacturers are encouraged to purchase equipment to manufacture products from reclaimed material.

(4) All businesses are offered an additional business-related tax deduction to use recycled products in the course of their business.

The scope of the business activity to qualify for a tax credit should be broad. Retail grocery stores and other businesses should be encouraged to collect reclaimable material by receiving a tax credit for equipment they purchase to collect the material, even if they do not directly receive a business-related profit from the equipment or collection operation. Recyclers are encouraged to purchase collection and processing equipment, and manufacturers are encouraged to purchase equipment to make products from reclaimed material.

The rules should be inflexible in allowing dual roles for equipment—the qualifying equipment should be used primarily for the purposes of this bill. The rules should be flexible in determining the specifics of what are to be defined as reclaimable materials and recycled materials. The in-state advantages to building industry based upon reclamation and recycling may have local and interstate benefits that far outweigh the cost of a tax credit and additional deduction."

Termination: Section 9, Ch. 712, L. 1991, provided: "[This act] terminates December 31, 1995."

Administrative Rules

Title 42, chapter 4, subchapter 26, ARM Individual and corporation — recycle credit against individual and corporation license taxes.

CHAPTER 33
SMALL BUSINESS INVESTMENT INCENTIVES

Part 1
Small Business Investment Companies — Tax Exemptions

15-33-102. Purpose.

Compiler's Comments

2001 Amendment: Chapter 523 in second and third sentences after "manufacturing" inserted "technology, technology infrastructure, power generation", in second sentence at end after "companies" deleted "when the alternative investments for private risk capital are natural resource ventures, which often yield extremely high rates of return", and in third sentence at end after "processing" substituted "companies" for "given the hardship caused many Montana communities by their reliance on an economic base dominated by single, large industries"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

ARM 42.23.110 Determination of qualified investments.

15-33-103. Definition.

Administrative Rules

ARM 42.15.213 Small business corporation dividend and capital gain exclusion.

ARM 42.23.107 Definitions.

ARM 42.23.108 Conditions for exemption for dividends.

15-33-104. Reporting — recordkeeping by the department.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.23.109 Reporting requirements.

15-33-105. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 834 (Ch. 571, L. 1981), provided: "Section 5 of House Bill 834 [15-33-105] provides the Department of Revenue with rulemaking authority relating to Small Business Investment Corporations in Montana. In enacting this legislation, it is the intent of the Legislature that the Department of Revenue will adopt rules that ensure the proper reporting of investments in SBIC's and rules to establish eligibility for the capital gains and dividend treatment allowed by House Bill 834."

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

ARM 42.23.107 Definition of small business investment company.

ARM 42.23.108 Conditions for tax exemptions for dividends from investment in small business investment company.

ARM 42.23.109 Reporting requirements for small business investment company.

ARM 42.23.110 Determination of qualified investments by small business investment company.

15-33-106. Capital gains — dividends exempted.

Administrative Rules

ARM 42.23.108 Conditions for exemption for dividends.

CHAPTER 35
COAL SEVERANCE TAX

Chapter Case Notes

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Coal Severance Tax Not in Contravention of Federal Constitutional or Statutory Policy: The Montana coal severance tax in its present form is a lawful exercise of this state's taxing authority. The Montana Supreme Court upheld the tax stating that, whether as a question of this state's power to levy any tax or its power to levy a tax at the rate set forth, there has been no preemption by the federal government in the field of coal severance taxation, or any national policy derived from Congressional enactments pursuant to the constitution with which Montana's tax conflicts. Commonwealth Edison Co. v. St., 189 M 191, 615 P2d 847, 37 St. Rep. 1192 (1980).

Chapter Law Review Articles

The Black Book, Raney, 43 Pub. Land & Resources L. Rev. 303 (2020).

History of the Coal Tax, Towe, 43 Pub. Land & Resources L. Rev. 271 (2020).

The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

Constitutional Law — The Supreme Court Upholds Montana's Coal Severance Tax, Jacobs, 15 Creighton L. Rev. 681 (1982).

Chapter Collateral References

HJ 6 Coal Severance Tax Trust Fund Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj6-final-report-edited.pdf.

Reappraising Montana's Coal Severance Tax, 1984 Interim Report, Montana Legislative Council.

Report of the Coal Tax Oversight Committee, 1977-1978 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

Severability: Section 17, Ch. 525, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications." This clause applies to most of the sections in this part.

Part Administrative Rules

Title 42, chapter 25, subchapter 5, ARM Gross proceeds on coal production.

Part Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

History of Crow Case:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV), reversed and remanded in Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

15-35-101. Legislative findings and declarations of purpose.

Compiler's Comments

2001 Amendment: Chapter 399 inserted (1)(h) concerning coal used for production of electricity near the mine; inserted (2)(d) concerning advantages of electrical generation near coal mines; at end of (1)(e) inserted "and by encouraging the use of coal to produce electricity in modern generating plants near the coal mine"; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

1987 Amendment: In (1)(e) substituted "subbituminous coal and lignite coal in Montana have sufficiently different markets and value and therefore require different production taxes" for "coal in Montana, when subbituminous and recoverable by strip mining, is in sufficient demand that at least one-third of the price it commands at the mine may go to the economic rents of royalties and production taxes"; and deleted former (1)(f) that read: "(f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of subbituminous can pay".

15-35-102. Definitions.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 352, L. 2015, amended Sec. 7, Ch. 433, L. 2009, by extending the termination date imposed by Ch. 433 to July 1, 2025. Effective April 29, 2015.

2009 Amendments — Composite Section: Chapter 318 inserted definition of auger mining; deleted definition of base consumption level that read: ""Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii)"; deleted definition of base production level that read: "Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i)"; deleted definition of department that read: ""Department" means the department of revenue"; deleted definition of incremental production that read: ""Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers"; deleted definition of qualified purchaser that read: ""Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 433 inserted definition of coal washing; in definition of contract sales price inserted last sentence providing that contract sales price does not include costs associated with coal washing; inserted definition of prepared for shipment; and made minor changes in style. Amendment effective May 4, 2009.

Applicability: Section 5, Ch. 318, L. 2009, provided: "[This act] applies to coal recovered from a strip mine by auger mining after June 30, 2009."

Section 6, Ch. 433, L. 2009, provided: "[This act] applies to coal mined after June 30, 2009."

Termination: Section 7, Ch. 433, L. 2009, provided that the definition of coal washing and the language in the definition of contract sales price providing that contract sales price does not include costs associated with coal washing terminate July 1, 2017.

2007 Amendment: Chapter 44 in definition of contract sales price near end of third sentence after "includes" deleted "only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 7 in definition of energy conversion process substituted "electrical energy" for "electric energy"; and in version effective January 1, 2006, made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 318 inserted definition of Btu; inserted definition of coal enhancement facility; in definition of contract sales price deleted former (a) through (d) that set specific contract sales price for years 1984 through 1987 (see 1995 Session Law for text); inserted definition of feedstock; and made minor changes in style. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch. 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Amendment: Chapter 580 inserted definition of extended depth auger method; in definition of strip mining inserted "but does not include the extended depth auger method of mining"; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1997.

1989 Amendment: In definition of base consumption level and in definition of base production level inserted "applies only for the term of an agreement in effect as of December 31, 1984, and". Amendment effective February 24, 1989.

Retroactive Applicability: Section 6, Ch. 31, L. 1989, provided in part: "(1) [This act] . . . applies retroactively, within the meaning of 1-2-109, to January 1, 1989.

(2) [This act] applies to all coal severance tax revenue recorded on or after January 1, 1989, regardless of when the tax obligation accrued."

1987 Amendments: Chapter 370 in (12), after ""Strip mining"" deleted "or "surface mining"" and inserted "and includes "surface mining"".

Chapter 608 substituted "(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators" for "(2) "Base consumption level" for a purchaser means the greater of:

(a) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators"; inserted (2)(b) that reads: "If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii)"; at beginning of (3)(a) inserted "Except as provided in subsection (3)(b)" and at end inserted "lesser of"; and inserted (3)(a)(ii) and (3)(b) that read: "(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i)."

1985 Amendment: Inserted definitions of agreement, base consumption level, base production level, broker, incremental production, purchaser, and qualified purchaser.

1983 Amendment: In (1) inserted "Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton."

Administrative Rules

ARM 42.25.501 Definitions.

Case Notes

Coal Contract Sales Price Includes Certain Additives — Plain Language of Statute and Legislative History Confirm Taxation of Coal Additives Prior to Shipment: Following audits of the plaintiff coal mine operator for 2005-2007, the Department of Revenue assessed additional coal severance taxes and penalties. In addition to a valuation issue, the assessment included recovery of taxes on two items that were added to coal before it was shipped on a train. The additives included a freeze-proofing agent and dust suppressants. The plaintiff responded by filing a declaratory relief action in District Court, alleging that the additives should not be part of the sales price, and that legislative enactments were being applied retroactively. The District Court held that the additives were subject to coal taxes based on both the plain language of the definition "contract sales price" in 15-35-102 and the legislative history. On appeal, the Supreme Court affirmed, reasoning that the statute was broad enough to assess taxes based on the costs associated with the preparation of coal for shipment, and that later legislative amendments provided further explanation of this practice. Cloud Peak Energy Resources, LLC v. St., 2015 MT 10, 378 Mont. 54, 340 P.3d 1258.

Deduction for Tribal Tax Not Permitted: The plaintiff, who operated a mine on tribal land, paid coal severance and gross proceeds taxes to the tribe. The plaintiff also paid Montana's Resource Indemnity Trust and Ground Water Assessment Tax (RITT) to the Department of Revenue. In paying the RITT, the plaintiff attempted to deduct tribal taxes from the contract sales price used to calculate the RITT. The RITT calculation specifically did not include deductions for payments to a tribal entity, but it included a deduction for other local governments. The Supreme Court held that because the deduction for other local governments specifically did not include tribal governments, the RITT did not allow a deduction for tribal taxes. Westmoreland Resources Inc. v. Dept. of Revenue, 2014 MT 212, 376 Mont. 180, 330 P.3d 1188.

Apportionment of Tax From Coal Mine Spanning Two Counties Proper: Musselshell County filed an action against Yellowstone County for a declaratory judgment that the Department of Revenue improperly allocated a portion of the tax collected on coal from the Signal Peak mine, which spans both counties. Musselshell County argued that while coal is extracted from both counties, the coal is shipped only from Musselshell County and that the Department was required to adopt rules under the Montana Administrative Procedure Act to correctly apportion the proceeds. The Supreme Court held that the Legislature intended the coal gross proceeds to be apportioned between the counties in which the mine is located and that the Department was not required to adopt an administrative rule before apportioning the proceeds. Musselshell County v. Yellowstone County, 2012 MT 292, 367 Mont. 350, 291 P.3d 579.

Law Review Articles

The Black Book, Raney, 43 Pub. Land & Resources L. Rev. 303 (2020).

History of the Coal Tax, Towe, 43 Pub. Land & Resources L. Rev. 271 (2020).

The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).

Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

15-35-103. Severance tax — rates imposed.

Compiler's Comments

2009 Amendment: Chapter 318 in (1) inserted tax rates for auger mining; inserted (4) concerning reduced rate on coal produced by auger mining; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 5, Ch. 318, L. 2009, provided: "[This act] applies to coal recovered from a strip mine by auger mining after June 30, 2009."

2005 Amendment: Chapter 415 deleted former (b) that read: "(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, 2008.

(ii) The electrical producer agrees to offer, for use within the state, the first one-half of the amount of power that it produces to Montana customers and distribution services providers at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment"; deleted former (3) that read: "(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule"; and made minor changes in style. Amendment effective April 25, 2005.

2001 Amendment: Chapter 399 inserted (1)(b) providing that rate of taxation is one-third of the applicable rate in subsection (1)(a) if the conditions contained in subsections (1)(b)(i) and (1)(b)(ii) are met; and made minor changes in style. Amendment effective January 1, 2002.

Applicability: Section 4, Ch. 399, L. 2001, provided: "[This act] applies to coal produced after December 31, 2001."

1999 Amendment: (Temporary version) Chapter 51 in (1) at beginning deleted "Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit"; and deleted former (6) that read: "(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202"; and made minor changes in style.

(Version effective January 1, 2006) In (1) at beginning deleted "Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit"; deleted former (1)(a), (1)(b), and introductory clause of (1)(c) containing tables setting rates for surface and underground mining based on heating quality of coal (see 1997 MCA for text); deleted former (5) that read: "(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 318 deleted (1)(a) and (1)(b) that set tax schedule for coal produced after June 30, 1988, through June 30, 1991 (see 1995 Session Law for text); inserted (5) exempting 2 million tons of coal produced as feedstock; and made minor changes in style. Amendment effective April 3, 1995, and terminates December 31, 2005.

Applicability: Section 4, Ch 318, L. 1995, provided that this section applies to coal produced during calendar year 1995 and in subsequent years.

1993 Amendment: Chapter 580 in (1)(c) inserted tax on extended depth auger mining. Amendment effective July 1, 1993, and terminates June 30, 1997.

1989 Amendment: At beginning of (1) substituted reference to 15-35-202 for "Except as provided in subsection (2)"; deleted former (1)(a), (1)(b), (1)(c), (2)(a)(i), and (2)(a)(ii) (see Ch. 608, 1987 Session Law, for text); in (2)(b) at beginning deleted "The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1988, through June 30, 1990, is"; inserted introductory phrase in (1)(a) and substituted severance tax levels for those in former (2)(b) (see Ch. 608, 1987 Session Law, for text); substituted introductory phrase in (1)(b) for former (2)(c) that read: "(c) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state from July 1, 1990, through June 30, 1991, is"; substituted severance tax levels in (1)(b) for those in former (2)(c) (see Ch. 608, 1987 Session Law, for text); substituted introductory phrase in (1)(c) for former (2)(d) that read: "(d) The severance tax imposed pursuant to subsection (2)(a) on each ton of coal produced in the state after June 30, 1991, is"; substituted severance tax levels in (1)(c) for those in former (2)(d) (see Ch. 608, 1987 Session Law, for text); and made minor changes in form. Amendment effective February 24, 1989.

Retroactive Applicability: Section 6, Ch. 31, L. 1989, provided in part: "(1) [This act] . . . applies retroactively, within the meaning of 1-2-109, to January 1, 1989.

(2) [This act] applies to all coal severance tax revenue recorded on or after January 1, 1989, regardless of when the tax obligation accrued."

1987 Amendment: At beginning of (1) inserted exception clause; at beginning of (1)(a) inserted "Fiscal Years 1988 and 1989"; inserted (1)(b) relating to fiscal year 1990; inserted (1)(c) relating to fiscal year 1991; inserted (2) relating to reduced rates if sales exceed 32.2 million tons; and made minor changes in phraseology.

1985 Amendment: Inserted definition of broker.

1983 Amendment: In (3), increased amount of coal exempt from severance tax from 20,000 tons to 50,000 tons; and after "calendar year" inserted the exception for taxation on amounts produced in excess of 50,000 tons.

Nonseverability: Section 3, Ch. 303, L. 1983, provided: "It is the intent of the Legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid, and the prior law as reflected in sections 15-6-208 and 15-35-103 prior to the passage of this act shall remain in full force and effect."

Administrative Rules

ARM 42.4.4101 Individual, corporations, and property — alternative energy production — definitions.

ARM 42.4.4112 Records required — audit.

ARM 42.25.1701 Third party intermediary defined.

ARM 42.25.1707 Determination of contract sale price.

ARM 42.25.1709 Right to review records.

Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

State Taxation of Coal in Indian Ceded Strip — Crow Coal Case: The state was not required to pay taxes that it collected, plus interest, to the Crow Tribe for taxes paid by a non-Indian mining company that were imposed on coal that was owned by the tribe but was not within the Crow Reservation. The tribe based its case upon assumpsit and constructive trust because the state taxes, which were illegally collected, unjustly enriched the state and burdened the tribe's economic interests by decreasing the sale of Crow coal. The U.S. Supreme Court held that because the taxes were paid by the mining company, which forfeited entitlement to a tax refund, and that because the tribe could not have imposed a tax during the time in question, disgorgement of Montana taxes was not warranted and damages could not be granted since the tribe sought only disgorgement to the exclusion of damages. Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

History of Crow Case:

In 1978, the Crow Tribe brought action against Montana, seeking declaratory and injunctive relief against the imposition of the state's 30% coal severance and gross proceeds taxes on tribally owned coal mined from the Crow Reservation and the "ceded strip" by non-Indian lessees. While the District Court dismissed the action (469 F. Supp. 154 (D.C. Mont. 1979)), the Ninth Circuit Court, on appeal by the tribe, reversed and remanded (650 F2d 1104 (9th Cir. 1981), as amended by 665 F2d 1390 (9th Cir. 1982) (Crow I)). On remand, the District Court upheld the state's application of taxes for coal mined in the "ceded strip", but it abstained from deciding whether taxes could be imposed on the reservation boundaries (657 F. Supp. 573 (D.C. Mont. 1985)). On appeal, the Ninth Circuit Court reversed, ruling that federal law and policy preempted state taxation and that the taxes infringed on tribal sovereignty. The court also held that the question of whether coal mined on the reservation would be subject to taxation was a justiciable controversy (819 F2d 895 (9th Cir. 1987) (Crow II)). On appeal by the state, the Supreme Court affirmed the decision of the Ninth Circuit Court (108 S Ct 685 (1988)).

After Crow II, the District Court awarded the tribe over $23 million in severance taxes that the lessee Westmoreland had paid after 1982. The tribe then sought restitution of some $57 million in total taxes paid to the state and county between 1975 and 1982. The District Court denied the state's motion to dismiss the claim and certified an order for interlocutory appeal. After initially granting the leave to appeal, the Ninth Circuit Court dismissed the appeal, ruling that the states argument concerning privity had been resolved against the state in Crow II. Crow Tribe of Indians v. Mont., 969 F2d 848 (9th Cir. 1992) (Crow III).

After trial, the District Court denied relief, ruling that the tribe was not entitled to restitution. On appeal, a three-judge panel of the Ninth Circuit Court reversed, concluding that the District Court's denial of equitable relief was erroneously based on considerations explicitly rejected in the previous court decisions. The case was remanded to District Court for entry of an order directing the state and county to return the improperly collected taxes and for consideration by the court of the tribe's unresolved request for prejudgment interest. Crow Tribe of Indians v. Mont., 92 F3d 826 (9th Cir. 1996) (Crow IV), reversed and remanded in Mont. v. Crow Tribe of Indians, 523 US 696 (1998).

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary. The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

Coal Severance Tax Not in Contravention of Federal Constitutional or Statutory Policy: The Montana coal severance tax in its present form is a lawful exercise of this state's taxing authority. The Montana Supreme Court upheld the tax stating that, whether as a question of this state's power to levy any tax or its power to levy a tax at the rate set forth, there has been no preemption by the federal government in the field of coal severance taxation, or any national policy derived from Congressional enactments pursuant to the constitution with which Montana's tax conflicts. Commonwealth Edison Co. v. St., 189 M 191, 615 P2d 847, 37 St. Rep. 1192 (1980).

Law Review Articles

The Black Book, Raney, 43 Pub. Land & Resources L. Rev. 303 (2020).
History of the Coal Tax, Towe, 43 Pub. Land & Resources L. Rev. 271 (2020).
The Senate Democratic Caucus of 1975, Towe, 43 Pub. Land & Resources L. Rev. 175 (2020).
Tribes as Rich Nations, Cross, 38 Pub. Land & Resources L. Rev. 117 (2017).

Collateral References

HJ 6 Coal Severance Tax Trust Fund Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj6-final-report-edited.pdf.

15-35-104. Quarterly statement and payment of tax.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 364 deleted former third sentence that read: "Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter"; in third sentence near beginning after "form" deleted "in duplicate"; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

1987 Amendment: Inserted third sentence concerning coal sold to each purchaser.

1981 Amendment: Substituted "signed by the operator if the operator is an individual or" for "verified" in the fourth sentence; inserted "if the operator is a business entity" at the end of the fourth sentence.

Case Notes

Unconstitutionality of Department of Revenue Rule Concerning Confidentiality of Coal Severance Tax Information: Plaintiffs sought information regarding coal severance tax payments that had been routinely supplied to the Department of Revenue by coal mine operators prior to adoption of ARM 42.2.701 (now repealed), which declared certain information, such as tax returns that taxpayers are required to submit to the Department and Department-prepared documents that identify taxpayers, to be confidential. Plaintiffs challenged the rule on grounds that it violated constitutional and statutory rights to public information. The Department asserted that the rule was adopted to protect taxpayers' constitutional right to privacy and to inform the public of the Department's procedures regarding the confidentiality of tax information. The District Court found that the rule was adopted after balancing the public's right to know with the coal producers' right to privacy and that the producers had a reasonable and ongoing expectation of privacy that outweighed the public's right to know. On appeal, the Supreme Court disagreed, finding ARM 42.2.701 (now repealed) unconstitutional on its face. The rule presumes a wholesale constitutionally protected right to privacy for all taxpayers that prevails over public disclosure without balancing the taxpayers' right to privacy with the public's right to know. Prior to adoption of the rule, coal producers did not have an actual or subjective expectation of privacy in revenue information submitted to the Department. After the rule was adopted, the producers could assert a subjective expectation of privacy. However, based on a facially unconstitutional rule, the expectation was not one society would be willing to recognize as reasonable, especially when the information had been routinely available for nearly 20 years before ARM 42.2.701 (now repealed) was adopted. Neither prong of the two-part privacy test in Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M 155, 959 P2d 508 (1998), having been met, a constitutionally protected privacy interest in the information was ruled out. Assoc. Press, Inc. v. Dept. of Revenue, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

15-35-105. Penalty and interest for delinquent tax — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) at end substituted reference to 15-1-216 for "of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment"; in (3) substituted "A penalty may be waived by the department pursuant to 15-1-206" for "The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-23-704" at the end of the third sentence.

Administrative Rules

ARM 42.2.501 Application of partial payments.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-35-107. When value of coal may be imputed — procedure.

Compiler's Comments

2009 Amendment: Chapter 433 in (1) near beginning of introductory clause after "may" deleted "or shall at the request of the taxpayer"; deleted former (1)(b) that read: "(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal"; deleted former (1)(d) that read: "(d) a person neglects or refuses to file a statement under 15-23-701 or a statement and tax return under this chapter"; in (2) substituted "(1)" for "(1)(b)" and at end after "subsequent to" substituted "being prepared for shipment on the mode of transportation taken to its final destination" for "primary and secondary crushing but prior to drying, cleaning, or other processing"; and made minor changes in style. Amendment effective May 4, 2009.

Applicability: Section 6, Ch. 433, L. 2009, provided: "[This act] applies to coal mined after June 30, 2009."

1983 Amendment: Near beginning of (1), after "department may" inserted "or shall at the request of the taxpayer"; inserted (1)(b) relating to coal mine operators that refine coal to improve its quality; and inserted (2) defining market value F.O.B. mine.

Statement of Intent: The statement of intent attached to Ch. 326, L. 1983, provided: "It is the intent of SB 264 [Ch. 326, L. 1983] to give the Department of Revenue authority to adopt rules to impute the market value of coal prior to drying, cleaning or processing designed to improve the quality of the coal. The rules adopted shall:

1. Allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing.
2. Impute market price regardless of whether the processing takes place at the mine site or not."

Administrative Rules

ARM 42.25.503 Failure to file.
ARM 42.25.512 Imputed value.
ARM 42.25.1708 Imputed valuation.

Case Notes

Imputed Value of Coal Not Value When Loaded on Train — Similarly Negotiated Contracts Provided Value of Coal — Valuation Methodology Varies Based on Economic Conditions: Following audits of the plaintiff coal mine operator for 2005-2007, the Department of Revenue assessed additional coal severance taxes and penalties in the amount of $3,369,713. The plaintiff responded by filing a declaratory relief action in District Court, alleging that the Department's methodology in calculating the imputed fair market value of coal for non-arm's-length sales was improper under 15-35-107. The District Court ruled in favor of the plaintiff and held that when price is determined by contract it is the negotiation timeframe that should set the market value, and not the date coal is loaded on the train. On appeal, the Supreme Court affirmed the holding that market value was properly based on similarly negotiated contracts, but it also determined that the District Court improperly limited the Department's discretion by directing the usage of comparable sales to a negotiation timeframe that was a few months before and a few months after the contracts were executed. The Supreme Court cautioned that each case may require a different analysis depending on the economic conditions necessary to properly measure market value. Cloud Peak Energy Resources, LLC v. St., 2015 MT 10, 378 Mont. 54, 340 P.3d 1258.

Imputed Value of Coal Not Approximate of Market Value Under Market Conditions at Time of Sale — Additional Coal Tax Assessment Reversed: Following three audits of Decker Coal Co. (Decker) for 1987-92, the Department of Revenue assessed additional taxes and interest for years 1987-90. Administrative appeals were denied. Subsequently, there was an additional assessment for 1991-92, and administrative appeals were again denied. Both appeals were consolidated before the State Tax Appeal Board (STAB) (now Montana Tax Appeal Board), which granted the Department's motion for summary judgment. Upon judicial review, the District Court affirmed the STAB decision, and Decker appealed to the Supreme Court. Under the terms of Decker's 1974 long-term coal sales contract with Commonwealth Edison (ComEd), coal was to be supplied at a base price that would be adjusted over time by a predetermined escalator. During the audit period of 1987-92, the base price plus escalators was $24 to $28 a ton. However, during that time, Decker sold coal for $7.50 to $10.42 a ton to two other coal companies, who in turn sold the coal to ComEd under their contract right to outsource coal from an alternative source, in this case Decker. Decker timely paid $8.5 million in taxes on the full contract price and received no additional money or other consideration from the two companies. The Department contended that by selling coal to two other companies, Decker was attempting to contract away its tax obligation on coal mined under its original ComEd contract. Thus, the Department applied the imputed price of $24 to $28 a ton as market value. Decker asserted that during the period in question, it never had an opportunity to sell the coal at the imputed price. Under this section, the Department may impute a value to coal sales rather than relying on contract prices if: (1) it determines that the contract price does not represent an arm's-length agreement; and (2) the imputed value approximates market value. Both conditions must be satisfied before an imputed value may be assessed. The Department also argued that the statute allows application of factors used under federal tax regulations and that when those factors were applied, the representative market price was established by the original Decker-ComEd contract. The undisputed definition of "market value" in this case, as established by the District Court, was "the price that a willing buyer would pay a willing seller under the market and economic conditions at the time of sale". The only evidence of market value under this definition was presented by Decker's expert, which showed that coal sales in Decker's market area during the time in question ranged from $3.77 to $7.61 a ton; thus, the prices paid to Decker met or exceeded market value. The Department's imputed price erroneously ignored the temporal component of the definition, which required consideration of market factors at the time of sale, and the federal tax language did not suggest that the taxpayer's own actual sales be determinative of current market value regardless of date and price. Thus, the Supreme Court held that Decker's sale of coal to ComEd pursuant to the contract with predetermined escalators was not representative of the market and economic conditions at the time of sale and therefore did not meet the definition of market value. The STAB and Department conclusion that the 1974 contract represented market value was incorrect. Decker showed that the Department's imputed value did not approximate market value f.o.b. mine under market and economic conditions at the time of sale, so the District Court decision affirming STAB was dismissed. Because this issue was dispositive, the court did not address whether the sale price constituted an arm's-length agreement. Decker Coal Co. v. Dept. of Revenue, 2000 MT 125, 299 M 477, 2 P3d 245, 57 St. Rep. 512 (2000).

15-35-108. Disposal of severance taxes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 248, L. 2023. Amendment effective April 25, 2023.

2019 Amendments — Composite Section — Code Commissioner Correction: (Temporary version) Chapter 343 in (3) substituted "0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter" for "0.85% in fiscal year 2018 and 0.88% in fiscal year 2019"; in (4) substituted "3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter" for "3.89% in fiscal year 2018 and 3.83% in fiscal year 2019"; in (5) substituted "0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter" for "0.72% in fiscal year 2018 and 0.75% in fiscal year 2019"; in (9) after "The" deleted "amount of 5.8% through June 30, 2019, and beginning July 1, 2019, the"; in (11)(b) after "general fund" deleted "less the annual transfer of $1.275 million to the research and commercialization state special revenue account pursuant to 15-1-122(2)"; in (11)(b)(i) inserted reference to the department of agriculture; in (11)(b)(i)(A) after "$65,000" substituted "for" for "to"; in (11)(b)(i)(B) substituted "$900,000" for "$625,000"; inserted (11)(b)(i)(C) regarding an appropriation for the Montana food and agricultural development program; in (11)(b)(ii)(A) substituted "$325,000" for "$125,000"; in (11)(b)(ii)(C) substituted "$625,000" for "$425,000"; in (11)(b)(ii)(D) substituted "$500,000" for "$200,000"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2027.

(Both versions) Chapter 464 in (9) extended amount of 5.8% through June 30, 2023; and made minor changes in style. Amendment effective July 1, 2019.

(Both versions) Chapter 469 in (2) before "long-range building program" inserted "major repair". Amendment effective July 1, 2019.

Although sec. 5, Ch. 343, L. 2019, in subsection (9) of the temporary version of this section deleted the reference to 5.8% through June 30, 2019, sec. 1, Ch. 464, L. 2019, explicitly extended the inclusion of 5.8% through June 30, 2023. Consequently, a conflict of language in subsection (9) between Ch. 343 and Ch. 464 has been resolved in favor of the language used in Ch. 464.

Extension of Termination Date: Section 13, Ch. 343, L. 2019, amended sec. 6, Ch. 481, L. 2003, and sec. 15, Ch. 343, L. 2019, amended sec. 3, Ch. 459, L. 2009, to extend the termination date imposed by Ch. 481, L. 2003, to June 30, 2027. Effective May 7, 2019.

2019 Amendment Void: The amendments made to this section by sec. 6, Ch. 439, L. 2019, were rendered void by sec. 14, Ch. 439, L. 2019, a coordination instruction.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2017 Amendments — Composite Section: (Temporary version) Chapter 351 deleted former (9)(b)(iv) that read: "(iv) except as provided in subsection (9)(c), up to $21 million to the public employees' retirement system defined benefit plan trust fund".

(Version effective July 1, 2019) Chapter 351 in (11) at beginning deleted "Subject to subsection (9)(b)"; and deleted former (9)(b) that read: "(b) Except as provided in subsection (9)(c), up to $24 million of the interest income from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the public employees' retirement system defined benefit plan trust fund".

(Both versions) Chapter 351 in (3), (4), and (5) substituted current text for former (3) that read: "(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund"; deleted former (9)(c) that read: "(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that $5 million be subtracted from the amount allocated in subsection (9)(b) subject to legislative approval"; in (11)(a) after "of the state" deleted "and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103"; and made minor changes in style. Amendment effective July 1, 2017.

(Temporary version) Chapter 378 in (7) substituted "June 30, 2019" for "June 30, 2017" and substituted "July 1, 2019" for "July 1, 2017". Amendment effective July 1, 2017.

Severability: Section 19, Ch. 351, L. 2017, was a severability clause.

2015 Amendments — Composite Section: (Temporary version) Chapter 347 in (9)(b) inserted "less the annual transfer of $1.275 million to the research and commercialization state special revenue account pursuant to 15-1-122(2)"; deleted former (9)(b)(iii) that read: "(iii) $1.275 million to the research and commercialization state special revenue account created in 90-3-1002"; and made minor changes in style. Amendment effective July 1, 2015.

(Temporary version) Chapter 414 in (7) substituted "June 30, 2017" for "September 30, 2013" and substituted "July 1, 2017" for "October 1, 2013". Amendment effective July 1, 2015.

2013 Amendment: (Temporary version) Chapter 390 in (3) in last sentence at beginning deleted "Beginning July 1, 2012"; in (9)(a) after "of the state" inserted language concerning statutory appropriation; in (9)(b) after "interest income" deleted "from $140 million" and substituted "July 1 each year" for "an annual basis"; in (9)(b)(ii) substituted "$625,000" for "$1.25 million"; in (9)(b)(iii) substituted "$1.275 million" for "$3.65 million"; inserted (9)(b)(v) concerning public employees' retirement system defined benefit plan trust fund; inserted (9)(c) concerning insufficient public employees' retirement board reports; and made minor changes in style. Amendment effective July 1, 2013.

(Version effective July 1, 2019) In (3) in last sentence at beginning deleted "Beginning July 1, 2012"; in (9)(a) inserted "Subject to subsection (9)(b)" and after "of the state" inserted language concerning statutory appropriation; inserted (9)(b) concerning public employees' retirement system defined benefit plan trust fund appropriation; inserted (9)(c) concerning insufficient public employees' retirement board reports; and made minor changes in style.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2011 Amendments — Composite Section: Chapter 19 in (7) of temporary version and version effective July 1, 2013, deleted brackets around "5.8% through September 30, 2013, and beginning October 1, 2013, the amount of". Amendment effective October 1, 2011.

Chapter 312 in temporary version in (9)(b)(iii) at end after "90-3-1002" inserted appropriations for fiscal years 2012 and 2013. Amendment effective May 4, 2011.

Severability: Section 18, Ch. 312, L. 2011, was a severability clause.

2009 Amendments — Composite Section: Chapter 33 in (7) near middle after "credited to the" deleted "oil, gas, and" and at end substituted "90-6-1001(2)" for "90-6-1001". Amendment effective July 1, 2009.

Chapter 425 in (7) increased from 2.9% to 5.8% the amount credited to the coal natural resource account. Amendment effective July 1, 2009, and terminates September 30, 2013.

Chapter 459 in version effective July 1, 2010, in (9)(b)(ii) at beginning substituted "$625,000" for "$1.25 million"; in (9)(b)(iii) at beginning substituted "$1.275 million" for "$3.65 million". Amendment effective July 1, 2010, and terminates June 30, 2013.

Chapter 486 in (3) at beginning of fourth sentence inserted "Beginning July 1, 2012"; and made minor changes in style. Amendment effective July 1, 2009.

Code Commissioner Correction: The code commissioner inserted the bracketed language in (7) to avoid creating a version of the section that would be effective October 1, 2013.

Effective Date — Coordination: Section 2, Ch. 425, L. 2009, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2011.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] is effective July 1, 2009."

Because House Bill No. 645 did not include the funding referenced in sec. 2(2), Ch. 425, L. 2009, the 2009 amendments to this section by Ch. 425, L. 2009, are effective July 1, 2009.

Applicability — Coordination: Section 3, Ch. 425, L. 2009, provided: "(1) Except as provided in subsection (2), [this act] applies to severance tax collections from coal produced after June 30, 2011.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] applies to severance tax collections from coal produced after June 30, 2009."

Because House Bill No. 645 did not include the funding referenced in sec. 3(2), Ch. 425, L. 2009, the 2009 amendments to this section by Ch. 425, L. 2009, apply to severance tax collections from coal produced after June 30, 2009.

Termination — Coordination: Section 4, Ch. 425, L. 2009, provided: "(1) Except as provided in subsection (2), [this act] terminates September 30, 2015.

(2) If House Bill No. 645 is not passed and approved in a form that includes funding for the purposes of [this act], then [this act] terminates September 30, 2013."

Because House Bill No. 645 did not include the funding referenced in sec. 4(2), Ch. 425, L. 2009, the 2009 amendments to this section by Ch. 425, L. 2009, terminate September 30, 2013.

Applicability: Section 34(1), Ch. 486, L. 2009, provided: "(1) [Section 7] [amending 15-35-108] applies retroactively, within the meaning of 1-2-109, to the fiscal year ending June 30, 2009."

2007 Amendments — Composite Section: Chapter 280 inserted (8) requiring $250,000 to be credited to coal and uranium mine permitting and reclamation program account after allocations; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in introductory clause substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Applicability: Section 5, Ch. 280, L. 2007, provided: "[This act] applies to severance tax collections from coal produced after June 30, 2007."

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendments — Composite Section — Coordination: Chapter 589 in (3) near beginning substituted "8.36%" for "7.75%"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 603 in (3) at beginning of first sentence after "amount of" substituted "5.46%" for "7.75%" and after "legislature for" deleted "local impacts"; inserted (7) crediting 2.9% to the oil, gas, and coal natural resource account; and made minor changes in style. Amendment effective July 1, 2005.

Section 8, Ch. 603, L. 2005, a coordination section, provided: "If House Bill No. 482 and [this act] are passed and approved, then:

(1) the percentage figure referred to in each version of 15-35-108(3) in House Bill No. 482 and [this act] must be 5.46%; and

(2) the percentage figure referred to in each version of 15-35-108 allocating money to the oil, gas, and coal natural resource account must be 2.9%." House Bill No. 482 was approved as Ch. 589, L. 2005, and the changes to this section in sec. 8, Ch. 603, L. 2005, were made accordingly.

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

2003 Amendments — Coordination — Composite Section: (Temporary version) Chapter 32 in (7)(b)(ii) at beginning deleted "for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and"; in (7)(b)(iii)(C) at beginning deleted "except for the fiscal year beginning July 1, 2002"; deleted former (7)(b)(iv) that read: "(iv) $175,000 to the office of economic development for business recruitment and retention"; in (7)(c) deleted former first two sentences that read: "For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002"; and made minor changes in style. Amendment effective July 1, 2003.

(Temporary version) Chapter 351 in (7)(b)(ii) at beginning deleted "for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and"; in (7)(b)(iii)(C) at beginning deleted "except for the fiscal year beginning July 1, 2002" and after "certified" substituted "regional development corporations" for "communities"; in (7)(c) deleted former first two sentences that read: "For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002"; and made minor changes in style. Amendment effective July 1, 2003.

(Version effective July 1, 2005) Chapter 481 in (7)(a) at beginning inserted "Subject to subsection (7)(b)"; inserted (7)(b) allocating interest income from $140 million of the coal severance tax permanent fund to enumerated programs; and made minor changes in style. Amendment effective July 1, 2005, and terminates June 30, 2010.

Pursuant to sec. 4, Ch. 481, L. 2003, a coordination section, in (7)(b)(iii)(C) substituted "certified regional development corporations" for "certified communities".

2002 Amendments — Composite Section: (Temporary version) Chapter 9 at beginning of first sentence of (7)(c) substituted "For the fiscal year beginning July 1, 2001" for "Beginning July 1, 2001" and after "transferred" deleted "annually", inserted second sentence transferring $3.165 million from interest income to research and commercialization account for fiscal year July 1, 2002, and inserted third sentence transferring $3.65 million annually from interest income to research and commercialization account beginning July 1, 2003. Amendment effective August 16, 2002.

(Temporary version) Chapter 12 at beginning of (2) inserted clause concerning 10% allocation to long-range building program account for the fiscal year ending June 30, 2003; at beginning of (3) inserted clause allocating 6.01% to state special revenue account for the fiscal year ending June 30, 2003; at beginning of (4) and (6) inserted clause concerning fiscal years beginning on or after July 1, 2003; in (7)(b)(ii) at beginning inserted clause concerning the fiscal year beginning

July 1, 2001, and after "$1.25 million" inserted allocation of $925,000 for the fiscal year beginning July 1, 2002, and language concerning $1.25 million allocation for fiscal years beginning on or after July 1, 2003; in (7)(b)(iii)(C) inserted exception clause concerning the fiscal year beginning July 1, 2002; in (7)(b)(iv) reduced amount from $350,000 to $175,000; and made minor changes in style. Amendment effective August 16, 2002, and terminates June 30, 2005.

(Both versions) Chapter 13 in (3) near beginning of first sentence reduced percentage to 7.75% from 8.36% and near middle after "local impacts" deleted "county land planning". Amendment effective August 16, 2002.

Retroactive Applicability: Section 4, Ch. 9, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to transfers in fiscal years beginning July 1, 2001."

Section 7, Ch. 12, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2002."

Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendments — Composite Section: Chapter 34 in first sentence of (4) after "allocated to a" substituted "permanent fund account" for "nonexpendable trust fund" and in second sentence after "from this" substituted "permanent fund account" for "trust fund". Amendment effective July 1, 2001.

Chapter 61 in last sentence of (4) and (6) inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Temporary version) Chapter 483 deleted former (7)(b)(iii)(A) that read: "(A) $350,000 for business recruitment"; inserted (7)(b)(iv) allocating $350,000 to the office of economic development for business recruitment and retention; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective July 1, 2005) At beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; and made minor changes in style.

Code Commissioner Instruction: Pursuant to sec. 38, Ch. 34, L. 2001, in (7)(c) in temporary version the code commissioner changed "expendable trust fund" to "state special revenue account".

2000 Amendment: (Temporary version) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsection (7)(b); inserted (7)(b) statutorily appropriating fund interest to specific programs for biennium ending June 30, 2001; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2001.

(Version effective July 1, 2001) Chapter 10 at beginning of (6) deleted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999"; at beginning of (7)(a) inserted reference to subsections (7)(b) and (7)(c); inserted (7)(b) statutorily appropriating fund interest to specific programs on an annual basis; inserted (7)(c) transferring funds to the research and commercialization expendable trust; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2005.

1999 Amendment: Chapter 389 deleted former (7) that read: "(7) Beginning July 1, 1997, and ending June 30, 2007, the amount of 1.3% must be allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of the Virginia City and Nevada City property"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 422 in (3) inserted second and third sentences relating to expenditures from the account and transfers from the account and at beginning of last sentence substituted "Any unreserved fund balance" for "Any cash balance that is unspent". Amendment effective July 1, 1997.

Chapter 469 in (6), in first sentence, substituted "Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund" for "The amount of 0.63% must be allocated to a nonexpendable trust" and inserted second sentence concerning allocation to trust fund; and inserted (7) concerning allocation to long-range building program fund. Amendment effective July 1, 1997.

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 18 in introduction, after "15-1-501", deleted reference to subsection (6); in former (3)(d) substituted reference to loan debt service fund for reference to development bond fund; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 442 in subsection allocating to various accounts deleted former introductory clause that read: "Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance"; changed allocation to local impact account from 17½% of remainder to 6.65% of total; changed allocation to state equalization aid from 30% of remainder to 11.4% of total; changed allocation to county land planning account from 1% of remainder to 0.38% of total; deleted former subsection allocating 1¼% of remainder to credit of renewable resource development bond fund; changed allocation to parks acquisition or maintenance fund from 3⅓% of remainder to 1.27% of total; changed allocation to State Library Commission from 1% of remainder to 0.38% of total; changed allocation to conservation districts from 1/2 of 1% of remainder to 0.19% of total; changed allocation to renewable resource loan debt service fund from 1¼% of remainder to 0.95% of total; changed allocation to Growth Through Agriculture Act from 2% of remainder to 0.76% of total; changed allocation to cultural and aesthetic trust from 1⅔% of remainder to 0.63% of total; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 456 in (2) deleted "Starting July 1, 1987, and ending June 30, 2003", substituted "long-range building program" for "highway reconstruction trust fund", and substituted "established in 17-7-205" for "in the state special revenue fund"; in (3), in introductory clause after "allocation", deleted "to the trust fund" and inserted reference to subsection (2); and made minor changes in style. Amendment effective July 1, 1995. The amendments in (3) were rendered void by Ch. 442.

Chapter 509 in former (3), after "(1)", inserted "and (2)"; in both versions in subsection allocating remaining coal severance tax collections, in (3), substituted "22% to the credit of an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Any cash balance that is unspent at the end of each fiscal year must be deposited in the general fund" for "17½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account", deleted former (f) that read: "(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking", deleted (g) that read: "(g) 1/2 of 1% to the state special revenue fund for conservation districts", and deleted (i) that read: "(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Coordination: Section 7, Ch. 442, L. 1995, provided: "If Senate Bill No. 83, House Bill No. 19, House Bill No. 422, House Bill No. 526, or House Bill No. 528 is passed and approved in a form that amends 15-35-108, percentages in that section must be expressed as percentages of total tax collections consistent with [this act]." The amendment to (3) made by Ch. 509 was adjusted accordingly from 22% to 8.36% to reflect the percentage from the total collections and not from the 38% remaining after other allocations.

Amendment Termination: Sections 4 and 5, Ch. 456, L. 1995, amended sec. 1 and sec. 4, Ch. 191, L. 1991, to terminate temporary versions of this section July 1, 1995, rather than July 1, 1993, and July 1, 2003.

1993 Amendments: Chapter 455 near middle of introductory clause, after "must", inserted "in accordance with the provisions of 15-1-501(6)" and after "allocated" deleted "according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated". Amendment effective April 21, 1993.

Chapter 536 in (3)(e) reduced from 3⅓% to 0% the amount paid to trust fund for parks; and inserted (3)(k) establishing account for historic and cultural sites. Amendment effective July 1, 1993, and terminates June 30, 1995.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendments: (Temporary version) Chapter 16 in (2) changed allocation of 12% of coal severance tax collections from the highway reconstruction trust fund account to the general fund for the period beginning July 1, 1992, and ending June 30, 1993.

(Version effective July 1, 1992) Chapter 8 in (3)(j) allocated 42½% of 1⅔% remaining balance of unallocated coal severance tax collections to the Montana Arts Council for operating costs and 57½% to the nonexpendable trust fund. Amendment effective July 1, 1992.

Effective Dates — Termination: Section 3, Ch. 8, Sp. L. January 1992, provided: "[This act] is effective July 1, 1992, and [section 1] [15-35-108] terminates June 30, 1993."

Section 2, Ch. 16, Sp. L. January 1992, provided: "[This act] is effective on passage and approval [approved February 4, 1992] and terminates July 1, 1993."

1991 Amendments: Chapter 16 in (1) corrected citation to subsection of 17-6-203; and made minor changes in style.

Chapter 191 in (2), near beginning, substituted "June 30, 2003" for "June 30, 1993". Amendment effective March 27, 1991.

(Temporary version) Chapter 615 in (3)(e) decreased 5% allocation to a nonexpendable trust fund for parks acquisition and management, protection of works of art in the State Capitol, and other cultural and aesthetic projects, with 1/3 of income from the trust fund to be appropriated for art in the State Capitol and other cultural and aesthetic projects and 2/3 for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102 to 0% to a nonexpendable trust fund for parks management, with income from the fund to be appropriated for development, operation, and maintenance of sites and areas described in 23-1-102; inserted (3)(j) providing a 1⅔% allocation to a nonexpendable trust fund for protection of works of art in the State Capitol and for other cultural and aesthetic projects, with trust income to be appropriated for those purposes; and inserted (3)(k) providing a 3⅓% allocation to a special revenue account to be used by Department of Fish, Wildlife, and Parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system. Amendment effective July 1, 1991.

(Version effective July 1, 1993) Chapter 615 in (3)(e) decreased 5% allocation to a nonexpendable trust fund for parks acquisition and management, protection of works of art in the State Capitol, and other cultural and aesthetic projects, with 1/3 of income from the trust fund to be appropriated for art in the State Capitol and other cultural and aesthetic projects and 2/3 for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102 to 3⅓% allocation to a nonexpendable trust fund for parks acquisition or management, with income from the fund to be appropriated for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102; and inserted (3)(j) providing a 1⅔% allocation to a nonexpendable trust fund for protection of works of art in the State Capitol and for other cultural and aesthetic projects, with trust income to be appropriated for those purposes.

Termination Date Extended: Section 1, Ch. 191, L. 1991, amended sec. 7, Ch. 541, L. 1983, to read: "Sections 1 through 5 [60-3-216, 60-3-217, and 60-3-218 and the 1983 amendments to 15-35-108 and 17-3-201, now repealed] are effective July 1, 1983, and terminate July 1, 2003." Effective March 27, 1991.

Effective Date — Applicability — Termination Date: Section 4, Ch. 191, L. 1991, provided: "(1) [This act] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] is effective on passage and approval [approved March 27, 1991].

(2) [Section 1] [amending sec. 7, Ch. 541, L. 1983] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] terminate July 1, 2003."

Fund Transfer: Section 2, Ch. 615, L. 1991, provided that the Board of Investments shall transfer one-third of the balance as of June 30, 1991, of the nonexpendable trust fund (now a permanent fund account) created in subsection (3)(e) to the nonexpendable trust fund (now a permanent fund account) created in subsection (3)(j) for protection of works of art in the Capitol and for other cultural and aesthetic projects, with the remainder of the subsection (3)(e) fund to be used as provided in subsection (3)(e).

1989 Special Session Amendment: At beginning of (3)(a) deleted "20% to the state special revenue fund to the credit of the education trust fund account and" and at end substituted "state special revenue fund for state equalization aid to public schools of the state" for "education trust fund account"; and in (3)(b) increased percentage for state equalization aid from 10% to 30%. Amendment effective July 1, 1990.

1989 Amendments: Chapter 83 at beginning of (3)(a) deleted "4% until June 30, 1989, to the state special revenue fund to the credit of the local impact account and thereafter" and before "education trust fund account" deleted "local impact and"; at beginning of (3)(b) deleted "44.2% until June 30, 1989, and thereafter"; and at beginning of (3)(e) deleted "after June 30, 1989".

Chapter 626 deleted former (3)(a) that read: "(a) 4½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account"; and in (3)(a), after "20% to the state special revenue fund to the credit of the", deleted "local impact and". Amendment effective July 1, 1989.

Preamble: The preamble attached to Ch. 626, L. 1989, provided: "WHEREAS, elimination of the allocation of coal severance tax revenues in section 15-35-108, MCA, to the alternative energy and energy conservation research development and demonstration account would allow those revenues to be deposited in the state general fund from which the Legislature can appropriate that money to fund the Department of Natural Resources and Conservation."

Transfer of Cash: Chapter 626, which amended this section by deleting from subsection (3) a provision that 4½% of remaining severance taxes go to the credit of the alternative energy research development and demonstration account, contained two new sections providing: "Section 3. Transfer of alternative energy unobligated cash balance to general fund. (1) The unobligated cash balance from the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 is transferred to the general fund.

(2) The department of natural resources and conservation shall retain $10,000 of the unobligated cash balance within the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 to fully fund its appropriations in the 1990-91 biennium.

Section 4. Unobligated cash balance defined. As used in [section 3], "unobligated cash balance from the alternative energy and energy conservation research development and demonstration account" is the fund balance at the end of fiscal year 1989 less all accruals, loan receivables, and any other legal obligations of either the department of natural resources and conservation or the department of commerce that encumber funds in the account."

1987 Amendment: At beginning of section inserted "Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104"; in (2) deleted former first sentence that read: "Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund"; at beginning of (3)(a) deleted "2½% until July 1, 1987, and thereafter"; at beginning of (3)(b) decreased 6% to 4%, changed "July 1, 1987" to "June 30, 1989, to the state special revenue fund to the credit of the local impact account", and after "thereafter" substituted "20% to the state special revenue fund to the credit of the local impact and education trust fund account and 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the education trust fund account" for "37½% to the state special revenue fund to the credit of the local impact and education trust fund account"; in (3)(c) increased 30% to 44.2% and changed "July 1, 1987" to "June 30, 1989"; at beginning of (3)(f) deleted "starting July 1, 1986, and ending June 30, 1989, 5% to the general fund, and"; and in (3)(j) substituted "2% to the state special revenue fund for the Montana Growth Through Agriculture Act" for "4% until July 1, 1987, to the highway reconstruction trust fund account in the state special revenue fund".

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

1986 Amendments: Chapter 3 at beginning of (3)(f) inserted 5% appropriation to the general fund and time periods; at beginning of (3)(f)(ii) deleted "starting July 1, 1985, and ending June 30, 1989"; and at end of (3)(f)(ii) after "23-1-102" deleted "and, after June 30, 1989, 2/3 for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection".

Chapter 19 in (3)(b) reduced amount allocated until July 1, 1987, from 26% to 6%; and in (3)(c) changed "10%" to "30% until July 1, 1987, and thereafter 10%".

Effective Dates: The 1986 amendment made by Ch. 3 was effective June 30, 1986.

The 1986 amendment made by Ch. 19 was effective July 10, 1986, and applies retroactively to coal mined after April 1, 1986.

1985 Amendments: Chapter 246 in (3)(f)(ii) substituted "starting July 1, 1985, and ending June 30, 1989, 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102 and, after June 30, 1989, 2/3 for the acquisition of sites and areas described in 23-1-102 and the development, operation, and maintenance of sites acquired with funds allocated under this subsection" for "2/3 for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired".

Chapter 715 in (3)(a) substituted "July 1, 1987" for "December 31, 1979"; in (3)(b) substituted "26%" for "26½% until July 1, 1979, and thereafter 37½%"; and inserted (3)(j) relating to highway reconstruction trust fund account. Amendment effective May 10, 1985, applicable to coal mined on or after April 1, 1985, and terminates July 1, 1987 (secs. 4 and 5, Ch. 715, L. 1985).

Coal Tax Subcommittee Bill: Chapter 246, L. 1985, was introduced by request of the Coal Tax Oversight Subcommittee. See the committee's report entitled: "Reappraising Montana's Coal Severance Tax", Montana Legislative Council, November 1984.

Code Commissioner Changes — Applicability of Allocations: In subsections (1) and (3) the Code Commissioner has deleted references to allocation formulas that are no longer effective. The Code Commissioner inserted in subsection (3)(b) "until July 1, 1987, and thereafter 37½%" and in (3)(j) "until July 1, 1987" because of the termination provision in sec. 5, Ch. 715, L. 1985.

1983 Amendments — Termination Date: Chapter 281, throughout section, substituted "state special revenue fund" for "earmarked revenue fund"; in (3)(g), before "credit", deleted "sinking fund to the" and substituted "bond fund" for "bond account"; at beginning of (3)(h), substituted "5% to a nonexpendable trust fund" for "5% to the earmarked revenue fund to the credit of a trust fund"; and in (3)(k), substituted "debt service fund type" for "sinking fund" and "debt service fund" for "sinking account".

Chapter 541 inserted (2) relating to 6% allocation to highway reconstruction for fiscal year 1987 and 12% for fiscal years 1988 to 1993; and in introduction to (3), changed "allocation to the trust fund under subsection (1)" to "allocations provided by subsections (1) and (2)".

Section 7, Ch. 541, L. 1983, provided: "Sections 1 through 5 [60-3-216 through 60-3-218 and 1983 amendments to 15-35-108 and 17-3-201] are effective July 1, 1983, and terminate July 1, 1993."

1981 Amendments: Chapter 479 reduced the amount of the coal severance tax allocated to alternative energy research from 5% to 4½% in (2)(b); and inserted subsection (2)(j) relating to earmarked revenue fund for conservation districts.

Chapter 505 reduced the amount of the coal severance tax allocated to the sinking fund to the credit of the renewable resource development bond account from 2½% to 1¼% in (2)(g); and inserted (2)(k) relating to sinking fund to credit of water development sinking account.

Attorney General's Opinions

"Collection" as Referring to Quarter of Assessment Rather Than Quarter of Payment: The coal tax is assessed on coal mined during the quarter but the payment is not due until 30 days following the end of the quarter. The term "collection" refers to the assessment rather than the actual payment of the tax. 38 A.G. Op. 72 (1980).

Applicability of Distribution Formula: The distribution formula embodied in Ch. 540, L. 1977, applies only to taxes assessed on coal mined after July 1, 1977. 37 A.G. Op. 73 (1977).

Collateral References

HJ 6 Coal Severance Tax Trust Fund Study, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/September-2022/hj6-final-report-edited.pdf.

15-35-112. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) at end substituted reference to 15-1-216 for "until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-35-113. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on unpaid taxes provided in 15-1-216" for "charged on deficiency assessments provided in 15-35-112"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-35-122. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 181 (Ch. 581, L. 1979) provided: "It is the intent of the Legislature that the rulemaking authority in existence at the present time exercised by the Department of Revenue shall not be enlarged by the passage of this bill."

Administrative Rules

ARM 42.2.501 Application of partial payments.

ARM 42.2.510 Review of statement of account notices.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

Title 42, chapter 25, subchapter 17, ARM Coal consumption tax credit.

CHAPTER 36
OIL AND GAS PRODUCTION TAX

Chapter Compiler's Comments

Repayment of Former Foundation Program Money: Section 2, Ch. 299, L. 1993, provided: "(1) Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money [now repealed, see 20-9-315 through 20-9-320, 1991] for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, plus interest as provided in subsection (2), based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A	$135,682
Saco School District No. B	102,003
Whitewater School District No. 20AA	121,924
Whitewater School District No. D	73,196
Malta Elementary School District No. 14	12,923
Malta High School District No. A	8,086

(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year."

Retroactive Applicability: Section 3, Ch. 299, L. 1993, provided that this section applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Case Notes

Lease Not Tract of Land: Gary Drilling Company obtained a declaratory judgment that the production from certain of its wells had to be taxed as new production under a predecessor to this chapter. The Department of Revenue appealed, arguing that it could not be new production because there had been previous production on the tract of land where the company had drilled the wells. The Supreme Court held that the oil was new production because the company operated under a different lease than the one used by the parties that had obtained earlier production on the property. Gary Drilling Co. v. Dept. of Revenue, 250 M 313, 820 P2d 428, 48 St. Rep. 975 (1991).

State Taxation of Indian Trust Properties Valid — No Repeal by Implication Found: Where the plaintiff Indian tribe sought declaratory and injunctive relief against the levy and collection of certain taxes (now repealed) by the state and several counties on the production of oil and gas owned by the United States in trust for the plaintiff by non-Indian lessees within the boundaries of the plaintiff's reservation, the court held that the provisions of 25 U.S.C. § 398 specifically authorized state taxation of oil and gas on tribal lands and that the provisions of the statute had not been impliedly repealed by 25 U.S.C. § 396. The sovereign right asserted by the plaintiff to be free from state taxation has been controlled by Congress, and the plaintiff has not shown that there is such a repugnancy between the two federal statutes as to satisfy their burden of proving a congressional intent to repeal the former by enactment of the latter or that there is an ambiguity in the law which should be construed in favor of the plaintiff. Blackfeet Tribe v. St., 507 F. Supp. 446, 38 St. Rep. 238 (D.C. Mont. 1981); reversed in part and remanded for further proceedings by en banc court of appeals, Blackfeet Tribe v. Mont., 729 F2d 1192 (9th Cir. 1984); certiorari granted state to resolve whether Montana may tax Indian royalty interest arising out of leases executed after the adoption of 1938 Act, and U.S. Supreme Court upheld the 9th Circuit decision that state could not tax such royalty interests. Mont. v. Blackfeet Tribe, 105 S Ct 2399 (1985).

Production Under Lease of Trust Patent Indian Land — Prior Tax Laws: The State Board of Equalization (now Department of Revenue) is authorized to levy the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling Santa Rita Oil & Gas Co. v. St. Bd. of Equalization (now Department of Revenue), 101 M 268, 54 P2d 117 (1936), with exception of the royalty owner's net proceeds tax, for the reason that the federal Supreme Court overruled its holdings upon which the state court's former opinion was based.) Santa Rita Oil & Gas Co. v. St. Bd. of Equalization, 112 M 359, 116 P2d 1012 (1941).

Nature of Tax: Under former law, oil and gas in place is land, and a tax on the income of such oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for tax thereon in absence of contractual obligation to the contrary. N. Pac. Ry. v. Gas Dev. Co., 103 M 214, 62 P2d 204 (1936).

Estate in Land Created by Lease of Trust Patent Indian Land Held Taxable: Oil and gas leases on Indian lands held under trust patent, in which the oil and gas were reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the federal government, which estate was subject to operators' net proceeds tax and the gross production tax (now repealed). British-American Oil Prod. Co. v. St. Bd. of Equalization, 101 M 293, 54 P2d 129 (1936), affirmed 299 US 159, 81 L Ed 95, 57 S Ct 132 (1936).

Nonresident Royalty Holder: Under former law, the fact that the owner of a royalty interest in an oil well made taxable under sections 2096.1 and 2096.2, R.C.M. 1935 (now repealed), was a nonresident of the state did not render him immune from payment of a tax thereon, the tax imposed upon the royalty as a part of the net proceeds being in lieu of the ad valorem tax on the oil in the ground as a part of the realty and not a personal property tax depending upon the residence of the owner. Forbes v. Mid-Northern Oil Co., 100 M 10, 45 P2d 673 (1935).

Land Leased From United States: An oil company operating under leases from the United States government and assigned to it, under the terms of which the lessees were given the exclusive right to explore for, extract, and dispose of oil and gas in lands covered by homestead entries for which patents had not issued, is not such an agency or instrumentality of the federal government as to render the license or occupation tax imposed by Ch. 266, L. 1921, invalid. Mid-Northern Oil Co. v. Walker, 65 M 414, 211 P 353 (1922), affirmed, 268 US 45, 69 L Ed 841, 45 S Ct 440 (1925).

Nature of Tax: The tax of 1% of the gross value of crude oil exacted from persons engaged in producing petroleum within the state, by Ch. 266, L. 1921, is not a property tax or imposed for regulatory purposes under the police power but is a revenue measure, and the exaction is a license or occupation tax. Mid-Northern Oil Co. v. Walker, 65 M 414, 211 P 353 (1922), affirmed, 268 US 45, 69 L Ed 841, 45 S Ct 440 (1925).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part 3

Oil and Gas Production Tax Act

Part Compiler's Comments

Effective Date: Section 54, Ch. 451, L. 1995, provided: "(1) Except for the purposes of subsection (2), [this act] is effective January 1, 1996.

(2) For the purposes of promulgating administrative rules, [section 16 [15-36-322] and this section] are effective on passage and approval." Approved April 14, 1995.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Part Administrative Rules

Title 42, chapter 25, subchapter 18, ARM Natural resources taxes — oil and gas.

Part Case Notes

Absent Equal Protection Violation, No Constitutional Violation for Legislature to Tax or Exempt From Taxation Property Without First Classifying Property: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas while at the same time exempting those properties from a statewide mill levy for education were invalid because the statutes did not classify those properties as required by 15-6-101 and, in addition, created a partial exemption from school funding instead of creating a total exemption. The Supreme Court held that the Legislature is not constitutionally limited to a classification system and that the Legislature is not constitutionally limited to providing tax exemptions for property exclusively within a classification system. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

Conflicting Taxation Statutes Not Invalid: Certain counties and individual taxpayers argued that statutes enacted to tax coal, oil, and natural gas were invalid because the statutes did not classify those properties as required by 15-6-101. The Supreme Court held that the specific statutes providing for taxation of coal, oil, and natural gas were superior to and not invalidated by the more general classification statute. Powder River County v. St., 2002 MT 259, 312 M 198, 60 P3d 357 (2002).

15-36-303. Definitions.

Compiler's Comments

2023 Amendments — Composite Section — Purported Amendment: Section 1, Ch. 475, L. 2023, in definition of natural gas substituted "means all natural gases, hydrocarbon gases, all forms of inert gas, and all other fluid hydrocarbons as produced at the wellhead and not defined as oil under 82-1-111" for "means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead"; and made minor changes in style. Amendment effective May 8, 2023. The amendments to the previous two temporary versions terminated May 18, 2023, based on the termination of the two temporary versions by sec. 5, Ch. 569, L. 2023 (see sec. 1, Ch. 475, L. 2023, for amendments to the temporary versions).

Section 1, Ch. 725, L. 2023, in definition of incremental production in (a) near middle inserted "by recompletion of an existing horizontal drain hole"; in definition of production decline rate at end of first sentence inserted "or the recompletion of an existing horizontal drain hole"; and made minor changes in style. Amendment effective January 1, 2024.

Although sec. 1, Ch. 569, L. 2023, purported to amend this section, the final version of the text remained unamended by Ch. 569.

Applicability: Section 3, Ch. 475, L. 2023, provided: "[This act] applies to the future production of natural gas after [the effective date of this act]." Effective May 8, 2023.

Contingent Termination Provision Repealed: Section 5, Ch. 569, L. 2023, and sec. 5, Ch. 725, L. 2023, repealed sec. 14, Ch. 559, L. 2021, which terminated the sec. 1, Ch. 559, L. 2021, sec. 2, Ch. 559, L. 2021, sec. 3, Ch. 559, L. 2021, and sec. 4, Ch. 559, L. 2021, amendments to this section on occurrence of a contingency. Section 5, Ch. 569, effective May 18, 2023, and sec. 5, Ch. 725, effective May 22, 2023.

2021 Amendment: Chapter 559 inserted definitions of post-1999 stripper well and pre-1999 stripper well; deleted definition that read: "(a) "Stripper oil" means the oil produced from any well that produces more than 3 barrels but fewer than 15 barrels a day for the calendar year immediately preceding the current year if the average price for a barrel of west Texas intermediate crude oil during a calendar quarter is less than $30. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate in that quarter.

(b) The average price for a barrel is computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter.

(c) Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and then dividing the resulting quotient by 365"; and made minor changes in style. Amendment effective January 1, 2022, January 1, 2023, January 1, 2024, January 1, 2025, and January 1, 2026, and terminates on occurrence of contingency until December 31, 2025.

Effective Dates — Applicability: Section 12, Ch. 559, L. 2021 (amended by sec. 3, Ch. 569, L. 2023, and sec. 3, Ch. 725, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] [first temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2022, and apply to the calendar year beginning after December 31, 2021.

(3) [Sections 2 and 7] [second temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2023, and apply to the calendar year beginning after December 31, 2022.

(4) [Sections 3 and 8] [third temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2024, and apply to the income calendar year beginning after December 31, 2023.

(5) [Sections 4 and 9] [fourth temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2025, and apply to the calendar year beginning after December 31, 2024.

(6) [Sections 5 and 10] [final permanent amendments of 15-36-303 and 15-36-304] are effective January 1, 2026, and apply to calendar years beginning after December 31, 2025."

Severability: Section 11, Ch. 559, L. 2021, was a severability clause.

Contingent Termination: Section 14, Ch. 559, L. 2021 (repealed by sec. 5, Ch. 569, L. 2023, and sec. 5, Ch. 725, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 1 and 6] [first temporary amendment of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 2 and 7] [second temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 3 and 8] [third temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 4 and 9] [fourth temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)." Effective July 1, 2021, and terminates January 1, 2025.

2015 Amendment: Chapter 29 in definition of stripper oil in (a) after "average price for a barrel of" deleted "oil as reported in the Wall Street Journal for" and in (b) substituted "for a barrel of west Texas intermediate crude oil" for "for west Texas intermediate crude oil as reported in the Wall Street Journal"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 592 in definition of stripper oil in (a) in first sentence after "produces" inserted "more than 3 barrels but" and deleted former last sentence that read: "There is no stripper well exemption tax rate if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is more than $38 a barrel"; in definition of stripper well exemption in first sentence inserted stripper well bonus as defined term and inserted second sentence related to determination of production; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 4, Ch. 592, L. 2005, provided: "[This act] applies to oil produced and sold after June 30, 2005."

2001 Amendments — Composite Section: Chapter 403 in definition of expanded enhanced recovery project, new enhanced recovery project, and secondary recovery project after "December 31, 1993" deleted "and before January 1, 2002"; and made minor changes in style. Amendment effective April 28, 2001.

Chapter 421 in definition of stripper oil near end of second sentence after "stripper tax rate" deleted "including stripper well exemption tax rate" and inserted third sentence eliminating stripper well exemption tax rate when oil price exceeds $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

1999 Amendments — Composite Section — Coordination: Chapter 488 inserted definition of stripper well exemption; and made minor changes in style. Amendment effective April 27, 1999.

Section 4, Ch. 488, L. 1999, a coordination instruction, voided part of the definition of stripper well exemption after "3 barrels a day or less" by deleting: "when the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper well exemption in that quarter. However, the stripper exemption would apply subject to the conditions of subsection (21). The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter."

Chapter 530 deleted definition of stripper exemption that read: ""Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter"; substituted definition of stripper oil for former definition that read: ""Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365"; and made minor changes in style. Amendment effective April 30, 1999.

(Temporary version) Chapter 554 in definition of post-1985 well in two places inserted "but before January 1, 1999"; inserted definition of post-1999 well; in definition of qualifying production in (a)(i) inserted "but before January 1, 1999" and inserted (a)(ii) regarding well production on or after January 1, 1999; and made minor changes in style. Amendment effective April 30, 1999, and terminates December 31, 1999.

(Version effective January 1, 2000) In definition of post-1999 well at beginning substituted "Post-1999" for "Post-1985", substituted "on or after January 1, 1999" for "after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993", and substituted "post-1999" for "post-1985"; in definition of pre-1999 well at beginning substituted "Pre-1999" for "Pre-1985" and at end substituted "January 1, 1999" for "July 1, 1985"; in definition of production decline rate substituted "15-36-304(5)(e)" for "15-36-304(4)(d)"; in definition of qualifying production in first sentence substituted "12 months" for "24 months", substituted "a well" for "any post-1985 well", and substituted December date and language regarding horizontally completed well drilled after December date for "March 31, 1995"; and made minor changes in style.

Effective Date — Applicability: Section 5, Ch. 488, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to oil produced and sold during the quarters beginning after June 30, 1999."

Applicability: Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

(Version effective January 1, 2000) Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Retroactive Applicability: (Temporary version) Section 19(2), Ch. 554, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold and to wells drilled after December 31, 1998.

Coordination With Other Chapters — Effective Dates: Section 3, Ch. 571, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3] [15-36-303], of Senate Bill No. 412, is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(20) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.""

Section 3, Ch. 581, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section.

(1) The definition section, [section 3] [15-36-303], of Senate Bill No. 412 is amended by adding the following definition, in alphabetical order, and renumbering subsequent subsections:

"(19) "Qualifying production" means the first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well."" Effective January 1, 1996.

Senate Bill No. 412 was enacted as Ch. 451, L. 1995, effective January 1, 1996.

Administrative Rules

ARM 42.25.1801 Definitions.
ARM 42.25.1806 Allocation of incremental production.
ARM 42.25.1807 Average daily well production calculation.
ARM 42.25.1808 Dually qualified stripper wells and enhanced recovery projects.

15-36-304. Production tax rates imposed on oil and natural gas — exemption.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 569, L. 2023, in (5)(b)(i) provided tax rate of 9% for pre-1999 stripper wells; in (5)(c)(i)(A) at beginning substituted "3 through 10 barrels" for "first 1 through 10 barrels" and provided tax rate of 5% for 3 through 10 barrels a day production; in (5)(c)(ii)(B) provided tax rate of 5% for post-1999 stripper well bonus production; and made minor changes in style. Amendment effective January 1, 2024.

Section 2, Ch. 725, L. 2023, in (5)(f)(i) provided tax rate of 0.5% for first 18 months of horizontally recompleted well; and inserted (6)(f) regarding horizontally recompleted well. Amendment effective January 1, 2024.

Contingent Termination Provision Repealed: Section 5, Ch. 569, L. 2023, and sec. 5, Ch. 725, L. 2023, repealed sec. 14, Ch. 559, L. 2021, which terminated the sec. 6, Ch. 559, L. 2021, sec. 7, Ch. 559, L. 2021, sec. 8, Ch. 559, L. 2021, and sec. 9, Ch. 559, L. 2021, amendments to this section on occurrence of a contingency. Section 5, Ch. 569, effective May 18, 2023, and sec. 5, Ch. 725, effective May 22, 2023.

2021 Amendment: Chapter 559 in (5)(b)(i) substituted "pre-1999 stripper wells" for "stripper oil production" and provided tax rates of 9.2% for working interest and 14.8% for nonworking interest of pre-1999 stripper oil wells; inserted (5)(b)(ii)(A) concerning tax rates for pre-1999 stripper well exemption production; inserted (5)(b)(ii)(B) concerning tax rates for pre-1999 stripper well bonus production; inserted (5)(c)(i) introductory clause concerning post-1999 stripper wells; in (5)(c)(ii)(A) substituted "post-1999 stripper well exemption production" for "stripper well exemption production"; in (5)(c)(ii)(B) substituted "post-1999 stripper well bonus production" for "stripper well bonus production"; in (6)(c) in first sentence substituted "average price reported and received by the producer for Montana oil marketed during a calendar quarter" for "average price for a barrel of west Texas intermediate crude oil during a calendar quarter" and near beginning of last sentence after "greater than $54 a barrel" deleted "in a calendar quarter as determined in subsection (6)(e)"; in (6)(d) in first sentence at beginning substituted "Pre-1999 stripper well exemption" for "Stripper well exemption" and near middle after "as provided in subsection" substituted "(5)(b)(ii)(A)" for "(5)(c)(i)", and in last sentence near middle after "there is no" substituted "pre-1999 stripper well exemption tax rate" for "stripper well exemption tax rate" and at end after "is taxed as" substituted "pre-1999 stripper well bonus production" for "stripper well bonus production"; inserted (6)(e)(i) concerning post-1999 stripper well exemption production if the average price is less than $54 a barrel; deleted former (6)(e) that read: "(e) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for a barrel of west Texas intermediate crude oil for the calendar quarter by the number of days on which the price was reported in the quarter"; and made minor changes in style. Amendment effective January 1, 2022, January 1, 2023, January 1, 2024, January 1, 2025, and January 1, 2026, and terminates on occurrence of contingency until December 31, 2025.

Effective Dates — Applicability: Section 12, Ch. 559, L. 2021 (amended by sec. 3, Ch. 569, L. 2023, and sec. 3, Ch. 725, L. 2023), provided: "(1) Except as provided in subsections (2) through (6), [this act] is effective July 1, 2021.

(2) [Sections 1 and 6] [first temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2022, and apply to the calendar year beginning after December 31, 2021.

(3) [Sections 2 and 7] [second temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2023, and apply to the calendar year beginning after December 31, 2022.

(4) [Sections 3 and 8] [third temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2024, and apply to the income calendar year beginning after December 31, 2023.

(5) [Sections 4 and 9] [fourth temporary amendments of 15-36-303 and 15-36-304] are effective January 1, 2025, and apply to the calendar year beginning after December 31, 2024.

(6) [Sections 5 and 10] [final permanent amendments of 15-36-303 and 15-36-304] are effective January 1, 2026, and apply to calendar years beginning after December 31, 2025."

Severability: Section 11, Ch. 559, L. 2021, was a severability clause.

Contingent Termination: Section 14, Ch. 559, L. 2021 (repealed by sec. 5, Ch. 569, L. 2023, and sec. 5, Ch. 725, L. 2023), provided: "(1) The legislature intends to provide the tax relief provided by [this act] while also preventing the loss of federal funds that are available to the state as part of the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in subsections (2) through (5) are limited to the duration of time established by each subsection and are necessary based on the lack of information available to the legislature from the federal government at the time of enactment of [this act].

(2) [Sections 1 and 6] [first temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made in calendar year 2021.

(3) [Sections 2 and 7] [second temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2022, and December 31, 2022.

(4) [Sections 3 and 8] [third temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2023, and December 31, 2023.

(5) [Sections 4 and 9] [fourth temporary amendments of 15-36-303 and 15-36-304] terminate on the date that the budget director provides the certification provided for in subsection (7). In order to be effective, the certification must be made between October 1, 2024, and December 31, 2024.

(6) (a) The budget director shall continually evaluate whether implementation of a section of [this act] will:

(i) result in a reduction of funds from the American Rescue Plan Act; or

(ii) require the state to repay or refund to the federal government pursuant to the American Rescue Plan Act.

(b) The budget director shall consider guidance from:

(i) the federal government about the American Rescue Plan Act;

(ii) court decisions about the American Rescue Plan Act;

(iii) amendments to the American Rescue Plan Act;

(iv) any information provided by the attorney general; and

(v) other relevant information about the American Rescue Plan Act.

(c) If the budget director determines that the implementation of a section of [this act] may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director shall notify the legislative finance committee of the preliminary determination. The budget director's notification of the preliminary determination may occur after January 1 but no later than December 10 of each of the calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee shall provide the budget director with any recommendations concerning the preliminary determination. The budget director shall consider any recommendations of the legislative finance committee.

(7) If the budget director determines that the implementation of a section of [this act] would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget director shall provide certification in writing to the legislative finance committee and the code commissioner of the occurrence of the relevant contingency provided for in subsections (2) through (5)." Effective July 1, 2021, and terminates January 1, 2025.

2019 Amendments — Composite Section: Chapter 8 in (6)(c) in two places substituted references to new or expanded secondary recovery production for references to incremental production and in first sentence substituted "subsection (5)(e)(i)" for "subsection (5)(e)". Amendment effective February 19, 2019.

Chapter 71 in (6)(d)(i) in middle of first sentence substituted "reported and received by the producer for Montana oil marketed" for "for a barrel of west Texas intermediate crude oil" and at end of first sentence inserted "a barrel"; in (6)(d)(ii) in middle substituted "reported and received by the producer for Montana oil marketed" for "for a barrel of west Texas intermediate crude oil" and at end inserted "a barrel"; in (6)(e) at beginning deleted "and (6)(d)"; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 414 in (7) substituted current text for former (7)(a), (7)(b), and (7)(c) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 3, Ch. 8, L. 2019, provided: "[This act] applies to projects approved by the board of oil and gas conservation on or after [the effective date of this act]." Effective February 19, 2019.

Section 8, Ch. 414, L. 2019, provided: "[This act] applies to oil and gas production occurring on or after July 1, 2019."

2017 Amendment: Chapter 91 in (6)(c) in two places substituted "$54" for "$30". Amendment effective March 23, 2017.

Applicability: Section 3, Ch. 91, L. 2017, provided: "[This act] applies to projects approved by the board of oil and gas conservation on or after [the effective date of this act]." Effective March 23, 2017.

2015 Amendments — Composite Section: Chapter 29 in (6)(c), (6)(d)(i), and (6)(d)(ii) before "west Texas intermediate crude oil" deleted "oil as reported in the Wall Street Journal for"; in

(6)(e) substituted "a barrel of west Texas intermediate crude oil" for "west Texas intermediate crude oil as reported in the Wall Street Journal"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 301 in (6)(d)(i) in two places and (6)(d)(ii) substituted "$54" for "$38". Amendment effective July 1, 2015.

2011 Amendment: Chapter 19 in (6)(c) in second sentence substituted "subsection (6)(e)" for "subsection (6)(d)". Amendment effective October 1, 2011.

2009 Amendment: Chapter 33 in (7)(a) near end, in (7)(b) in first and second sentences, in (7)(b)(i), in (7)(b)(ii), and in (7)(c) after "gas" deleted "and coal" and after "resource" inserted "distribution"; in (7)(b) in first sentence after "account" inserted "established in 90-6-1001(1)"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 286 inserted (8) exempting production interest owned by the state or local government from production tax. Amendment effective April 26, 2007.

Retroactive Applicability: Section 3, Ch. 286, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production on or after December 31, 1995."

2005 Amendments — Composite Section: Chapter 592 inserted (5)(c)(ii) related to stripper well bonus production; in (6)(d)(i) inserted second sentence related to taxation of stripper well bonus production; inserted (6)(d)(ii) related to stripper well bonus production; in (6)(e) near beginning inserted reference to subsection (6)(d); and made minor changes in style. Amendment effective July 1, 2005.

Chapter 603 in (7)(a) in first sentence after "include the" inserted "total of the" and at end after "82-11-131" inserted "and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b)"; inserted (7)(b) and (7)(c) regarding imposition of the privilege and license tax and the oil, gas, and coal natural resource tax and notice required of any change in the rate; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 4, Ch. 592, L. 2005, provided: "[This act] applies to oil produced and sold after June 30, 2005."

Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

2003 Amendment: Chapter 522 in (1) at end of second sentence substituted "15-36-331 and 15-36-332" for "15-36-324"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

2001 Amendment: Chapter 421 in (6)(c) at end of second sentence inserted "other than exempt stripper well production" and inserted third sentence providing for taxation of stripper well exemption production when oil price is less than $38 a barrel; and made minor changes in style. Amendment effective April 28, 2001.

Retroactive Applicability: Section 4, Ch. 421, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to production occurring on or after January 1, 2001."

1999 Amendments — Composite Section — Coordination — Code Commissioner Correction: Chapter 488 inserted (5)(b)(iii) in temporary version and (5)(c) in January 1, 2000, version regarding stripper well exemption production. Amendment effective April 27, 1999.

Chapter 530 in (5)(b) substituted schedule on stripper oil production for former schedule (see 1999 Session Law for former text); and made minor changes in style. Amendment effective April 30, 1999.

(Temporary version) Chapter 554 inserted (2)(d) concerning post-1999 wells; inserted (2)(e) concerning horizontally completed well production; in (3) near middle inserted clause applying subsection (2)(d)(i) to natural gas production from post-1999 well; inserted (4) regarding reduced tax rate under subsection (2)(e)(i); inserted (5)(a)(iii) concerning post-1999 wells; substituted tax schedule in (5)(b) concerning stripper wells for former tax schedule (see 1999 Session Law for former text); inserted (5)(c)(i) concerning post-1985 wells; inserted (5)(c)(ii)(A) and (5)(c)(ii)(B) concerning post-1999 wells; inserted (5)(d)(i)(C) concerning post-1999 wells; inserted (5)(d)(ii)(C) concerning post-1999 wells; in (5)(e)(i) at end inserted "of production"; in (5)(e)(i)(A) inserted reference to post-1985 wells; inserted (5)(e)(i)(B) concerning post-1985 wells; in (5)(e)(ii)(A) inserted reference to post-1985 wells; inserted (5)(e)(ii)(B) concerning post-1999 wells; in (6)(a) inserted clause concerning first 12 months of production from post-1999 well; in (6)(b)(i) inserted clause concerning post-1985 well and first 18 months of production from post-1999 well; in

(6)(b)(ii) near middle inserted "from a post-1985 well or post-1999 well"; in (6)(c) in second sentence inserted "and from post-1999 wells"; and made minor changes in style. Amendment effective April 30, 1999, and terminates December 31, 1999.

In (5)(e)(i)(B) after "post-1985" the code commissioner inserted "[1999]" to reflect the apparent intent of the amendment.

Section 17(3)(a), Ch. 554, L. 1999, a coordination instruction, substituted (5)(b)(i) through (5)(b)(iii) for (5)(b)(i) through (5)(b)(iii) as amended by sec. 2, Ch. 488, L. 1999, sec. 2, Ch. 530, L. 1999, and sec. 3, Ch. 554, L. 1999 (see 1999 Session Law for text).

(Version effective January 1, 2000) In (2) substituted tax schedule for natural gas working and nonworking interests for former tax schedule (see 1999 Session Law for former text); in (3) substituted "12 months" for "24 months" and after "production from a" deleted "post-1985"; inserted (4) regarding tax rate on production from horizontally completed well; in (5) substituted tax schedule for oil well working and nonworking interests for former tax schedule (see 1999 Session Law for former text); in (6)(a) substituted "12 months" for "24 months" and after "production from a" deleted "post-1985"; in (6)(b)(i) substituted "18 months" for "24 months"; in (6)(c) substituted "pre-1999 wells" for "pre-1985 wells" and substituted "post-1999 wells" for "post-1985 wells"; and made minor changes in style.

Section 17(3)(b), Ch. 554, L. 1999, a coordination instruction, substituted (5)(b) and (5)(c) for (5)(b) and (5)(c) as amended by sec. 2, Ch. 488, L. 1999, sec. 2, Ch. 530, L. 1999, and sec. 4, Ch. 554, L. 1999 (see 1999 Session Law for text).

Effective Date — Applicability: Section 5, Ch. 488, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to oil produced and sold during the quarters beginning after June 30, 1999."

Applicability: Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

(Temporary version) Section 19(3), Ch. 554, L. 1999, provided that (5)(b)(i) through (5)(b)(iii) apply to oil produced and sold after June 30, 1999.

(Version effective January 1, 2000) Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Retroactive Applicability: (Temporary version) Section 19(2), Ch. 554, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold and to wells drilled after December 31, 1998, except as provided in sec. 19(3).

1997 Amendment: Chapter 466 in (5)(c), after "incremental production", inserted "from pre-1985 wells and from post-1985 wells" and after "(4)(a)(i)" inserted "and (4)(a)(ii)(C), respectively"; and made minor changes in style. Amendment effective April 30, 1997.

1995 Coordination: Section 3, Ch. 571, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section...."

Section 2, Ch. 573, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is further amended as follows:..."

Section 3, Ch. 581, L. 1995, was a coordination section. It provided in part: "If Senate Bill No. 412 is passed and approved, then Senate Bill No. 412 is amended as provided in subsections (1) and (2) of this section and the distribution of revenue must be modified as provided in subsection (3) of this section. If necessary, the code commissioner shall correct all erroneous internal references within Senate Bill No. 412 caused by this section...."

Administrative Rules

ARM 42.25.1803 Treatment of nonworking interests (royalties).
ARM 42.25.1804 Horizontally completed or recompleted wells.
ARM 42.25.1805 Qualification of new or expanded recovery projects.
ARM 42.25.1806 Allocation of incremental production.
ARM 42.25.1807 Average daily well production calculation.
ARM 42.25.1808 Dually qualified stripper wells and enhanced recovery projects.
ARM 42.25.1809 Tax rates.
ARM 42.25.1814 Incentive period.
ARM 42.25.1816 Determining qualifying production.

15-36-305. Determination of gross value of product.

Compiler's Comments

1999 Amendment: Chapter 549 inserted (2) regarding determination of average value of oil; and made minor changes in style. Amendment effective April 30, 1999.

Retroactive Applicability: Section 3, Ch. 549, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998."

Administrative Rules

ARM 42.25.1817 Gross value of natural gas.
ARM 42.25.1818 Delivery price adjustment (DPA) costs.
ARM 42.25.1819 Policy on delivery price adjustments.
ARM 42.25.1820 Necessity of proof.

15-36-311. Quarterly payment of tax — statement — failure to pay penalty.

Compiler's Comments

2005 Amendment: Chapter 5 in (2) near middle of first sentence after "produced and sold" deleted "from pre-1985 wells and post-1985 wells". Amendment effective February 23, 2005.

Retroactive Applicability: Section 4, Ch. 5, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to oil and natural gas production occurring in tax years beginning after December 31, 2004."

1999 Amendments — Composite Section: Chapter 427 in (3) substituted "assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206" for "assessed a penalty of 10% of the amount of the tax not paid. If the tax is not paid when due, interest also must be added at the rate of 1% a month or fraction of a month, computed on the total amount of the tax from the due date until paid. The department may waive the 10% penalty if reasonable cause for the failure to pay is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 530 in (2) in first sentence near middle after "sold" inserted "from pre-1985 and post-1985 wells". Amendment effective April 30, 1999.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Section 7, Ch. 530, L. 1999, provided: "[This act] applies to oil produced and sold after June 30, 1999."

15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest.

Compiler's Comments

2009 Amendment: Chapter 364 in (1) in first sentence after "department shall" deleted "immediately after the time has expired"; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

1999 Amendment: Chapter 427 in (2) near beginning substituted "penalty and interest as provided in 15-1-216" for "penalty of 10% of the tax due plus interest at the rate of 1% a month or fraction of a month, computed on the total amount of the tax. Interest must be computed from the date on which the oil and natural gas production taxes were due to the date of payment"; in (2) at end substituted "waive any penalty pursuant to 15-1-206" for "waive the 10% penalty if reasonable cause for the failure to file the statement required by 15-36-311 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-36-314. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) in first sentence after "due" deleted "including the amount due for the local government severance tax"; deleted former (2)(a) and (2)(b) that read: "(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-332"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 522 at end of (2)(b) substituted "15-36-332" for "15-36-324(12)(a)"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 51 in (2)(b) at end after "15-36-324" substituted "(11)(a)" for "(8)(a)". Amendment effective March 15, 1999. The code commissioner substituted "(12)(a)" for "(11)(a)" to reflect the version of 15-36-324 effective January 1, 2000.

Chapter 427 in (3) substituted "Penalty and interest must be added to a deficiency assessment as provided in 15-1-216" for "A deficiency assessment must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 101, Ch. 51, L. 1999, provided: "[Sections 35 and 36] [amending 15-36-314 and 15-36-315] apply retroactively, within the meaning of 1-2-109, to April 17, 1997."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 295 in first sentence of (1), after "due", inserted "including the amount due for the local government severance tax"; inserted (2) requiring collection of deficiency severance tax assessments in same manner as oil and gas deficiency assessments and treating severance taxes collected on oil and gas production between 1988 and 1995 as current revenue; and made minor changes in style. Amendment effective April 17, 1997.

Retroactive Applicability: Section 3, Ch. 295, L. 1997, provided: "[This act] [15-36-314 and 15-36-315] applies retroactively, within the meaning of 1-2-109, to any local government severance tax deficiency assessments or refunds collected or refunded by the department of revenue for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995."

15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.

Compiler's Comments

2013 Amendment: Chapter 46 deleted former (3) that read: "(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-332"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 522 throughout section substituted references to 15-36-332 for references to 15-36-324. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1999 Amendments — Composite Section — Code Commissioner Correction: Chapter 51 in (3) at end after "15-36-324" substituted "(11)(a)" for "(8)(a)". Amendment effective March 15, 1999. The code commissioner substituted "(12)(a)" for "(11)(a)" to reflect the version of 15-36-324 effective January 1, 2000.

Chapter 427 in (4) substituted "unpaid taxes provided in 15-1-216" for "deficiency assessments provided in 15-36-314"; and made minor changes in style. Amendment effective January 1, 2000.

Retroactive Applicability: Section 101, Ch. 51, L. 1999, provided: "[Sections 35 and 36] [amending 15-36-314 and 15-36-315] apply retroactively, within the meaning of 1-2-109, to April 17, 1997."

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 295 inserted (2) requiring that credit or refunds for overpayment of oil and gas production be withheld from current distributions and requiring Department to demand amount of refund for overpayments from county of original distribution; inserted (3) requiring refund to be treated as current distribution; adjusted subsection references; and made minor changes in style. Amendment effective April 17, 1997.

Retroactive Applicability: Section 3, Ch. 295, L. 1997, provided: "[This act] [15-36-314 and 15-36-315] applies retroactively, within the meaning of 1-2-109, to any local government severance tax deficiency assessments or refunds collected or refunded by the department of revenue for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995."

15-36-322. Rulemaking authority.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 451, L. 1995, provided: "(1) A statement of intent is required for this bill because [section 16] [15-36-322] grants the department of revenue authority to adopt rules for the implementation and administration of the new production taxes imposed on oil and natural gas.

(2) The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(a) the forms and other documents required for the reporting and payment of the oil and natural gas production tax;

(b) the definition and clarification of the categories of oil and natural gas subject to taxation;

(c) the requirements for the maintenance of records and other documents required to ensure proper payment of oil and natural gas production taxes;

(d) the process for the estimation and collection of delinquent or unpaid taxes; and

(e) the procedures for the efficient collection of the oil and natural gas production tax.

(3) [This act] takes effect before taxes on the oil and gas net proceeds tax, the local government severance tax, the state oil and gas severance tax, the resource indemnity and ground water assessment tax, and the oil and gas privilege and license tax for certain production periods will have been paid. The legislature intends that the department establish procedures to ensure that all tax liabilities for production occurring before January 1, 1996, are satisfied. The legislature also intends that the department establish procedures for the proper distribution of this tax revenue to all affected governmental entities and funds."

Effective Date: Section 54, Ch. 451, L. 1995, provided: "(1) Except for the purposes of subsection (2), [this act] is effective January 1, 1996.

(2) For the purposes of promulgating administrative rules, [section 16 [15-36-322] and this section] are effective on passage and approval." Approved April 14, 1995.

Administrative Rules

Title 42, chapter 25, subchapter 18, ARM Natural resource taxes — oil and gas.

15-36-326. Oil and natural gas accelerated tax fund.

Compiler's Comments

1999 Amendment: Chapter 554 in (1) in first sentence near middle inserted "as that section read on December 31, 1999"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

15-36-331. Distribution of taxes.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (4)(d) substituted "15-10-109" for "15-10-108". Amendment effective October 1, 2019.

Chapter 414 in (2)(a) substituted "percentage of privilege and license tax established by the board" for "privilege and license tax" and before "state special revenue fund" inserted "account in the"; in (2)(b) at beginning substituted "After the allocation provided for in subsection (2)(a), up to 0.08% of the tax collected pursuant to 15-36-304(7) must be deposited in" for "The amount of the tax allocated in 15-36-304(7)(b) for" and at end substituted "for distribution pursuant to 15-36-332(7)" for "must be deposited in the account"; inserted (2)(c) regarding any funds remaining as reserves; deleted former (4)(a) concerning distributions through fiscal year 2011 (see 2019 Session Law for former text) and deleted "for fiscal years beginning after June 30, 2011, to be distributed as follows:"; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 8, Ch. 414, L. 2019, provided: "[This act] applies to oil and gas production occurring on or after July 1, 2019."

2017 Amendment: Chapter 173 inserted (5) providing that a payment may be withheld by the state if the local government fails to perform certain actions. Amendment effective July 1, 2017.

2009 Amendments — Composite Section: Chapter 33 in (2)(b) near beginning after "tax" inserted "allocated in 15-36-304(7)(b)", after "gas" deleted "and coal", after "resource" inserted "distribution", and near end substituted "90-6-1001(1)" for "90-6-1001"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 57 in (4)(a)(v) at end and in (4)(b)(iv) at end substituted "15-10-108" for "20-25-423". Amendment effective March 25, 2009.

2007 Amendments — Composite Section: Chapter 432 in (3)(a) deleted 2005 schedule (see 2007 Session Law for former text); inserted (4)(a)(ii) relating to natural resources projects state special revenue account; in (4)(a)(iii) substituted "1.45% to the natural resources operations state special revenue account established in 15-38-301" for "2.95% to the reclamation and development grants special revenue account established in 90-2-1104"; in (4)(a)(iv) increased percentage for orphan share account from "2.95%" to "2.99%"; inserted (4)(b)(i) relating to natural resources projects state special revenue account; in (4)(b)(ii) substituted "2.02% to the natural resources operations state special revenue account established in 15-38-301" for "4.18% to the reclamation and development grants special revenue account established in 90-2-1104"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in (2)(a) near middle after "provisions of" substituted "17-2-124" for "15-1-501"; in (3)(a) deleted column setting out 2005 schedule of percentages allocated to each county (see 2007 Session Law for former text); in (4) near beginning after "provisions of" substituted "17-2-124" for "15-1-501"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendments — Composite Section: Chapter 5 in (3)(a) near beginning of introductory clause after "tax year" substituted "2004" for "2003" and near middle after "(1)(b)" deleted "plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002"; deleted former 2003 schedule of production taxes for each county (see 2005 Session Law for former 2003 schedule); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; near beginning of (4)(a) after "July 1" substituted "2004" for "2003"; and made minor changes in style. Amendment effective February 23, 2005.

Chapter 527 in (2)(a) at beginning inserted exception clause; inserted (2)(c) allocating $50,000 in the 2007 biennium to the legislative services division for a study of split estates; in (3)(a) at beginning substituted "For each tax year" for "For tax year 2003 and succeeding tax years" and deleted the 2003 and 2004 county tax allocations from the table (see 2005 Session Law for former text); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; and made minor changes in style. Amendment effective April 28, 2005, and terminates September 15, 2006.

Chapter 603 inserted (2)(b) requiring deposit of the amount of tax for the oil, gas, and coal natural resource account in the account; in (3)(a) at beginning after "For" substituted "each tax year" for "tax year 2003 and succeeding tax years" and in schedule of county allocations deleted percentages allocated for 2003 and 2004 (see 2005 Session Law for former text); deleted former (4)(a) that read: "(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund"; in (4)(a) at beginning after "for" substituted "each fiscal year" for "the fiscal year beginning July 1, 2003"; and made minor changes in style. Amendment effective July 1, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 4, Ch. 5, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to oil and natural gas production occurring in tax years beginning after December 31, 2004."

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Effective Date: Section 20, Ch. 522, L. 2003, provided that this section is effective on passage and approval. Approved April 26, 2003.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Administrative Rules

ARM 42.25.1813 Applicability.

ARM 42.25.1815 Distribution by population.

15-36-332. Distribution of taxes to taxing units — appropriation.

Compiler's Comments

2019 Amendment: Chapter 414 in (7) in first sentence after "oil and gas production" substituted "for distribution to" for "Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to" and before "allocation" deleted "city and town". Amendment effective July 1, 2019.

Termination Provision Repealed: Section 1, Ch. 247, L. 2019, repealed sec. 29, Ch. 418, L. 2011, and sec. 38, Ch. 400, L. 2013, which terminated the 2011 amendments to this section June 30, 2020. Effective October 1, 2019.

Applicability: Section 8, Ch. 414, L. 2019, provided: "[This act] applies to oil and gas production occurring on or after July 1, 2019."

2017 Amendment: (Temporary version) Chapter 173 in (1)(a) and (6) inserted "and subsection (9) of this section"; in (1)(b) at beginning inserted exception clause; and inserted (9) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style. Amendment effective July 1, 2017.

(Version effective July 1, 2020) Chapter 173 in (1)(a), (1)(b), and (6) inserted exception clause; inserted (9) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style.

Extension of Termination Date: Section 38, Ch. 400, L. 2013, amended sec. 29, Ch. 418, L. 2011, by extending the termination date imposed by Ch. 418 to June 30, 2020. Effective May 6, 2013.

2011 Amendments — Composite Section: Chapter 128 deleted former (7) that read: "(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 418 at beginning of (1) inserted "Subject to 20-9-310"; at end of (4)(a) inserted "and subject to the provisions of 20-9-310"; in (5) substituted "as provided in 20-9-310" for "in the relative proportion of the mill levy for each fund"; deleted former (5)(b) that read: "(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district"; in (6) inserted "Subject to 20-9-310"; and made minor changes in style. Amendment effective May 13, 2011, and terminates June 30, 2016.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2009 Amendment: Chapter 33 in (1)(b) near middle after "gas" deleted "and coal", after "resource" inserted "distribution"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 603 inserted (1)(b) requiring distribution of the oil, gas, and coal natural resource account money by certain dates; inserted (8) requiring distribution of the oil, gas, and coal natural resource account money to counties based on county oil and gas production; in (9) after "units" inserted "and to counties and incorporated cities and towns"; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 10, Ch. 603, L. 2005, provided: "[This act] applies to oil and gas production occurring after June 30, 2005."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Effective Date: Section 20, Ch. 522, L. 2003, provided that this section is effective on passage and approval. Approved April 26, 2003.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Administrative Rules

ARM 42.25.1813 Applicability.
ARM 42.25.1815 Distribution by population.

CHAPTER 37
MINING LICENSE TAXES

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part 1
Metalliferous Mines

Part Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the metalliferous mines license tax from the State Treasurer to the Department of Revenue, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Section 84-2015, R.C.M. 1947, which is a severability clause that applies to most of the sections in this part, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 16, Initiative No. 28, 1925.

Part Case Notes

Constitutionality — Sufficiency of Title:

Initiative measure No. 28 did not violate Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.) because arsenic or arsenious oxide, taxable under initiative measure No. 28 was not mentioned in its title. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

If an act deals with matters germane to the subject expressed in its title and the title is not of such character as to mislead the public or the members of the Legislature, the constitutional requirement with relation to the contents of the title, Art. V, sec. 23, 1889 Mont. Const. (now Art. V, sec. 11, 1972 Mont. Const.) is sufficiently complied with; where the general object is plainly expressed in the title it is not necessary that it should embody the exact methods of application or procedure, and courts should not embarrass legislation by technical interpretation based upon mere form or phraseology. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Effect of Repealed Sections: Initiative measure No. 28, providing for a gross proceeds of mines tax, specifically repealed sections 2344-2355, R.C.M. 1921, providing for a net proceeds of metalliferous mines tax, and it was error to contend that measure No. 28 was simply amendatory of the net proceeds act, that act by its repeal having been blotted out as completely as though it had never existed, a new and different act taking its place. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

15-37-101. License tax on metal mines.

Compiler's Comments

1983 Amendment: Near end of (1), inserted "and impacted local government units". Amendment effective July 1, 1985, applicable to tax years beginning after December 31, 1984.

Case Notes

Nature of Tax: The tax provided by initiative measure No. 28 is not a property tax—on metals, minerals, or mine products—but an occupational license tax, i.e., upon the business of producing metals or precious stones, based upon annual production. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

15-37-102. Gross value of metal mine yield — definitions.

Compiler's Comments

2005 Amendment: Chapter 594 in definition of reporting period after "means" deleted "(a) for periods beginning prior to January 1, 2003, the calendar year; and

(b) for periods beginning on or after January 1, 2003"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 substituted gross value of product for annual gross value of product as defined term and near middle of definition substituted "each reporting period" for "each calendar year"; substituted definition of reporting period for definition of annual reporting date that read: "The "annual reporting date", as used in this part, means the last day of the calendar year"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 throughout section substituted "annual" for "quarterly" and "year" for "quarter".

Chapter 672 in first sentence substituted "annual reporting date" for "quarterly reporting date" and substituted "calendar year" for "calendar quarter"; in second sentence substituted "annual gross value of product" for "quarterly gross value of product", substituted "means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals" for "means the market value of all merchantable metals", and substituted "calendar year" for "calendar quarter"; after second sentence deleted remainder of section that read: "Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the quarterly gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar quarter for which a report is being made. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Inserted first sentence that reads: "The "quarterly reporting date", as used in this part, means the last day of the calendar quarter"; in second sentence, substituted "quarterly" for "total"; in middle of second sentence, substituted "calendar quarter" for "year"; near beginning of third sentence, substituted "quarterly gross value" for "gross value"; at end of third sentence, substituted "quarter for which a report is being made" for "year immediately preceding"; and made minor phraseology changes.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Administrative Rules

Title 42, chapter 25, subchapter 1, ARM Metalliferous mines tax.

ARM 42.25.102 Average price quotations.

Case Notes

Deductions in Fixing Tax for Smelting Reduction "or Otherwise": In the former version of this section that prohibited "any deductions for costs of smelting, reduction or treatment, or otherwise", the words "or otherwise" relate to whatever expense is incurred in making the gross product. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

Market Value in Montana, Not in New York, Taxable: Under the former version of this section, which declared that the amount of the license tax exacted by the state on operators of metalliferous mines shall be determined by ascertaining the market value of the gross product resulting from the smelting, reduction, or treatment of the ore, based upon the average quotations of the price of the metals or mineral products in New York City, their market value in Montana, not that prevailing in New York, is taxable. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

New York Price as Basis: Under the former version of this section, it was contemplated that in fixing the market value of zinc, the New York price was to be considered as a basis, thus the State Board of Equalization (now Department of Revenue) in fixing market value upon the basis of the price of the metal in St. Louis did so in violation of the act. State ex rel. Snidow v. St. Bd. of Equalization, 93 M 19, 17 P2d 68 (1932).

15-37-103. Rate of tax.

Compiler's Comments

2009 Amendment: Chapter 4 in (2) and (3) in table before "first $250,000" inserted "subject to subsection (4), the"; and inserted (4) providing that gross value of nontaxable product under subsection (2) or (3) may not exceed $250,000 annually. Amendment effective February 10, 2009.

Retroactive Applicability: Section 3, Ch. 4, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to metalliferous mines license taxes for reporting periods beginning after December 31, 2002."

2003 Amendment: Chapter 342 in (3) after "matte" inserted reference to other forms of processed concentrate processed in treatment facility owned or operated by taxpayer, before "shipped" inserted "sold or", and after "refinery" inserted "for final processing"; and made minor changes in style. Amendment effective April 15, 2003.

Applicability: Section 4, Ch. 342, L. 2003, provided: "[This act] applies to metal mine production occurring after December 31, 2003."

2002 Amendment: Chapter 19 in (1) at beginning after "The" deleted "annual" and at end substituted "preceding reporting period" for "calendar year immediately preceding"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendment: In (2) inserted "concentrate shipped to a smelter, mill, or reduction work is taxed" and substituted rate table for former rate table (see Ch. 619, 1983 Session Law, for text); inserted (3) relating to taxation of gold, silver, and platinum-group metal that is dore, bullion, or matte; and made minor changes in phraseology. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Effective July 1, 1985, and applicable to tax years beginning after December 31, 1984, substituted rate table for former rate table: first $100,000, 0.15%; more than $100,000 and not more than $250,000, 0.575% of the increment; more than $250,000 and not more than $400,000, 0.86% of the increment; more than $400,000 and not more than $500,000, 1.15% of the increment; more than $500,000, 1.438% of the increment.

15-37-104. Mine operator's statement of gross value — reports and sampling.

Compiler's Comments

2002 Amendment: Chapter 19 in (1) near middle of first sentence after "not later than" substituted "the date for payment of the tax under 15-37-105" for "March 31 following the end of each calendar year" and at end substituted "reporting period" for "calendar year immediately preceding"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 in (1) substituted "March 31 following the end or each calendar year" for "60 days following the quarterly reporting date of each quarter" and substituted "calendar year" for "calendar quarter"; in (1)(f) substituted "annual" for "quarterly"; and in (4) (deleted by Ch. 672, L. 1989) substituted "annual" for "quarterly", substituted "by March 31 following the calendar yearend" for "within 60 days following the calendar quarter ending", and changed penalty percentage to "10% of the tax under this part" from "2% of the tax that would be due under this part if collected quarterly".

Chapter 672 in (1) substituted "not later than March 31 of each year" for "not later than 60 days following the quarterly reporting date of each quarter" and substituted "calendar year" for "calendar quarter"; in (1)(f) substituted "annual gross value" for "quarterly gross value"; deleted former (4) that read: "(4) If the quarterly statement of gross value described herein is not filed with the department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of $25 or 2% of the tax that would be due under this part if collected quarterly. If good cause is shown, the department may waive the penalty"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: In (1), in middle of first sentence, substituted "60 days following the quarterly reporting date of each quarter" for "April 15 in such year"; near end of first sentence, substituted "quarter" for "year"; inserted second sentence relating to extension of time for filing statement; substituted last sentence of (1) "The statement shall be in the form prescribed by the department of revenue and shall show the following:" for "Such statement shall be in the form prescribed by the department of revenue and must be delivered to the department not later than April 15. The department may grant a reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:"; in (1)(f), substituted "quarterly gross value" for "gross value"; inserted (4) relating to penalties; and made minor changes in phraseology.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

1981 Amendment: Inserted "and telephone number" after "address" and "or operator" after "lessee" in (1)(a); substituted "the mine's location by county and legal description" for "the description and location of the mine or mining property" in (1)(b); inserted "concentrate" after "ore" in (1)(c); inserted "or concentrate" after "ore" in (1)(d); inserted "concentrates" after "ores" in two places in (1)(e); inserted subsection (2) relating to smelter location; and inserted (3) requiring in-state ore testing.

Administrative Rules

Title 42, chapter 25, subchapter 1, ARM Metalliferous mines tax.

15-37-105. Computation and payment of tax.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) deleted former second sentence that read: "For the reporting period defined in 15-37-102(2)(a), the tax is due and payable on or before March 31 of each year" and in second sentence substituted "15-37-102(2)" for "15-37-102(2)(b)"; deleted former (2) that read: "(2) The tax due under this part becomes delinquent as of:

(a) midnight on March 31 for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b); and

(b) midnight on August 15 for each reporting period ending June 30 under 15-37-102(2)(b)"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 in (1) at beginning of second sentence inserted "For the reporting period defined in 15-37-102(2)(a), the tax", inserted third sentence concerning due date of tax for reporting periods defined in 15-37-102(2)(b), and at end of fourth sentence substituted "reporting period" for "preceding calendar year"; at end of (2)(a) substituted "for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b)" for "of the year immediately following the production year"; inserted (2)(b) concerning delinquency date of August 15; in (4) near end of second sentence substituted "reporting period" for "year"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1999 Amendment: Chapter 427 in (1) at end substituted reference to 15-1-216 for reference to a 1% per month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendments: Chapter 128 in (1), in two places, substituted "March 31" for "March 1".

Chapter 672 in (1), in two places, substituted "March 31" for "March 1"; and made minor changes in phraseology and punctuation. Amendment effective May 16, 1989.

Retroactive Applicability: Section 10, Ch. 128, L. 1989, provided: "[Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988."

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment — Code Commissioner Correction: In (1), substituted "The tax due under this part is computed according to 15-37-103 and is due and payable on or before March 1 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 1 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof" for "The department of revenue shall examine each such statement and return filed and determine and ascertain therefrom and compute and assess the amount of the license tax to be paid by the person making and filing the same and shall, not later than June 1, mail to each person making and filing such statement and return a written notice of the amount of the license tax to be paid by each, respectively; that the same is due and payable; that it will become delinquent at 5 p.m. on June 30 immediately following; that if the same becomes delinquent, a penalty of 10% will be added thereto; and that the whole amount of such license tax, with penalty added, will bear interest at the rate of 1% per month or fraction thereof from the date the same becomes delinquent until paid"; the two references to "this part" were changed from "this chapter" by the Code Commissioner to correct inaccurate references.

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

15-37-106. Procedure in case of failure to file statements.

Compiler's Comments

2005 Amendment: Chapter 594 in first sentence near beginning after "fails" substituted "to file" for "refuses, or neglects to make and file", substituted "15-37-108" for "15-37-105", and after "expired" deleted "ascertain and"; in second sentence after first "shall" deleted "make and", after second "shall" deleted "ascertain", after "determine" deleted "compute", and after "from" deleted "and to be paid by"; in fourth sentence at end after "provided" substituted "in 15-1-216" for "for other delinquencies"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 near beginning of first sentence substituted "statement of gross yield for a reporting period on or before the date the tax becomes delinquent under 15-37-105" for "annual statement of gross yield for a production year on or before March 31 of the year immediately following the production year" and near end substituted "during the reporting period" for "during the calendar year immediately preceding the year" and near beginning of third sentence substituted "as soon as possible" for "immediately"; and made minor changes in style. Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1989 Amendments: Chapter 128 near beginning substituted "file the required annual statement" for "file all required quarterly statements" and substituted "March 31" for "March 1".

Chapter 672 near beginning substituted "file the required annual statement" for "file all required quarterly statements"; substituted "March 31" for "March 1"; and made minor changes in phraseology and punctuation. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: Near beginning of section, substituted "all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year" for "such statement and return within the time prescribed".

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

15-37-107. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted the first sentence, authorizing issuance of a warrant for distraint, for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-37-108. Delinquent taxes — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in first sentence at end after "date" substituted "that the tax is payable as established for the applicable reporting period in 15-37-105(1)" for "established in 15-37-105(2)". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2002 Amendment: Chapter 19 at end of first sentence substituted "the date established in 15-37-105(2)" for "March 31 of the year immediately following the production year". Amendment effective August 20, 2002.

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

1999 Amendment: Chapter 427 substituted "penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206" for "a penalty of 10%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 10% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 31 of the year immediately following the production year"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendments: Chapters 128 and 672 in two places substituted "March 31" for "March 1"; and in two places increased penalty percentage amount from 8% to 10%. Amendment to Ch. 672 effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: After first "paid" substituted "on or before midnight of March 1 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of 8%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 8% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 1 of the year immediately following the production year" for "by 5 p.m. on June 30 following the date when the same are assessed, and as the same become delinquent, a penalty of 10% shall be added thereto and the whole amount of said license tax, with penalty added, shall bear interest at the rate of 1% per month or fraction thereof from the date of becoming delinquent until paid".

Applicability: Section 6, Ch. 227, L. 1983, provided: "This act is applicable to tax years beginning after December 31, 1983."

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-37-109. False or erroneous statements — investigation penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) near beginning substituted reference to 15-1-216 for reference to a 1% per month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-37-110. Review of determination of gross value of product or amount of tax.

Compiler's Comments

1991 Amendment: At end, after "may", inserted "seek review pursuant to 15-1-211" and deleted remainder of section that read: "at any time within 10 days after the receipt of the required notice of such determination and assessment, file with the state tax appeal board a petition for a hearing, in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value of product or the amount of the license tax, or both, the board shall immediately correct such error or errors; and if such correction is in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board considers reasonable. At the hearing of such petition, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-37-114. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-37-115. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on the amount of unpaid tax as provided in 15-1-216" for "charged on deficiency assessments provided in 15-37-114"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-37-117. Disposition of metalliferous mines license taxes.

Compiler's Comments

2017 Amendment: Chapter 173 inserted (4) providing that a payment may be withheld by the state if the local government fails to perform certain actions. Amendment effective July 1, 2017.

2015 Amendment — Coordination: Chapter 387 in (1)(a) substituted "47%" for "57%"; in (1)(b) after "account" inserted "established in 90-6-304(2)"; and in (1)(e) near end of introductory clause substituted "35%" for "25%". Amendment effective July 1, 2016, pursuant to sec. 10, Ch. 438, L. 2015, a coordination instruction, and terminates June 30, 2027.

2007 Amendments — Composite Section: Chapter 432 in (1)(d) in introductory clause substituted "natural resources operations state special revenue account established in 15-38-301" for "reclamation and development grants program state special revenue account"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in (1) in introductory clause after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 598 in (1)(a) after "state" substituted "57%" for "for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003, 58%"; in (1)(d) after "account" deleted "for the fiscal years beginning on or after July 1, 2003"; in (1)(e) near end before "of total collected" increased percentage from 24% to 25%; in (1)(e)(i) after "mine" substituted "trust account" for "trust reserve account"; in (1)(e)(ii)(A) after "county for" substituted "general planning functions" for "planning" and at end inserted "as described in 7-6-2225(3)(c) through (3)(e)"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendments — Composite Section: Chapter 12 in (1)(a) near middle inserted "for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003"; and in (1)(d) near middle after "account" inserted "for the fiscal years beginning on or after July 1, 2003". Amendment effective August 16, 2002.

Chapter 19 at beginning of (1)(e) substituted "within 60 days of the date the tax is payable pursuant to 15-37-105" for "on or before June 1". Amendment effective August 20, 2002.

Retroactive Applicability: Section 7, Ch. 12, Sp. L. August 2002, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2002."

Applicability: Section 9, Ch. 19, Sp. L. August 2002, provided: "[This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003."

2001 Amendment: Chapter 460 in (1)(c) substituted "hard-rock mining reclamation debt service fund created in 82-4-312" for "orphan share state special revenue account established in 75-10-743". Amendment effective July 1, 2002.

1999 Amendments — Composite Section: Chapter 144 deleted former (1)(d) that read: "(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year"; in (1)(d) increased amount allocated to reclamation and development grants from 4.8% to 7%; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 464 in (1)(b) increased tax allocation to hard-rock mining impact trust account from 1.5% to 2.5%; at beginning of (1)(e) inserted "on or before June 1" and near end decreased county tax allocation from 25% to 24%; and in (1)(e)(i) decreased allocation to county hard-rock mine trust reserve account from 40% to 37.5%. Amendment effective April 22, 1999.

The amendment to this section made by sec. 3, Ch. 552, L. 1999, was rendered void by sec. 12(2), Ch. 552, L. 1999, a contingent voidness provision.

1997 Amendment: Chapter 415 in (1)(c) substituted current text concerning orphan share for "to the state resource indemnity trust fund, 15.5%"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 3, Ch. 120, L. 1997, and sec. 2, Ch. 542, L. 1997.

1995 Amendments: Chapter 18 near beginning of (1), after "15-1-501", deleted reference to subsection (6).

Chapter 31 in (1)(c) reduced from 15.5% to 13.3% the amount of total annual collections credited to the resource indemnity trust fund; inserted (1)(d) allocating 2.2% of total annual collections to the ground water assessment account; adjusted subsection references; and made minor changes in style. The amendment in (1)(c) was rendered void pursuant to sec. 8, Ch. 577, L. 1995, a coordination section. Amendment effective February 6, 1995.

Chapter 577 in (1)(c) reduced allocation from 15.5% to 8.5%; inserted (1)(d) allocating 2.2% to ground water assessment account; inserted (1)(e) allocating 4.8% to reclamation and development grants program account; and adjusted subsection references. The amendment in (1)(c) was rendered void pursuant to sec. 22, Ch. 584, L. 1995, a coordination section. Amendment effective July 1, 1995.

Chapter 584 at beginning of (1)(c) substituted "to the abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, 8.5%" for "to the state resource indemnity trust fund, 15.5%". Amendment effective May 1, 1995, and terminates June 30, 1997.

Retroactive Applicability: Section 3, Ch. 31, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all metalliferous mines taxes collected after December 31, 1994."

Severability: Section 23, Ch. 584, L. 1995, was a severability clause.

Applicability: Section 25(1), Ch. 584, L. 1995, provided: "(1) [This act] does not apply to civil actions commenced or begun prior to [the effective date of this act] [May 1, 1995] or to claims based on those actions."

1993 Amendment: Chapter 455 near middle of (1), after "part", substituted "must, in accordance with the provisions of 15-1-501(6), be" for "are"; in (4), in temporary version after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, at beginning inserted exception clause; and inserted (4) concerning disposition of the surtax.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Retroactive Applicability — Termination: Section 39(3), Ch. 15, Sp. L. July 1992, provided that this section applies to production occurring after December 31, 1991, and before January 1, 1993. This section terminates upon receipt of taxes on production occurring prior to January 1, 1993.

1991 Amendment: At beginning of (1)(d) inserted "to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if no impact plan has been prepared"; and in (1)(d)(ii), at end after "follows", deleted "except that more than one entity may share an allocation if a jurisdictional revenue disparity is identified pursuant to subsection (2)".

Retroactive Applicability: Section 3, Ch. 760, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all large-scale mineral developments required to comply with 90-6-307 that did not have an impact plan approved pursuant to 90-6-307, as of December 31, 1990."

1989 Amendment: In (1)(a) reduced percentage credited to state general fund from 67% to 58%; in (1)(b) reduced percentage credited to hard-rock mining impact trust account from 33% to 1.5%; inserted (1)(c) relating to percentage credited to state resource indemnity trust fund; inserted (1)(d) relating to percentage of tax to be credited to the county and specifying its allocation by County Commissioners; inserted (2) relating to distribution by county when a jurisdictional revenue disparity is involved; inserted (3) relating to return of tax collections from the Department to the counties; and made minor changes in form. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1983 Amendment: In (2), substituted "state special revenue fund" for "earmarked revenue fund".

Part 2
Micaceous Mineral Mines

15-37-203. Records.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, inserted "subject to 15-37-201"; at end of second sentence deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-37-205. Procedure on failure to file statement.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "penalty and interest as provided in 15-1-216. The department may waive a penalty pursuant to 15-1-206" for "a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-37-204 is provided"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-37-206. Collection — warrant for distraint.

Compiler's Comments

1981 Amendment: In (1) substituted "The letter shall advise that if payment is not made, a warrant for distraint may be filed" for "The letter shall advise that if payment is not made within 15 days, a lien may be filed"; deleted provision at the end of (1) that the amount due must be paid within 15 days of receiving the letter and that if not paid there is a lien on the taxpayers' property; in (2) inserted "If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7"; and deleted a provision at the end of the section that the lien provided for in this section may be enforced in the same manner as judgment liens.

15-37-210. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must bear interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-37-211. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "rate as provided in 15-1-216" for "rate is charged on deficiency assessments provided in 15-37-210"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

CHAPTER 38
RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT

Chapter Compiler's Comments

Section Not Codified: Section 84-7011, R.C.M. 1947, which is an effective date, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 11, Ch. 497, L. 1973.

Chapter Administrative Rules

Title 42, chapter 25, subchapter 15, ARM Resource indemnity trust tax.

Chapter Case Notes

No Constitutional Limitation on Appropriation of Resource Indemnity Trust Funds Beyond Principal: Nothing in the Montana Constitution as a whole or in the plain language of Art. IX, sec. 2, Mont. Const., places a limitation on the appropriation of resource indemnity trust funds beyond the $100 million principal, which must remain inviolate. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

Trust Funds Not Limited to Reclamation of Land Disturbed by Taking of Natural Resources: The appropriation or allocation of resource indemnity trust funds is not limited to the reclamation of lands disturbed by the taking of natural resources. Therefore, the use of funds for programs related to improving the total environment does not violate the fiduciary duty of the state toward the trust in allocating trust funds. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

State Taxation of Indian Trust Properties Valid — No Repeal by Implication Found: Where the plaintiff Indian tribe sought declaratory and injunctive relief against the levy and collection of certain taxes by the state and several counties on the production of oil and gas owned by the United States in trust for the plaintiff by non-Indian lessees within the boundaries of the plaintiff's reservation, the court held that the provisions of 25 U.S.C. § 398 specifically authorized state taxation of oil and gas on tribal lands and that the provisions of the statute had not been impliedly repealed by 25 U.S.C. § 396. The sovereign right asserted by the plaintiff to be free from state taxation has been controlled by Congress, and the plaintiff has not shown that there is such a repugnancy between the two federal statutes as to satisfy their burden of proving a congressional intent to repeal the former by enactment of the latter, or that there is an ambiguity in the law which should be construed in favor of the plaintiff. Blackfeet Tribe v. St., 507 F. Supp. 446, 38 St. Rep. 238 (D.C. Mont. 1981); reversed in part and remanded for further proceedings by en banc court of appeals, Blackfeet Tribe v. Mont., 729 F2d 1192 (9th Cir. 1984); certiorari granted state to resolve whether Montana may tax Indian royalty interests arising out of leases executed after the adoption of 1938 Act, and U.S. Supreme Court upheld 9th Circuit decision that state could not tax such royalty interests. Mont. v. Blackfeet Tribe, 105 S Ct 2399 (1985).

Chapter Law Review Articles

Limitations on State Power to Tax Natural Resource Development on Indian Reservation, Dockins, 43 Mont. L. Rev. 217 (1982).

Taxation of Mineral Interests Under the 1889 Montana Constitution, 32 Mont. L. Rev. 47 (1971).

Part 1
General Provisions

15-38-101. Short title.

Compiler's Comments

1991 Amendment: Inserted "and Ground Water Assessment". Amendment effective July 1, 1993.

15-38-102. Legislative policy.

Compiler's Comments

1991 Amendment: In introductory clause, in second sentence after "trust", inserted "as required by Article IX, section 2, of the Montana constitution, by supporting ground water assessment programs" and after "spendable" deleted "trust"; inserted (3) allocating revenue to assess the state's ground water resources; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: Substituted "It is the policy of the state of Montana to indemnify its citizens for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. This policy of indemnification is achieved by establishing a permanent resource indemnity trust from the proceeds of a tax levied on mineral extraction and by allocating spendable trust revenues:

(1) to protect and restore the environment from damages resulting from mineral development; and

(2) to support a variety of development programs that benefit the economy of the state and the lives of Montana citizens" for "It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure."

15-38-103. Definitions.

Compiler's Comments

1995 Amendments: Chapter 10 in definition of mineral, after "uranium", inserted "talc, vermiculite, limestone". Amendment effective January 27, 1995.

Chapter 397 in definition of gross value of product inserted reference to 15-38-129; and made minor changes in style. Amendment effective April 12, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 10, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994." Approved January 27, 1995.

Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 in definition of gross value of product expanded reference to include 15-38-128. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 520 in (2) inserted reference to 15-38-125. Amendment effective April 22, 1991.

Chapter 695 in definition of gross value of product inserted reference to 15-38-127. Amendment effective April 27, 1991.

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: In definition of gross value of product inserted exception clause referring to 15-38-126. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Administrative Rules

ARM 42.25.1501 Definitions.

15-38-104. Tax on mineral production.

Compiler's Comments

2009 Amendment: Chapter 477 in (1) at beginning of first sentence after "provided in" inserted "15-38-113 and"; and made minor changes in style. Amendment effective May 8, 2009.

Applicability: Section 12(1), Ch. 477, L. 2009, provided that except as provided in subsection (4), this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2007.

Section 12(4), Ch. 477, L. 2009, provided: "The exemption provided for in 15-38-113(4) applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, for counties, cities, and towns."

1997 Amendment: Chapter 42 in (1), in exception clause, expanded reference to include subsection (5). Amendment effective March 12, 1997.

1995 Amendments: Chapter 10 at end of (2)(a), after "4%", inserted "of the gross value of product in excess of $625"; at end of (2)(b), after "0.4%", inserted "of the gross value of product in excess of $6,250"; at end of (3), after "2%", inserted "of the gross value of product in excess of $1,250"; and at end of (4), after "10%", inserted "of the gross value of product in excess of $250". Amendment effective January 27, 1995.

Chapter 397 inserted (5) imposing an annual tax of $25 on a person mining, extracting, or producing industrial garnets and associated byproducts, plus an additional 1% of the gross value of product in excess of $2,500 derived from the work during the preceding calendar year. Amendment effective April 12, 1995.

Effective Date — Retroactive Applicability: Section 3, Ch. 10, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994." Approved January 27, 1995.

Section 14, Ch. 397, L. 1995, provided that this section applies retroactively to production years beginning after December 31, 1994.

1993 Amendment: Chapter 506 near beginning of (1), after "(2)", expanded reference to include subsection (4); and inserted (4) setting annual tax of $25 on mining, extracting, or producing limestone for quicklime. Amendment effective April 24, 1993.

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

1991 Amendments: Chapter 520 inserted (2)(b) establishing an annual tax on coal of $25 plus an additional amount computed on the gross value of product for coal produced in Montana during calendar year immediately preceding at 0.4% rate; and made minor change in style. Amendment effective April 22, 1991.

Chapter 695 in (1) inserted reference to subsection (3); and inserted (3) establishing annual tax on vermiculite production. Amendment effective April 27, 1991.

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "(1) [This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

1989 Amendment: At beginning of (1) inserted exception clause; inserted (2) providing amount of annual tax on talc production; and made minor changes in phraseology. Amendment effective April 14, 1989.

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

Administrative Rules

ARM 42.25.1504 Responsibility for filing forms and paying tax.
ARM 42.25.1506 Minimum tax and annual exemption.
ARM 42.25.1507 Computation of gross value.

Case Notes

Deduction for Tribal Tax Not Permitted: The plaintiff, who operated a mine on tribal land, paid coal severance and gross proceeds taxes to the tribe. The plaintiff also paid Montana's Resource Indemnity Trust and Ground Water Assessment Tax (RITT) to the Department of Revenue. In paying the RITT, the plaintiff attempted to deduct tribal taxes from the contract sales price used to calculate the RITT. The RITT calculation specifically did not include deductions for payments to a tribal entity, but it included a deduction for other local governments. The Supreme Court held that because the deduction for other local governments specifically did not include tribal governments, the RITT did not allow a deduction for tribal taxes. Westmoreland Resources Inc. v. Dept. of Revenue, 2014 MT 212, 376 Mont. 180, 330 P.3d 1188.

Applicability of Tax to Adjustment Portion of Coal Sales Price — Commerce Clause: The contract sales price for coal was adjusted when the actual BTU content of the coal was different from the BTU content warranted by seller. The warranted BTU content determined the base price of the coal. The adjustment formula took railroad shipping charges into account and was part of the contract sales price. The coal severance and gross proceeds taxes were based on the contract sales price, and the resource indemnity tax was based on the value of the coal at the time of extraction. It was proper for the state to apply the coal severance, gross proceeds, and resource indemnity trust taxes to amounts seller received on upward price adjustments caused by higher BTU content, after deducting from the contract sales price, for purposes of the resource indemnity trust tax, the costs of hauling the coal from the mine to the railroad and preparing the coal for shipment. Seller's claim that it was taxed on the revenue received pursuant to the transportation costs component of the adjustment formula was properly denied in the lower court. Transportation costs were paid by the buyer, not the seller, the transportation cost component of the formula was based on the average transportation rate per ton and did not vary. The adjustment formula did nothing to alter the actual transportation costs. The claim that the commerce clause of the United States Constitution was violated was properly denied in the lower court because seller did not receive, and thus was not taxed on, any transportation revenue. Westmoreland Resources v. Dept. of Revenue, 263 M 303, 868 P2d 592, 51 St. Rep. 67 (1994).

15-38-105. Report of gross yield from mines.

Compiler's Comments

1995 Amendment: Chapter 451 in fourth sentence, after "Mineral producers", deleted "including oil and gas producers"; in (4), after "tons of coal", deleted "barrels of petroleum or other crude or mineral oil, cubic feet of natural gas"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1989 Amendment: In first sentence substituted "file an annual statement" for "make out a quarterly statement" and substituted "calendar year" for "quarter"; at beginning of second sentence substituted "statement must" for "form shall"; created third sentence, relating to delivery of statement by metal producers, from end of second sentence and in third sentence substituted "March 31" for "the 60th day", substituted "year" for "quarter", and made minor changes in grammar; and inserted fourth sentence regarding delivery of statement by mineral producers.

1983 Amendment: In first sentence, substituted "quarterly" for "on or before March 31 of each year", and substituted "quarter" for "year preceding January 1 of the year in which the statement is made and the value thereof"; and at end of second sentence, substituted "the 60th day following the end of the calendar quarter" for "March 31".

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

1981 Amendment: Substituted "signed by the person" for "verified by the oath of the person" in the second sentence.

Administrative Rules

ARM 42.25.1501 Definitions.
ARM 42.25.1502 Applicability.
ARM 42.25.1503 Computation of tax.
ARM 42.25.1505 Supplemental information.
ARM 42.25.1507 Computation of gross value.

15-38-106. Payment of tax — records — collection of taxes — refunds.

Compiler's Comments

2019 Amendment: Chapter 334 in (2) after "ground water assessment tax" deleted "and money deposited pursuant to 82-4-424(3)". Amendment effective July 1, 2019.

2009 Amendment: Chapter 477 in (2) near end of introductory clause after "tax" inserted "and money deposited pursuant to 82-4-424(3)". Amendment effective May 8, 2009.

Applicability: Section 12(1), Ch. 477, L. 2009, provided that except as provided in subsection (4), this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2007.

Section 12(4), Ch. 477, L. 2009, provided: "The exemption provided for in 15-38-113(4) applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, for counties, cities, and towns."

2007 Amendments — Composite Section: Chapter 432 in (2) after "deposit" inserted reference to proceeds from resource indemnity and ground water assessment tax; in (2)(b) after "proceeds" inserted "from the tax"; inserted (2)(c) relating to appropriation for biennium beginning July 1, 2007, to water storage state special revenue account; in (2)(d) after "proceeds" substituted "from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621" for "in the orphan share account established in 75-10-743"; in (2)(e) substituted "proceeds from the tax in the natural resources projects state special revenue account, established in 15-38-302" for "proceeds in the reclamation and development grants account established by 90-2-1104" and at end after "projects" inserted "and renewable resource projects"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in (2) in introductory clause after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 594 in (1) in first sentence after "on or before" substituted "the due date of the annual statement established in 15-38-105" for "March 31". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

2003 Amendment: Chapter 496 inserted (2)(a) requiring annual deposit of tax proceeds to the CERCLA match debt service fund in the amount necessary to pay the principal, any premium, and interest during the next fiscal year on bonds or notes issued under 75-10-623; and made minor changes in style. Amendment effective July 1, 2003.

Effective Dates — Contingency: Section 9, Ch. 586, L. 2001, provided: "(1) Except as provided in subsections (2) and (3), [this act] is effective on July 1, 2001.

(2) [Section 7] [15-38-106] is effective on July 1 immediately following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million and applies to the then-current academic year. The secretary of state shall forward a copy of the executive order to the code commissioner.

(3) [Section 4(1) [39-10-104(1)] and this section] are effective on passage and approval." Approved May 5, 2001. On February 27, 2002, the Governor certified that the balance in the resource indemnity trust fund had reached $100 million.

Termination: Section 10, Ch. 586, L. 2001, provided: "[This act] terminates on June 30, 5 years after [the effective date provided in section 9(2)]." Effective on occurrence of contingency.

Contingent Effective Date: Section 13(2), Ch. 552, L. 1999, provided: "[Section 5 of this act] [15-38-106] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification." On February 27, 2002, the Governor certified that the balance in the resource indemnity trust fund had reached $100 million.

2001 Amendments — Composite Section: Chapter 34 in temporary version in (2)(a) substituted "permanent fund type" for "nonexpendable trust fund type". Amendment effective July 1, 2001.

Chapter 586 in (2)(a) inserted "of the resource indemnity and ground water assessment taxes"; inserted (2)(b) depositing 50% of remaining proceeds in reclamation and development grants account; inserted (2)(c) depositing $150,000 of remaining proceeds of resource indemnity and ground water assessment taxes in natural resource workers' tuition scholarship account; in (2)(d) at beginning substituted "all" for "50% of the"; deleted former (2)(c) that read: "(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects"; and made minor changes in style. Amendment effective on occurrence of contingency.

Preamble: The preamble attached to Ch. 586, L. 2001, provided: "WHEREAS, the economy of Montana is in transition to a new economy that will necessitate a workforce trained for the new economy; and

WHEREAS, since 1995, the closure of timber mills, such as American Timber, JD Timber, Darby Lumber, Crown Pacific, Louisiana Pacific, Missoula White Pine, and others, has resulted in the loss of approximately 1,500 jobs in the timber industry; and

WHEREAS, since 1995, an estimated 200 jobs have been lost in the oil and gas industry with the closure of Equitable Resources and JN Oil and Gas; and

WHEREAS, another estimated 1,175 jobs have been lost since 1995 in the mining industry as a result of reductions at Montana Resources International, Mineral Hill Mine, Zortman-Landusky Mine, Basin Creek Mine, Beal Mountain Mine, and Diamond Hill Mine; and

WHEREAS, the shift has left many hard-working Montanans, who are the state's greatest asset, without employment and unqualified to fill positions created in the new economy."

1999 Amendments — Composite Section: (Temporary version) Chapter 144 substituted (2) concerning allocation of funds for former (2) that read: "(2) The department shall, in accordance with the provisions of 15-1-501, deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; and

(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited in the orphan share account established in 75-10-743"; and made minor changes in style. Amendment effective July 1, 1999.

(Version effective on occurrence of contingency) Chapter 552 in (2) substituted "in the following order" for "the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that"; in (2)(a) at beginning substituted "$366,000" for "14.1%"; substituted (2)(b) regarding orphan share account for former (2)(b) that read: "(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604"; substituted (2)(c) regarding use of remaining proceeds in the reclamation and development grants account for former (2)(c) that read: "(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104"; deleted former (2)(d) that read: "(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited in the orphan share account established in 75-10-743"; and made minor changes in style. Amendment effective on occurrence of contingency.

The amendment to this section made by sec. 4, Ch. 552, L. 1999, was rendered void by sec. 12(1), Ch. 552, L. 1999, a contingent voidness provision.

1997 Amendments: Chapter 42 in (2), in introductory clause after "15-1-501", deleted "(6)". Amendment effective March 12, 1997.

Chapter 415 inserted (2)(d) concerning allocation of tax proceeds to orphan share account; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 422 in (2), after "15-1-501", deleted "(6)"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 3, Ch. 542, L. 1997.

1993 Amendments: Chapter 455 near beginning of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

(Temporary version) Chapter 478 inserted (2)(b) and (2)(c) requiring 15% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 15% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1993, and terminates June 30, 1995.

(Version effective July 1, 1995) Chapter 478 inserted (2)(b) and (2)(c) requiring 10% of proceeds to be deposited in renewable resource grant and loan program state special revenue account established by 85-1-604 and requiring 30% of proceeds to be deposited in reclamation and development grants account established by 90-2-1104; and made minor changes in style. Amendment effective July 1, 1995.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendment: In (2), in first sentence after "type", inserted "except that 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905". Amendment effective July 1, 1993.

1989 Amendment: In (1) substituted March 31 for March 1 and substituted "preceding calendar year" for "last calendar quarter"; and in (3) substituted "examine the statement" for "examine each of the four quarterly statements".

1983 Amendments: Chapter 226 made the following changes: in (1), changed payment deadline from March 31 to March 1; near end of last sentence in (1), after "yield" inserted "for the last calendar quarter"; near beginning of first sentence in (3), inserted "four quarterly" before "statements"; at end of first sentence in (3), deleted "making the statement for the year for which the statement is filed"; and made minor phraseology changes.

Chapter 281, in first sentence of (2), substituted "trust fund of the nonexpendable trust fund type" for "trust account of the trust and legacy fund".

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

15-38-107. Procedure in case of failure to file statement.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) after "fails" deleted "refuses, or neglects", after "determine" deleted "as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain", and at end substituted "interest as provided in 15-1-216" for "$25 or 10%, whichever is greater"; in (2) at end substituted reference to 15-1-216 for reference to a 1% a month rate of interest; in (4) substituted "Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1989 Amendment: In (1), in three places, substituted "year" for "quarter", substituted "tax due to the state from such person" for "tax that would be due to the state if the tax were paid on a quarterly basis from such person", and increased the penalty to 10% from 2%; in (2) increased the penalty to 10% from 8%; and in (3) substituted "an annual statement" for "a quarterly statement".

1983 Amendment: Near middle of (1), substituted "gross yield of the mineral" for "total gross value of product"; substituted "quarter" for "year" three times; after "quarter in which the" substituted "statement is to be filed" for "tax is to be paid"; after "due to the state" inserted "if the tax were paid on a quarterly basis"; at end of (1), substituted "$25 or 2%, whichever is greater" for "10% thereof"; at beginning of (2), inserted "If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount a penalty of 8%"; in (3), substituted "person failing to file a quarterly statement or" for "person required to file an annual statement and"; in (4), substituted "Penalties" for "The 10% penalty"; after "15-38-105" inserted "or the failure to pay the tax required by 15-38-106"; and made minor phraseology changes.

Applicability: Section 4, Ch. 226, L. 1983, provided: "This act is applicable to taxable years beginning after December 31, 1983."

1981 Amendment: In (2) substituted "The letter shall advise that if payment is not received, a warrant for distraint may be filed" for a provision that the taxpayer shall pay the amount of tax due within 15 days of receiving the letter.

Administrative Rules

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-38-108. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-38-109. Restricted access to records.

Compiler's Comments

1993 Amendment: Chapter 135 at end substituted "15-31-511" for "15-31-507"; and made minor changes in style.

Administrative Rules

ARM 42.2.325 Access to information.
ARM 42.25.1709 Right to review records.

15-38-110. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" substituted reference to 15-1-216 for "shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-38-111. Credit for overpayment — interest on overpayment.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) near middle substituted "15-1-216" for "15-38-110"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-38-113. Exemption from resource indemnity and ground water assessment tax.

Compiler's Comments

2019 Amendment: Chapter 334 in (3) substituted "fees" for "fee" and after " 82-4-437(2)" inserted "and (3)". Amendment effective July 1, 2019.

2009 Amendment: Chapter 477 inserted (3) and (4) exempting certain permitholders, counties, cities, or towns; and made minor changes in style. Amendment effective May 8, 2009.

Applicability: Section 12(1), Ch. 477, L. 2009, provided that except as provided in subsection (4), this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2007.

Section 12(4), Ch. 477, L. 2009, provided: "The exemption provided for in 15-38-113(4) applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000, for counties, cities, and towns."

2003 Amendment: Chapter 522 inserted (2) providing exemption for person who pays tax on oil and natural gas production; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

1993 Name Change: Section 17, Ch. 769, L. 1991, provided: "In the provisions of the Montana Code Annotated, the code commissioner is instructed to change the term "resource indemnity trust tax", meaning the tax created by Title 15, chapter 38, to "resource indemnity and ground water assessment tax." Section 21(2), Ch. 769, L. 1991, provided that the name change is effective July 1, 1993. Therefore, the Code Commissioner has changed the term where it appears in this section, effective July 1, 1993.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

15-38-121. Certain royalties exempt.

Compiler's Comments

1995 Amendment: Chapter 451 in (1) substituted "mineral" for "on-reservation oil and gas"; and made minor changes in style. Amendment effective January 1, 1996.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1991 Amendment: Inserted (2) concerning royalties received by the United States as trustee for individual Indians; inserted (3) concerning royalties received by the United States, Montana, or a county or municipal government; and made minor change in style. Amendment effective March 20, 1991.

Retroactive Applicability: Section 2, Ch. 92, L. 1991, provided: "[This act] is effective on passage and approval [approved March 20, 1991] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

15-38-125. Gross value of product for coal.

Compiler's Comments

Retroactive Applicability: Section 5, Ch. 520, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Effective Date: Section 6, Ch. 520, L. 1991, provided that this section is effective on passage and approval. Approved April 22, 1991.

Case Notes

Deduction for Tribal Tax Not Permitted: The plaintiff, who operated a mine on tribal land, paid coal severance and gross proceeds taxes to the tribe. The plaintiff also paid Montana's Resource Indemnity Trust and Ground Water Assessment Tax (RITT) to the Department of Revenue. In paying the RITT, the plaintiff attempted to deduct tribal taxes from the contract sales price used to calculate the RITT. The RITT calculation specifically did not include deductions for payments to a tribal entity, but it included a deduction for other local governments. The Supreme Court held that because the deduction for other local governments specifically did not include tribal governments, the RITT did not allow a deduction for tribal taxes. Westmoreland Resources Inc. v. Dept. of Revenue, 2014 MT 212, 376 Mont. 180, 330 P.3d 1188.

15-38-126. Gross value of product for talc.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 531, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988." Effective April 14, 1989.

15-38-127. Gross value of product for vermiculite.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 15, Ch. 695, L. 1991, provided: "[This act] is effective on passage and approval [approved April 27, 1991] and, except as provided in subsection (2), applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1990.

(2) [Section 10] [amending 15-23-515] applies retroactively, within the meaning of 1-2-109, to talc produced after December 31, 1989."

15-38-128. Gross value of product for limestone.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 506, L. 1993, provided: "[This act] is effective on passage and approval [approved April 24, 1993] and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991."

15-38-129. Gross value of product for industrial garnets and byproducts.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 14, Ch. 397, L. 1995, provided that this section is effective on passage and approval (approved April 12, 1995) and applies retroactively to production years beginning after December 31, 1994.

Part 2
Resource Indemnity Trust Fund

15-38-201. Creation of resource indemnity trust fund.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 at end of first sentence, after "nonexpendable trust fund type", inserted "in the amount of $100 million"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 at end of first sentence, after "fund", deleted "in the nonexpendable trust fund type"; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1983 Amendment: In first sentence, substituted "trust fund in the nonexpendable trust fund type" for "trust account in the trust and legacy fund"; and in second sentence, changed "account" to "fund".

15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.

Compiler's Comments

2015 Amendment: Chapter 413 in (2)(a)(i) substituted "$3.2 million" for "$3.5 million"; and in (2)(b)(i) substituted "$650,000" for "an amount not to exceed $50,000". Amendment effective July 1, 2015.

2009 Amendment: Chapter 288 deleted former (2)(a)(iv) that read: "(iv) $175,000 to be deposited in the environmental contingency account established in 75-1-1101"; inserted (2)(b)(iii) providing that $175,000 is to be deposited in the environmental contingency account at the beginning of each biennium; and made minor changes in style. Amendment effective April 17, 2009.

2007 Amendment: Chapter 432 throughout section deleted temporary language related to allocations that expired prior to 2007; deleted former (2)(a)(i) that read: "(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection"; in (2)(a)(i) increased allocation from "$2 million" to "$3.5 million" and substituted "the natural resources projects state special revenue account, established in 15-38-302" for "the renewable resource grant and loan program state special revenue account, created by 85-1-604"; deleted former (2)(a)(iii) that read: "(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants"; inserted (2)(a)(iii) allocating $500,000 to department of fish, wildlife, and parks for qualified mineral reclamation projects; inserted (2)(a)(iv) allocating $175,000 to environmental contingency account; deleted former (2)(a)(v) that read: "(v) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005, $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects"; deleted former (2)(b)(i) that read: "(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101"; in (2)(c)(i) increased allocation from "Thirty percent" to "Sixty-five percent" and substituted "the natural resources operations state special revenue account established in 15-38-301" for "the renewable resource grant and loan program state special revenue account created by 85-1-604"; deleted former (2)(c)(iii) that read: "(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104"; and made minor changes in style. Amendment effective July 1, 2007.

Preamble: The preamble attached to Ch. 77, L. 2007, provided: "WHEREAS, the future fisheries improvement program and the bull trout and cutthroat trout enhancement program have proved to be effective voluntary programs to enhance Montana fisheries, including the historical habitats of native fish; and

WHEREAS, private landowners and anglers have found both programs to be effective tools for increasing fish populations; and

WHEREAS, it is important to the future of Montana's native fish, fisheries, and anglers to make the future fisheries improvement program and the bull trout and cutthroat trout enhancement program permanent."

Termination Provision Repealed: Section 1, Ch. 77, L. 2007, repealed sec. 5, Ch. 463, L. 1995, and secs. 6 and 9, Ch. 529, L. 1999, which terminated the 1995 and 1999 amendments to this section July 1, 2009. Effective March 27, 2007.

Termination Date Rendered Ineffective: The termination date for the amendments to this section provided for in sec. 4(2), Ch. 497, L. 1999, was rendered ineffective by the amendments to this section contained in sec. 4, Ch. 432, L. 2007.

2003 Amendment: Chapter 522 in (1) in first sentence after "fund" deleted "including money payable into the fund under the provisions of 15-36-324 and 15-37-117"; and made minor changes in style. Amendment effective April 26, 2003.

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

Retroactive Applicability: Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Transfer to Reclamation and Development Grants Account: Section 1, Ch. 20, Sp. L. August 2002, provided: "There is transferred to the reclamation and development grants account, as provided in 90-2-1104 [now repealed], in the fiscal year ending June 30, 2003, $1 million from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million."

2002 Amendment: (Temporary version) Chapter 20 at beginning of (2)(a)(iii) inserted "for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $1.2 million and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(a)(v) inserted "for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(i) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(ii) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(iii) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005"; at beginning of (2)(c)(iv) inserted "For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005"; and made minor changes in style. Amendment effective August 21, 2002.

2001 Amendments — Composite Section: (Temporary version and version effective July 1, 2009) Chapter 34 in second sentence of (2)(a)(i) after "deposited in a" substituted "permanent fund account" for "nonexpendable trust account". Amendment effective July 1, 2001.

Chapter 61 in (1) in second sentence inserted "excluding unrealized gains and losses" and inserted "balance, excluding unrealized gains and losses" and in third sentence in two places inserted "excluding unrealized gains and losses"; and made minor changes in style. Amendment effective March 16, 2001.

1999 Amendments — Composite Section: (All versions) Chapter 144 in (2)(a)(ii) increased allocation to renewable resource grant and loan program state special revenue account from $1 million to $2 million; inserted (2)(a)(iv) concerning allocation to ground water assessment account; deleted former (2)(c) that read: "(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in 75-10-743"; in (2)(c)(i) reduced allocation to renewable resource grant and loan program from 36% to 30%; in (2)(c)(ii) increased allocation to hazardous waste/CERCLA account from 18% to 26%; in (2)(c)(iii) reduced allocation to reclamation and development grants account from 40% to 35%; in (2)(c)(iv) increased allocation to environmental quality protection fund from 6% to 9%; and made minor changes in style. Amendment effective July 1, 1999.

(All versions except version effective July 1, 2014) Section 1, Ch. 497, in (2)(a)(i) near beginning substituted "to be deposited into the renewable resource grant and loan program state special revenue account" for "from the renewable resource grant and loan program state special revenue account" and inserted last sentence allowing deposit of excess appropriation into nonexpendable trust account; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2014.

(Version effective July 1, 2014) Section 2, Ch. 497, deleted former (2)(a)(i) that read: "(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs"; and made minor changes in style.

(Version effective July 1, 2001) Chapter 529 inserted (2)(a)(v) allocating $500,000 to department of fish, wildlife, and parks; and made minor changes in style. Amendment effective July 1, 2001, and terminates July 1, 2009.

1997 Amendments: Chapter 42 in (1) deleted former second sentence that read: "All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million" and in third sentence substituted "all receipts may be appropriated" for "all receipts must be appropriated"; in (2)(b)(iii), (2)(b)(iv), and (2)(b)(v) deleted "beginning in fiscal year 1996" (amendments in (2)(b)(iii) and (2)(b)(iv) voided by Ch. 444 amendment); in first sentence of (3) substituted "appropriate the resource indemnity trust interest" for "appropriate funds from the resource indemnity trust interest account"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 415 inserted (2)(c) concerning allocation of tax proceeds to orphan share account; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 444 inserted (2)(a)(ii) allocating $1 million to renewable resource grant and loan program state special revenue account; inserted (2)(a)(iii) allocating $1.5 million to reclamation and development grants special revenue account; deleted former (2)(b)(iii) and (2)(b)(iv) that read: "(iii) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants"; in (3), near beginning of first sentence after "to appropriate funds", deleted "from the resource indemnity trust interest account"; and made minor changes in style. Amendment effective July 1, 1997.

Code Commissioner Correction: In (3), after "proposes to appropriate", the Code Commissioner retained the word "funds" deleted by Ch. 42 because that change was intended to be a nonsubstantive change.

Preamble: The preamble attached to Ch. 415, L. 1997, provided: "WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze the elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill."

Coordination Instruction: Section 7, Ch. 542, L. 1997, a coordination section, voided amendments to this section made by sec. 4, Ch. 542, L. 1997.

1995 Amendments: Chapter 451 in (1), in first sentence, inserted "15-36-324 and"; and in (2)(a)(iii), at beginning, deleted "beginning in fiscal year 1995". Amendment effective January 1, 1996.

Chapter 577 inserted (2)(a) allocating and statutorily appropriating $240,000 of resource indemnity trust fund interest to renewable resource grant and loan program account at beginning of each fiscal year; and deleted former (2)(a)(iii) that appropriated $240,000 of resource indemnity trust fund interest to renewable resource grant and loan program account at beginning of each biennium beginning in fiscal year 1995 to support environmental science and water quality programs at Northern Montana College. Amendment effective July 1, 1995.

Saving Clause: Section 52, Ch. 451, L. 1995, was a saving clause.

Severability: Section 53, Ch. 451, L. 1995, was a severability clause.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments: (Temporary version) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring $1,025,000 to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, $2,200,000 to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1994, $250,000 to be deposited into water storage state special revenue account, created by 85-1-631; at beginning of (2)(b)(i) substituted "Thirty-eight percent of the interest income" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Fifteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty-one and one-half percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Five and one-half percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1995) Chapter 478 at beginning of (2)(a)(ii) deleted "beginning in fiscal year 1992"; inserted (2)(a)(iv), (2)(a)(v), and (2)(a)(vi) requiring, beginning in fiscal year 1996, $2 million to be deposited into renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants, beginning in fiscal year 1996, $3 million to be deposited into reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants, and beginning fiscal year 1996, $500,000 to be deposited into water storage state special revenue account, created by 85-1-631; at beginning of (2)(b)(i) substituted "Thirty-six percent" for "Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30%" and near middle, before "state", substituted "renewable resource grant and loan program" for "water development"; at beginning of (2)(b)(ii) substituted "Eighteen percent" for "Beginning in fiscal year 1988, 12%"; deleted former (2)(b)(iii) that read: "Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2"; in (2)(b)(iii) substituted "Forty percent" for "Beginning in fiscal year 1990, 46%"; at beginning of (2)(b)(iv) substituted "Six percent" for "Beginning in fiscal year 1990, 4%"; and made minor changes in style. Amendment effective July 1, 1995.

(Both versions) Chapter 613 inserted (2)(a)(iii) statutorily appropriating money to support environmental science-water quality instructional programs; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 530 inserted (2)(a)(ii) providing for allocation of not more than $50,000 to oil and gas production damage mitigation account beginning in fiscal year 1992 and pursuant to conditions in 82-11-161; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Chapter 672 in (1) inserted "including money payable into the fund under the provisions of 15-37-117"; and made minor changes in phraseology. Amendment effective May 16, 1989.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendments: Chapter 408 in (2)(b) deleted a provision providing for a 6% allocation for CERCLA implementation after 1986 to the Department of Health and Environmental Sciences to obtain matching federal funds and added language relating to the special revenue account.

Chapter 418 in (2) inserted introductory language relating to environmental contingency account; inserted (2)(c) relating to renewable resource development account; inserted (2)(d) relating to reclamation and development grants account; inserted (3) relating to budgets proposing appropriations from resource indemnity trust interest account; and made minor changes in phraseology.

Chapter 555 inserted (2)(e) relating to environmental quality protection fund.

Coordination Instructions — 1987 Amendment: Section 18, Senate Bill 373 (Ch. 418, L. 1987), provided: "Coordination instruction. If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved:

(1) the bracketed material in section 12(2)(d) of this act allocating funds to the reclamation and development grants account must read "50%"; and

(2) the bracketed material in section 6 is void."

Section 5, House Bill 718 (Ch. 555, L. 1987), provided: "Coordination instruction. If Senate Bill No. 373, including the section of that bill amending 15-38-202, is passed and approved, section 18 of Senate Bill No. 373 must read:

"NEW SECTION. Section 18. Coordination instruction. (1) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section of that bill amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "46%".

(2) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is not passed and approved, the bracketed material in section 12 must read "50%".

(3) If House Bill No. 777, including the section amending 15-38-202 is not passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "52%".""

Senate Bill 373 was enacted as Ch. 418, L. 1987, and as enacted amended 15-38-202; House Bill 777 was enacted as Ch. 408, L. 1987, and as enacted amended 15-38-202; and House Bill 718 was enacted as Ch. 555, L. 1987, and as enacted amended 15-38-202. Thus, sec. 18(1), Ch. 555, L. 1987, controls, and the bracketed material was removed and replaced with "46%" in 15-38-202.

Saving Clause: Section 20, Ch. 418, L. 1987, was a saving clause.

Severability: Section 19, Ch. 418, L. 1987, was a severability section.

1985 Amendment: In (3) at end substituted "The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium" for "Any funds remaining unexpended at the end of each fiscal year will revert to the resource indemnity trust interest account."

1983 Amendments: Chapter 241 inserted (3) allocating 6% of resource indemnity trust fund to Department of Health and Environmental Sciences.

Chapter 281, throughout section, changed references to resource indemnity trust "account" to references to resource indemnity trust "fund"; and in (2), substituted "state special revenue account" for "earmarked account".

Commissioner Correction: In third and fourth sentences of (1), references to "account" were apparently overlooked by Chapter 281. The apparent intent was that "account" become "fund" and the Code Commissioner has changed the references accordingly. The Code Commissioner also changed "resource indemnity trust account" to "resource indemnity trust fund" in (3) pursuant to sec. 48, Ch. 281, L. 1983.

1981 Amendment: Added subsection (2) allocating 30% of interest income to water development account.

15-38-203. Use of funds.

Compiler's Comments

2007 Amendment: Chapter 432 deleted former (2) that read: "(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest not be made to fund general operating expenses of state agencies"; and inserted (2) requiring prioritization of funds to minimize use of funds for operations of state government. Amendment effective July 1, 2007.

1997 Amendment: Chapter 444 in (2), near middle after "the resource indemnity trust interest", deleted "account"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Subsection Enactment: Subsection (2) was enacted as a separate section in sec. 7, HB 922, L. 1985, and was codified as part of this section for convenience.

Case Notes

Trust Funds Not Limited to Reclamation of Land Disturbed by Taking of Natural Resources: The appropriation or allocation of resource indemnity trust funds is not limited to the reclamation of lands disturbed by the taking of natural resources. Therefore, the use of funds for programs related to improving the total environment does not violate the fiduciary duty of the state toward the trust in allocating trust funds. Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327, 46 St. Rep. 87 (1989).

Part 3
Natural Resources Accounts

15-38-301. Natural resources operations state special revenue account created — revenue allocated — appropriations from account.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 119, L. 2023. Amendment effective April 18, 2023.

Extension of Termination Date: Section 1, Ch. 573, L. 2023, amended sec. 3, Ch. 137, L. 2021, by extending the termination date imposed by Ch. 137 to June 30, 2027. Effective July 1, 2023.

2021 Amendment: Chapter 137 inserted (3) regarding transfers from the state general fund to the natural resources operations state special revenue account; and made minor changes in style. Amendment effective July 1, 2021, and terminates June 30, 2025.

2009 Amendment: Chapter 486 inserted (2)(e) requiring that fund transfers by the legislature be paid into the natural resources operations state special revenue account; and made minor changes in style. Amendment effective July 1, 2009.

Effective Date: Section 32, Ch. 432, L. 2007, provided that this section is effective July 1, 2007.

15-38-302. Natural resources projects state special revenue account created — revenue allocated — limitations on appropriations from account.

Compiler's Comments

Effective Date: Section 32, Ch. 432, L. 2007, provided that this section is effective July 1, 2007.

CHAPTER 39
TAXATION OF BENTONITE

Part 1
General Provisions

Part Compiler's Comments

Transition: Section 17, Ch. 559, L. 2005, provided: "(1) For property tax purposes, mill levies imposed in 2004 on bentonite production occurring in tax year 2003 for fiscal year 2005 are generally payable in November 2004 and May 2005.

(2) Notwithstanding any other provision of [this act], an owner or operator of a bentonite mine shall file the statement required by 15-23-502 at the time specified in 15-23-103 for tax year 2004."

Saving Clause: Section 19, Ch. 559, L. 2005, was a saving clause.

Effective Date: Section 20, Ch. 559, L. 2005, provided that this part is effective on passage and approval. Approved April 28, 2005.

Retroactive Applicability: Section 21, Ch. 559, L. 2005, provided: "(1) [Sections 1 through 11] [Title 15, ch. 39, part 1] apply retroactively, within the meaning of 1-2-109, to the production of bentonite beginning after December 31, 2004.

(2) [Sections 12 through 16] [15-6-131, 15-6-208, 15-23-101, 15-23-501, and 15-23-502] apply retroactively, within the meaning of 1-2-109, to bentonite production occurring after December 31, 2003."

15-39-105. Penalties and interest for violation.

Compiler's Comments

2009 Amendment: Chapter 364 in (1)(b) in first sentence after "tax" inserted "on or". Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

2007 Amendment: Chapter 44 in (2) at end substituted "15-1-216(2)" for "15-1-216(1)(d)". Amendment effective October 1, 2007.

15-39-107. Interest on deficiency — penalty.

Compiler's Comments

2007 Amendment: Chapter 44 in (2) near end after "imposed by" substituted "15-1-216(2)" for "15-1-216(1)(c)". Amendment effective October 1, 2007.

15-39-110. Distribution of taxes.

Compiler's Comments

2019 Amendment: Chapter 3 in (2)(a), (2)(c), (2)(d), (10)(a), and (10)(c) substituted "15-10-109" for "15-10-108". Amendment effective October 1, 2019.

2017 Amendment: Chapter 173 in (11) at beginning inserted exception clause; inserted (14) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 128 in (12)(a) in second sentence after "value" deleted "for county classification purposes under 7-1-2111 and". Amendment effective July 1, 2011.

2009 Amendment: Chapter 57 in (2)(a) at end substituted "15-10-108" for "20-25-423"; in (2)(c) and (2)(d) near end inserted "15-10-108" and after "20-9-360" deleted "and 20-25-423"; deleted former (3) and (4) that read: "(3) For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection (12).

(4) For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection (12)"; in (10)(a) at end substituted "15-10-108" for "20-25-423"; in (10)(c) substituted "15-10-108" for "15-10-107" and after "20-9-360" deleted "and 20-25-423"; and made minor changes in style. Amendment effective March 25, 2009.

2007 Amendment: Chapter 89 in (2) at beginning substituted "The percentage of" for "For the production of bentonite occurring after December 31, 2004, and before January 1, 2006" and inserted "and specified in subsections (3) through (11)"; deleted former (3) that read: "(3) For the production of bentonite occurring after December 31, 2005, and before January 1, 2007, 90% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 10% must be distributed as provided in subsection (13)"; inserted (15) regarding statutory appropriation of bentonite tax to department of revenue; and made minor changes in style. Amendment effective March 30, 2007.

Transition: Section 3, Ch. 89, L. 2007, provided: "Transition remittance. The department of revenue is authorized to remit a county's share of taxes collected on the production of bentonite occurring after June 30, 2006, and before January 1, 2007. The department shall remit the taxes for that period as if the statutory appropriation under 17-7-502 were in effect for that period. The distribution of taxes for that period must be made under 15-39-110, as that section read on December 31, 2006."

Retroactive Applicability: Section 5, Ch. 89, L. 2007, provided: "[Section 3] [not codified] applies retroactively, within the meaning of 1-2-109, to bentonite produced after June 30, 2006, and before January 1, 2007."

CHAPTER 44
FOREST LANDS TAX

Part 1
General Provisions

Part Compiler's Comments

Preamble: The preamble attached to Ch. 783, L. 1991, provided: "WHEREAS, the Department of Revenue does not have adequate resources to properly administer the existing standing inventory method of taxing forest lands; and

WHEREAS, the standing inventory method of taxing forest lands encourages landowners to harvest timber without regard to good forest management; and

WHEREAS, the valuation of forest lands in Montana is often based on outdated information; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee found that the forest productivity method of taxing forest lands encourages good forest management and is a more equitable method of taxing forest lands; and

WHEREAS, the forest productivity method of taxing forest lands is in the long run easier and less costly to administer than the standing inventory method; and

WHEREAS, the Forest Taxation Subcommittee of the Revenue Oversight Committee recommends that forest lands be taxed on the basis of productivity; and

WHEREAS, it is the intent of the Legislature to implement the recommendation of the Forest Taxation Subcommittee of the Revenue Oversight Committee.

THEREFORE, it is the purpose of this bill to implement the recommendation to change the method of taxing forest lands in the state."

1991 Statement of Intent: The statement of intent attached to Ch. 783, L. 1991, provided: "A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the forest productivity method of taxing forest lands.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) guidelines for information that must be contained in the statement of intent submitted by the forest landowner as provided for in [section 2(5)(b)] [15-44-102(5)(b)];

(2) the form to be used by the forest landowner for the statement of intent;

(3) the procedures for determining appropriate forest valuation zones and for computing forest land valuation schedules;

(4) the notification of landowners who may be eligible for forest land classification under this bill;

(5) the process by which a landowner may appeal the valuation of the owner's forest land; and

(6) the definition of terms and establishment of procedures as appropriate for the efficient administration of the forest productivity method of taxation.

In determining forest productivity values and in computing forest land valuation schedules, the department shall use the assistance of the university of Montana [now university of Montana-Missoula]. The legislature also intends that, in implementing this bill, the department seek the advice of the department of state lands [functions now transferred to department of natural resources and conservation], landowners of private forest lands, the timber industry, and local governments."

Assessment on Privately Owned Timberland — Collection — Disposition: Section 13, Ch. 783, L. 1991, provided: "(1) An assessment of 10 cents per acre or portion of an acre is imposed on all privately owned timberland for tax years 1991 through 1993. The assessment is imposed on the owner of the land as of January 1 of each year.

(2) This assessment is done on November 30 of each year and must be paid with the property tax due as provided in 15-16-101.

(3) (a) By September 1 of each year, the department of revenue shall provide county treasurers with a list showing:

(i) all owners of private timberland in the county as of January 1 of that year; and

(ii) the number of acres of timberland owned by each as of January 1 of that year.

(b) The county treasurer shall send each listed owner a bill for the assessment imposed in subsection (1) with the property tax notice required in 15-16-101.

(4) The county treasurer shall collect the assessment imposed in subsection (1) and remit collections to the state treasurer by December 20 of each year.

(5) The state treasurer shall deposit all collections from the assessment imposed in subsection (1) in the general fund." Section 17(2), Ch. 783, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990. Section 19, Ch. 783, L. 1991, provided that this section terminates January 1, 1994.

Saving Clause: Section 15, Ch. 783, L. 1991, was a saving clause.

Severability: Section 16, Ch. 783, L. 1991, was a severability clause.

Effective Date: Section 18(1), Ch. 783, L. 1991, provided that this part is effective July 1, 1991.

Part Administrative Rules

Title 42, chapter 20, subchapter 7, ARM Forest land.

15-44-102. Definitions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1997 Amendment: Chapter 297 in definition of forest land substituted language in (b) regarding annual net wood production that equals or exceeds 25 cubic feet an acre for "that has a dedicated use that is evidenced by a statement of intent by the owner for the eventual harvest of timber"; and made minor changes in style. Amendment effective April 17, 1997.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, and 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Administrative Rules

ARM 42.20.156 Land classification change criteria.

ARM 42.20.701 Definitions.

15-44-103. Legislative intent — value of forest lands — valuation zones.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 638, L. 2023. Amendment effective January 1, 2025.

2021 Amendment: Chapter 141 in (6) in third sentence after "base period" deleted "for tax years 2015 through 2020"; in (10)(a)(ii) increased governor appointments from three members to five members and increased industrial forest and nonindustrial forest landowner membership from one member of each group to two members of each group; in (10)(b) inserted first sentence regarding appointed and convened deadline; inserted (10)(c)(vi) regarding report to revenue interim committee; inserted (11) regarding review of appraisal methodology for the period of July 1, 2021, through December 31, 2022; and made minor changes in style. Amendment effective July 1, 2021, and subsection (11) terminates June 30, 2023.

2015 Amendment: Chapter 361 in (5)(a) near middle of first sentence substituted "10-year period" for "5-year period", at end of first sentence inserted "prior to the date the revaluation cycle ends", and inserted second sentence regarding averaging of data; and in (6) substituted "tax years 2015 through 2020" for "tax years 2009 through 2014". Amendment effective April 29, 2015.

Retroactive Applicability: Section 34, Ch. 361, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014, and to the reappraisal cycle beginning January 1, 2015."

2011 Amendment: Chapter 356 in (4) near beginning substituted "productivity valuation" for "valuation schedules"; in (9) near middle after "land valuation" deleted "schedules"; in (10)(c)(iv) inserted "and subclassification"; and in (10)(c)(v) substituted "techniques" for "schedules". Amendment effective October 1, 2011.

Saving Clause: Section 7, Ch. 356, L. 2011, was a saving clause.

Severability: Section 8, Ch. 356, L. 2011, was a severability clause.

2009 Amendment: Chapter 483 in (4) after "zone" deleted "to take effect on January 1, 1994"; in (6) substituted current language relating to the department establishing the capitalization rate for "The capitalization rate must be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the Northwest farm credit services, agricultural credit association of Spokane, Washington, plus the effective tax rate"; and inserted (10) establishing a forest lands taxation advisory committee and providing for its duties. Amendment effective May 10, 2009.

Saving Clause: Section 17, Ch. 483, L. 2009, was a saving clause.

Retroactive Applicability: Section 19, Ch. 483, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1997 Amendment: Chapter 297 in (6), after "loans", substituted "as reported by the Northwest farm credit services, agricultural credit association" for "reported by the federal land bank association". Amendment effective April 17, 1997.

Effective Date — Retroactive Applicability: Section 4, Ch. 297, L. 1997, provided: "[This act] [15-6-143, 15-44-102, and 15-44-103] is effective on passage and approval [approved April 17, 1997] and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996."

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Administrative Rules

ARM 42.20.156 Land classification change criteria.
ARM 42.20.725 Forest land valuation formula.
ARM 42.20.745 Forest land.

15-44-105. Administration — rules.

Administrative Rules

ARM 42.20.156 Land classification change criteria.
Title 42, chapter 20, subchapter 7, ARM Forest land.

15-44-106. Tax on change of use of part of tract.

Compiler's Comments

Effective Date: Section 4, Ch. 333, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

Retroactive Applicability: Section 5, Ch. 333, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2016, and to the reappraisal cycle beginning January 1, 2017."

CHAPTER 50

PUBLIC CONTRACTOR'S FEES AND TAX

Chapter Compiler's Comments

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Administrative Rules

Title 42, chapter 31, subchapter 21, ARM Public contractors.

Part 1

General Provisions

15-50-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 751, L. 2023. Amendment effective May 22, 2023.

Applicability: Section 3, Ch. 751, L. 2023, provided: "[This act] applies to any public contract entered into on or after [the effective date of this act]." Effective May 22, 2023.

1999 Amendment: Chapter 51 in (3)(b) near middle after "work" deleted "within their field of contracting and within the limits of their class of license"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 558 inserted introductory clause; inserted definitions of Department and public contractor; and made minor changes in style. Amendment effective April 26, 1995.

Administrative Rules

ARM 42.31.2101 Definitions.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.

Part 2

Tax on Contractors

Part Case Notes

Contract Made Without License: The District Court erred in concluding that the contract entered into between the parties was illegal and therefore void. Appellant admits that it did not have a public contractor's license as required by former statute when it accepted the bid proposal. It admits that it may have violated the law and may be assessed a misdemeanor fine. Nowhere in the statutes is it declared that a contract made without a license is unenforceable or void. Taurman v. Cascade, 192 M 529, 629 P2d 226, 38 St. Rep. 906 (1981).

Prior Act Unconstitutional: Chapter 277, L. 1965, which provided for a license tax payable only by nonresident public contractors, was unconstitutional. State ex rel. Schultz-Lindsay Constr. Co. v. St. Bd. of Equalization, 145 M 380, 403 P2d 635 (1965).

Part Attorney General's Opinions

Public Utility Contractor Not to Install Certain Service Lines in Billings Unless Licensed by State as Plumber — City Required to Check License Qualifications:

In clarifying 44 A.G. Op. 12, the Attorney General noted that work done on a public water supply or public sewer system that does not include work falling within the statutory distances for plumbing or drainage systems does not require a state-issued plumber's license. Therefore, the city of Billings may not allow public utility contractors to install water service lines that extend from the public water main to a point within the walls of the private property or within 20 feet from any foundation wall of the premises, whichever distance is shorter as measured from the foundation wall, or wastewater service lines that extend from the public sewer main to a point within 2 feet from any foundation wall of the premises, unless the contractor also has a plumber's license issued by the state. 44 A.G. Op. 39 (1992).

The city of Billings may not allow public utility contractors to install water and wastewater service lines that extend from the public water or sewer main to a point within the walls of the private property or within 20 feet from any foundation wall of the private residence unless the contractor also has a plumber's license issued by the state. The city is required to determine whether a person applying for a plumbing permit pursuant to the Uniform Plumbing Code is licensed by the state as a plumber if the type of work described in the permit requires licensure as a requisite to performance. 44 A.G. Op. 12 (1991).

Turnkey Contract for Public Housing Subject to Public Contractor's Licensing Tax: A turnkey method of providing public housing, whereby a public housing authority contracts for a completed development to be produced by the developer on his own land and with payments to be upon the "turning over the keys" of the development to the public housing authority, is a public contract for construction work. All of the essential elements required by 15-50-101 are present. The contract is between a person and a public agency, the value of the contract (prior to the 1983 amendment increasing the contract amount to $5,000) exceeds $1,000, and the contract contemplates construction. The turnkey method of production of new public housing units is therefore a public contract subject to the public contractor's licensing tax. To hold otherwise would frustrate the expressed legislative goal of the tax and allow any contractor to avoid the tax on projects intended to be included by merely changing contract language. 38 A.G. Op. 118 (1980).

15-50-205. Tax imposed on gross receipts from public contracts.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) at end substituted "provided for in 15-50-206" for "specified in this section"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 558 in (1), at beginning, deleted "In addition to the fees enumerated in 37-71-204, each" and at end substituted "public contractor receives payment" for "license is issued"; at end of (2) substituted "this section" for "37-71-101(3)"; and made minor changes in style. Amendment effective April 26, 1995.

1985 Amendment: In (1) inserted "unless he constructs or works on a federal research facility".

Applicability of 1985 Amendment: Section 3, Ch. 741, L. 1985, provided: "This act applies to any public contract entered into after the effective date of this act [effective May 18, 1985], except that any tax already paid to the department of revenue may not be returned to the contractor."

1983 Amendment: In (1), after "pay to the" substituted "department of revenue" for "state"; after "license is issued" deleted "provided, however, that the additional license fee hereby imposed shall not be paid upon or collectable from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on February 28, 1967"; and at end of (2), corrected internal reference.

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.
ARM 42.31.2142 Corporation license tax credit.
ARM 42.31.2143 State income tax credit.

Case Notes

United States Government Estopped From Bringing Constitutional Challenge: When the United States government had required a public contractor to challenge the constitutionality of the 1% public contractor's license fee and directed the litigation to an unsuccessful conclusion in the Montana Supreme Court in Peter Kiewit Sons' Co. v. St. Bd. of Equalization, 161 M 140, 505 P2d 102 (1973), the United States was collaterally estopped from thereafter challenging the constitutionality of the tax in federal courts. Mont. v. U.S., 440 US 147, 59 L Ed 2d 210, 99 S Ct 970 (1979).

Constitutionality: Imposing a 1% gross receipts tax was constitutional and did not violate Art. XII, sec. 11, 1889 Mont. Const., since the classification of public contractors separately from private contractors is reasonable and does not discriminate against the federal government or interfere with its functions or violate its immunity from taxation. Peter Kiewit Sons' Co. v. St. Bd. of Equalization, 161 M 140, 505 P2d 102 (1973).

15-50-206. Withholding license fee from payments — refunds.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) near beginning of first sentence substituted "of the state, county, or city" for "thereof, as described in 15-50-205"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 558 in (2) substituted "15-50-205" for "37-71-101(3)"; and made minor changes in style. Amendment effective April 26, 1995.

1983 Amendment: Near beginning of (2), corrected internal reference; and in (3), after "department" inserted "of revenue".

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2132 Gross receipts payment by contractor.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contracts.
ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.
ARM 42.31.2142 Corporation license tax credit.

15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.

Compiler's Comments

2013 Amendment: Chapter 268 in (1)(a) near middle and in (2) in second sentence near end substituted "corporate income tax" for "corporation license tax"; and in (2) in second sentence after "contractor's" substituted "income tax or corporate income tax" for "corporation license tax or income tax". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

2005 Amendments — Composite Section: Chapter 454 inserted (1)(b) allowing the credit allowed under subsection (1) to be used as a carryforward against certain taxes for 5 succeeding years; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (2) near middle of first sentence substituted "61-3-321(2) and" for "61-3-560 through". Amendment effective January 1, 2006.

Retroactive Applicability: Section 3, Ch. 454, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

2000 Amendment by Referendum: Chapter 515, L. 1999, near middle of first sentence of (2) inserted "and the registration fee on light vehicles, as provided in 61-3-560 through 61-3-562"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (2), in first sentence near beginning, inserted "and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors as provided in 61-3-529" and after "personal property" inserted "or vehicle" and in second sentence, near middle after "income tax, the", deleted "personal property"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1987 Amendment: Near beginning of (2), after "taxes", deleted "fees in lieu of taxes on motorcycles or quadricycles, or light vehicle license fees as provided by 61-3-532" and in second sentence, after "property tax", deleted "or light vehicle license fee".

1985 Amendment: In (2) near beginning, after "property taxes", inserted "fees in lieu of taxes on motorcycles or quadricycles" (effective January 1, 1986).

1981 Amendment: Inserted "or light vehicle license fees, as provided by 61-3-532" after "Personal property taxes" at the beginning of (2); and inserted "or light vehicle license fee" after "the personal property tax" in the middle of the second sentence of (2).

Administrative Rules

ARM 42.4.3102 Credit for public contractor's gross receipts tax.
ARM 42.4.3103 Credit for contractor's gross receipts tax.
ARM 42.31.2141 Personal property tax refund.
ARM 42.31.2142 Corporate license tax credit.
ARM 42.31.2143 State income tax credit.

Collateral References

2019-2020 Tax Credit Review, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Part 3
Contractor's Tax Return

15-50-301. Rules for contractor's return.

Compiler's Comments

2001 Amendment: Chapter 108 deleted former (2) that read: "(2) A person failing to file a contractor's license return as provided and required by the department of revenue, upon conviction, shall be fined not less than $1,000 or more than $10,000"; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

Title 42, chapter 31, subchapter 21, ARM Public contractors.
ARM 42.31.2101 Definitions.
ARM 42.31.2104 Contractor's return required for public works projects.
ARM 42.31.2121 Contract award report by agency.
ARM 42.31.2122 Gross receipts withholding by agency.
ARM 42.31.2131 Contract award report by contractor awarded contract.
ARM 42.31.2133 Additional report and withholding requirements in case of sublet contract.

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.
ARM 42.31.2141 Personal property tax refund.

15-50-304. Statute of limitations.

Compiler's Comments

Effective Date — Retroactivity: Section 4, Ch. 437, L. 1985, provided: "(1) This act is effective on passage and approval and, except as provided in subsection (2), applies retroactively within the meaning of 1-2-109 to taxable periods covered by returns due after December 31, 1982.

(2) Subsection (3) of section 1 is retroactively applicable within the meaning of 1-2-109 for all taxable years prior to the effective date of this act." Approved April 11, 1985.

Administrative Rules

ARM 42.31.2141 Personal property tax refund.

15-50-307. Inspection of books of contractor.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

15-50-308. Estimation of tax upon failure to file statement or pay tax — penalty and interest — notice.

Compiler's Comments

2005 Amendment: Chapter 594 in (1) after first "fails" deleted "neglects, or refuses"; in (2) after "due" inserted reference to penalty and interest; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-309. Penalty and interest for delinquency — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) substituted "penalty and interest as provided in 15-1-216" for "a penalty of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the date the license taxes were due to the date of payment"; in (2) substituted "Penalties imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-50-206 or pay the tax due is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-310. Warrant for distraint.

Compiler's Comments

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

Administrative Rules

ARM 42.31.2134 Estimation of tax upon failure to file and pay tax.

15-50-311. Disposal of license taxes.

Compiler's Comments

2007 Amendment: Chapter 475 near middle after "shall" inserted "in accordance with the provisions of 17-2-124"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

Effective Date: Section 12, Ch. 558, L. 1995, provided that this section is effective April 26, 1995.

CHAPTER 51
ELECTRICAL ENERGY PRODUCER'S LICENSE TAX

Part 1
General Provisions

Part Compiler's Comments

Section Not Codified: Section 84-1604, R.C.M. 1947, which required electrical energy producers to file a report on April 15, 1934, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 4, Ch. 51, Ex. L. 1933, as amended by sec. 71, Ch. 516, L. 1973.

Part Collateral References

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

15-51-101. Rate of tax — electrical energy producers.

Administrative Rules

ARM 42.25.1601 Electrical energy producer's license tax — line loss.

15-51-102. Payment of tax — may be itemized on customers' bills.

Compiler's Comments

1999 Amendments — Composite Section: Chapters 199 and 556 substituted second sentence concerning itemized tax for "No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter"; and made minor changes in style. Chapter 199 amendment effective October 1, 1999. Chapter 556 amendment effective January 1, 2000.

Applicability: Section 2, Ch. 199, L. 1999, provided: "[This act] applies to customer bills or statements rendered to customers after September 30, 1999."

Section 39(1), Ch. 556, L. 1999, provided that this section applies to tax years beginning after December 31, 1999.

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

15-51-103. Disposition of revenue — penalty and interest on delinquency.

Compiler's Comments

2007 Amendment: Chapter 475 in first sentence after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

1999 Amendment: Chapter 427 in second sentence substituted "penalty and interest must be added to the delinquent taxes as provided in 15-1-216" for "a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 18 near beginning, after "15-1-501", deleted reference to subsection (6).

1993 Amendment: Chapter 455 near beginning, after "shall", substituted "in accordance with the provisions of 15-1-501(6)" for "receipt therefor and" and after "promptly" substituted "remit the collected taxes" for "turn the same over"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-51-104. Inspection of books of producer.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 after "department" deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-51-109. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must be computed"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted reference to computing interest under 15-1-216 for reference to a 1% a month interest rate; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-51-110. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "rate as provided in 15-1-216" for "rate as is charged on deficiency assessments provided in 15-51-109"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-51-111. Procedure to compute tax in absence of statement — waiver of penalty.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) at end of first sentence substituted "15-1-216" for "15-51-103"; in (2) substituted "A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within such time, a lien may be filed" at the end of the second sentence; deleted sentence before the last sentence that required payment within 15 days of receiving the letter.

15-51-112. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; and deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

CHAPTER 53
RETAIL TELECOMMUNICATIONS EXCISE TAX

Chapter Collateral References

Montana Taxation, 1965-66 Interim Report, Montana Legislative Council.

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 42(1), Ch. 426, L. 1999, provided that this part is effective January 1, 2000.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Part Administrative Rules

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

Part Attorney General's Opinions

No Authority for Department of Revenue to Collect 9-1-1 Fees for Prepaid Wireless Phone Service — No Authority to Adopt Administrative Rules: The Legislature has not authorized the collection of 9-1-1 fees for prepaid wireless services purchased from independent retail stores. Absent this legislative authority, the Department of Revenue is not allowed to promulgate rules under 10-4-203 to allow for the collection of fees on these sales. 55 A.G. Op. 2 (2014).

15-53-127. Short title.

Administrative Rules

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

15-53-129. Definitions.

Compiler's Comments

2003 Amendment: Chapter 515 inserted definitions of call-by-call basis and charges for mobile communications services; in definition of customer or purchaser in (a) after "means" inserted exception clause and inserted (b) and (c) defining term for purposes of mobile telecommunications services and specifying exclusions; inserted definitions of home service provider, mobile telecommunications services, place of primary use, postpaid calling basis, private communications service, and reseller; in definition of retail telecommunications in (a) after "means" inserted exception clause and after "and" substituted "is charged" for "is billed", inserted (b) defining term for mobile telecommunications services, and in (c) after "long-distance" inserted "private communications", after "wireless" substituted "telecommunications" for "telephony", and after "services" inserted "regardless of whether the services are paid for on a call-by-call basis or postpaid calling basis"; substituted definition of service address for former definition that read: ""Service address" means:

(a) the location from where the retail telecommunications services originated or where the retail telecommunications services are received; or

(b) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed"; inserted definition of serving carrier; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

2001 Amendment: Chapter 484 in definition of sales price in (b)(iii) at end after "charges or fees" inserted "collected for and remitted to a federal government entity", in (b)(vi) substituted "construction" for "reconnection of service or for replacement of service", and in (b)(vii) near beginning inserted "installation" and after "servicing of equipment" inserted "and wiring"; and made minor changes in style. Amendment effective April 30, 2001.

Preamble: The preamble attached to Ch. 484, L. 2001, provided: "WHEREAS, the Retail Telecommunications Excise Tax Act, House Bill No. 128, 56th Legislature (Chapter 426, Laws of 1999), was enacted as a part of the 1999 Legislative Session's economic development package, replacing an archaic telephone license tax and an illogical and confusing array of property tax provisions with an excise tax that would foster Montana's long-term economic growth and ensure that Montana will have the necessary telecommunications infrastructure needed to be competitive for jobs and income for the future; and

WHEREAS, as enacted, the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(4)(c), stated that one of the reasons for imposing a replacement tax was to "preserve the revenue base of the existing property tax system for taxing jurisdictions in the state"; and

WHEREAS, as enacted, in the purpose section of the Retail Telecommunications Excise Tax Act, in 15-53-128(7), the legislature declared a "compelling public need to modify the existing system of property taxation . . . to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana"."

Applicability: Section 4, Ch. 484, L. 2001, provided: "[This act] applies to federal subscriber line charges and other federally authorized charges and fees collected but not remitted to a federal governmental entity by the telecommunications carrier and to retail telecommunications installation and activation charges made only after June 30, 2001."

Case Notes

Cable Company Properly Reclassified as a Telecommunications Company — Conclusion Based on Evaluation of Use and Productivity: The Department of Revenue reclassified a cable company's property from class eight (cable television system) to class thirteen (telecommunications services company) by reasoning that the company's voice, cable, and Internet services made it a centrally assessed telecommunications services company under 15-6-156. The District Court reversed the classification change, but the Supreme Court upheld the Department's decision. The Supreme Court reasoned that the Legislature had exempted certain properties from class thirteen in the past but chose not to exempt companies that use a network to provide voice, cable, and Internet services. Moreover, an analysis of the use and productivity of the cable company's entire network resulted in the inescapable conclusion that it used a single transmission line to deliver three services, and therefore the Department had the authority to treat all of the property accordingly under class thirteen. Bresnan Communications, LLC v. St., 2013 MT 357, 373 Mont. 29, 315 P.3d 921.

15-53-130. Imposition of retail telecommunications excise tax — rate.

Compiler's Comments

2003 Amendment: Chapter 515 at beginning of second sentence inserted reference to 15-53-131 and 15-53-132; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-131. Mobile telecommunications services.

Compiler's Comments

Effective Date: Section 6, Ch. 515, L. 2003, provided: "[This act] is effective July 1, 2003."

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

15-53-132. Telecommunications services other than mobile telecommunications services.

Compiler's Comments

Effective Date: Section 6, Ch. 515, L. 2003, provided: "[This act] is effective July 1, 2003."

Applicability: Section 7, Ch. 515, L. 2003, provided: "[This act applies to bills issued on or after the first day of the first month after [the effective date of this act]." Effective July 1, 2003.

15-53-137. Application for permission to report on accrual basis.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

ARM 42.31.506 Application for reporting on accrual basis.

15-53-138. Rural telephone cooperatives and rural electric cooperatives — subject to excise tax.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-139. Return required of telecommunications services providers.

Administrative Rules

ARM 42.31.504 Collection of tax and hearing rights.

15-53-145. Deficiency assessment — review — interest — penalty.

Compiler's Comments

2005 Amendment: Chapter 594 substituted (2) concerning assessment of penalty and interest for "(a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

15-53-146. Credit for overpayment — interest on overpayment.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) substituted "15-1-216" for "15-53-145". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-53-147. Penalty and interest for delinquency — waiver.

Compiler's Comments

2001 Amendment: Chapter 108 in (1) at end of second sentence substituted "penalty and interest, as provided in 15-1-216" for "a penalty of 10% of the excise tax due plus interest at the rate of 1% a month or fraction of a month, computed from the date on which the tax becomes delinquent to the date of payment"; and in (2) at beginning substituted "Penalty and interest, as provided in 15-1-216" for "The 10% penalty". Amendment effective July 1, 2001.

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

15-53-150. Statute of limitations.

Administrative Rules

ARM 42.31.502 Record requirements.

15-53-155. Administration — rules.

Compiler's Comments

Rulemaking Effective Date: Section 42(2), Ch. 426, L. 1999, provided: "For the purposes of promulgating administrative rules under [section 17] [15-53-155], [section 17] and this section are effective on passage and approval." Approved April 23, 1999.

Administrative Rules

Title 42, chapter 3, ARM Departmental rules on waiver of penalty and interest.

Title 42, chapter 22, ARM Centrally assessed property.

Title 42, chapter 31, subchapter 5, ARM Telephone license and telecommunication excise tax.

15-53-156. Retail telecommunications excise tax revenue.

Compiler's Comments

2007 Amendment: Chapter 475 near middle after "must" inserted "in accordance with the provisions of 17-2-124"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

1999 Enactment: The enactment of this section by sec. 18, Ch. 426, L. 1999, was rendered void by sec. 170(1)(a)(ii), Ch. 584, L. 1999, a coordination section. Pursuant to sec. 170(1)(a)(ii), the text of sec. 18 was replaced.

CHAPTER 59
CEMENT TAXES

Chapter Compiler's Comments

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the cement producers' and cement dealers' license tax from the State Treasurer to the Department of Revenue, was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue, while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Part 1
Cement and Gypsum Producers

15-59-102. License tax on producers and importers of gypsum and cement.

Case Notes

Gypsum Wallboard: Under former law, in an action under a predecessor to this section, as amended in 1931 adding "other products", to enjoin collection of tax on manufactured gypsum wallboard, State was in error in contending that "other products" by implication included gypsum wallboard, since, under doctrine of ejusdem generis, the Legislature meant gypsum products made and handled like plaster. The administrative measurements as used in the act being only barrels and tons, and not square feet as wallboard is handled and sold, the uncertainties were resolved in favor of the taxpayer. U.S. Gypsum Co. v. St. Bd. of Equalization, 116 M 275, 149 P2d 774 (1944).

15-59-104. Manufacturers to keep records.

Compiler's Comments

1993 Special Session Amendment: Chapter 27 in first sentence, near beginning, inserted "subject to 15-59-102"; in second sentence, at end, deleted "its agents or employees"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

15-59-105. Quarterly statement and payment of tax.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

15-59-106. Procedure to estimate tax on failure to file statement — penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) at end substituted reference to 15-1-216 for reference to a 1% a month interest rate; in (4) substituted "A penalty imposed by 15-1-216 may be waived by the department pursuant to 15-1-206" for "The 10% penalty may be waived by the department if reasonable cause for the failure or neglect to file the statement required by 15-53-105 is provided to the department"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1981 Amendment: Substituted "if payment is not made, a warrant for distraint may be filed" for "if payment is not made within 15 days, a lien may be filed as set forth in 15-59-107" at the end of (3); deleted a sentence at the end of (3) that required payment within 15 days of receiving the letter.

Administrative Rules

ARM 42.2.501 Application of partial payments.

Title 42, chapter 3, ARM Department rules on waiver of penalty and interest.

15-59-107. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted authorization to issue warrant for distraint for a procedure whereby the department filed a lien on all real property of the taxpayer; deleted provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

15-59-108. Deposit of taxes.

Compiler's Comments

2007 Amendment: Chapter 475 near middle after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

1995 Amendment: Chapter 18 near middle, after "15-1-501", deleted reference to subsection (6).

1993 Amendment: Chapter 455 after "part" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall". Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

15-59-112. Deficiency assessment — review — penalty and interest.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) at beginning inserted reference to penalty; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (2) substituted "Interest must be added to the deficiency assessment as provided in 15-1-216" for "Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendment: In (1), in first sentence, inserted reference to 15-1-211, after first sentence deleted remainder of subsection that read: "Within 30 days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer", and inserted last sentence relating to review under 15-1-211; and in (2) deleted former first two sentences that read: "When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand".

Applicability: Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

15-59-113. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "charged on unpaid taxes as provided in 15-1-216" for "charged on deficiency assessments provided in 15-59-112"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-59-121. Penalty for violations.

Compiler's Comments

1987 Amendment: Near beginning of section deleted references to 15-59-103 and 15-59-111.

CHAPTER 60
NURSING FACILITY UTILIZATION FEE

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 746, L. 1991, provided: "WHEREAS, the Legislature recognizes that the failure to fully fund the cost of nursing home care for Medicaid beneficiaries creates a burden on individuals who pay privately for nursing home care by shifting cost from Medicaid to non-Medicaid residents in our state's nursing homes; and

WHEREAS, the state has the potential of facing a lawsuit from nursing homes if the Legislature fails to fully fund the cost of nursing home care; and

WHEREAS, the Legislature desires to alleviate the cost-shifting from Medicaid to other patients, while bearing in mind the financial circumstances facing the state; and

WHEREAS, it is the intent of the Legislature to find creative financing solutions and to maximize federal participation in the cost of programs wherever possible; and

WHEREAS, it is the intent of the Legislature to use the utilization fee established in this bill as a means of providing additional Medicaid reimbursements to nursing homes; and

WHEREAS, it is the intent of the Legislature that nursing homes carefully consider the increased Medicaid revenues made available by this legislation when determining reasonable rates to be charged to non-Medicaid patients in their facilities; and

WHEREAS, the Legislature enacts the following legislation as a means of relieving privately paying individuals in nursing homes from the burden of costs shifted from the Medicaid program and of maximizing federal funding of this program."

Effective Date — Applicability: Section 22, Ch. 746, L. 1991, provided in part that this chapter, except 15-60-104, is effective July 1, 1991, and applies to all bed days on or after July 1, 1991.

Part 1
General Provisions

15-60-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 532 in definition of nursing facility inserted (b) to include the Montana mental health nursing care center; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendments: Chapter 418 in definition of nursing facility substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of nursing facility substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 558 in definition of bed day, in first sentence of (b) after "periods", substituted "of 24 hours described in subsection (1)(a) regardless of the source of payment" for "for which the nursing facility is reimbursed by a third-party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-102. Utilization fee for bed days in nursing facilities.

Compiler's Comments

2017 Amendment: Chapter 347 in (1)(a) substituted "2017" for "2003"; inserted (1)(b) concerning fee of $5.50 to be used as provided in 15-60-211; in (1)(c) substituted "2018" for "2006", substituted "$3" for "$4.25", and substituted "2017" for "2003"; in (1)(d) substituted "on and after July 1, 2018" for "beginning July 1, 2006", substituted "$7" for "$5.50", and substituted "2017" for "2003"; and made minor changes in style. Amendment effective July 1, 2017.

2005 Amendment: Chapter 523 in (1)(b) and (1)(c) near beginning substituted "2006" for "2004"; in (1)(b) increased utilization fee from $1.70 to $4.25; and in (1)(c) increased utilization fee from $2.50 to $5.50. Amendment effective July 1, 2005.

2003 Amendment: Chapter 541 in (1) at end inserted "for each bed day in the facility in the following amounts"; in (1)(a) at end substituted "which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount" for "or each bed day in the facility"; inserted (1)(b) concerning disposition in fiscal year 2004; inserted (1)(c) concerning disposition beginning July 1, 2004; in (2) at end inserted "as follows"; in (2)(a) at beginning inserted reference to amounts collected as provided in subsection (1)(a); inserted (2)(b) concerning amounts collected as provided in subsections (1)(b) and (1)(c); inserted (3) prohibiting placing fee on patient's bill; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 509 in first sentence, after "of", deleted "$2 for each bed day in the facility during fiscal year 1994 and" and after "facility" deleted "during fiscal year 1995 and each year thereafter" and in second sentence, after "the", substituted "general fund" for "nursing facility state special revenue account established in 15-60-210". Amendment effective July 1, 1995.

1993 Amendment: Chapter 558 in first sentence increased utilization fee from $1 in fiscal year 1992 and $2 in fiscal year 1993 to $2 in fiscal year 1994 and $2.80 in fiscal year 1995 and inserted second sentence requiring deposit of fees in the nursing facility state special revenue account. Amendment effective July 1, 1993.

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-104. Rulemaking authority.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 746, L. 1991, provided: "A statement of intent is required for this bill because [section 15] [this section] grants the department of revenue authority to adopt rules necessary to implement and administer [sections 1 through 15] [Title 15, ch. 60].

It is the intent of the legislature that, in adopting rules, the department:

(1) provide procedures and forms for reporting bed days that are subject to payment of the utilization fee imposed in [section 2] [15-60-102];

(2) establish requirements for the maintenance of records and other documents required to ensure proper payment of the utilization fee;

(3) develop a process for the estimation and collection of delinquent or unpaid fees;

(4) provide a process for the reconciliation of disputes relating to the payment of utilization fees; and

(5) establish other procedures for the efficient administration of the utilization fee."

Effective Date: Section 22(1), Ch. 746, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

Administrative Rules

Title 42, chapter 3, ARM Departmental rules on waiver of penalty and interest.
Title 42, chapter 31, subchapter 8, ARM Nursing facilities.

Part 2
Collection of Fee

15-60-201. Reporting and collection of fee.

Compiler's Comments

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Administrative Rules

Title 42, chapter 31, subchapter 8, ARM Nursing facilities.
ARM 42.31.802 Tax records.
ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-202. Audit — records.

Administrative Rules

ARM 42.31.802 Tax records.

15-60-204. Penalty and interest for delinquent fees — waiver.

Compiler's Comments

1999 Amendment: Chapter 427 at end substituted "penalty and interest as provided in 15-1-216 must be added to the fee" for "a penalty of 10% of the amount of the fee due must be assessed unless it is shown that the failure was due to reasonable cause and not neglect"; deleted former (2) that read: "(2) If any fee due under 15-60-102 is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Administrative Rules

ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-205. Estimated fee on failure to file.

Compiler's Comments

Coordination Instruction: Section 19, Ch. 746, L. 1991, provided: "If Senate Bill No. 445 is passed and approved and if it includes a section adopting a uniform tax appeal procedure, then the language contained in [sections 7(1) [15-60-205(1)] and 11 [not codified] of this act] is void and the provisions of Senate Bill No. 445 govern the appeal procedures." Senate Bill No. 445 was approved as Ch. 811, L. 1991, and therefore the language contained in [sections 7(1) [15-60-205(1)] and 11 [not codified]] of Ch. 746, L. 1991, is void.

Severability: Section 20, Ch. 746, L. 1991, was a severability clause.

Nonapplicability: Section 21, Ch. 746, L. 1991, provided: "[Sections 1 through 15] [Title 15, ch. 60] and the fee established under [section 2] [15-60-102] do not apply to facilities licensed to provide intermediate developmental disability care and facilities reimbursed as institutions for mental disease under the medicaid program."

Administrative Rules

ARM 42.31.803 Estimation and collection of delinquent or unpaid fees.

15-60-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) after "payment" substituted second sentence regarding penalty and interest for "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment bears interest from the date specified in 15-60-203 for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Administrative Rules

ARM 42.31.810 Hearing rights.

15-60-207. Closing agreements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

15-60-208. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "unpaid taxes as provided in 15-1-216" for "delinquent fees"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

15-60-210. Disposition of fee.

Compiler's Comments

2007 Amendment: Chapter 475 in (1) near end after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2003 Amendment: Chapter 532 in (1) at beginning inserted exception clause; inserted (2) providing for allocation of utilization fees; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendments: Chapter 18 after "15-1-501" deleted reference to subsection (6).

Chapter 509 at end substituted "general fund" for "nursing facility state special revenue account established in subsection (2)"; deleted (2) that read: "(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 455 in (1), after "must", inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 558 at end of (1) substituted "nursing facility state special revenue account established in subsection (2)" for "state general fund"; and inserted (2) establishing the nursing facility account. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Applicability: Section 5, Ch. 558, L. 1993, provided: "[This act] applies to all bed days on or after July 1, 1993."

Effective Date — Rulemaking: Section 6(1), Ch. 558, L. 1993, provided: "[Sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] are effective July 1, 1993, except that rules to administer [sections 1 through 3] [15-60-101, 15-60-102, and 15-60-210] may be adopted, but may not be implemented, prior to July 1, 1993."

15-60-211. State special revenue account.

Compiler's Comments

2017 Amendment: Chapter 347 in (2)(a) substituted "15-60-102(1)(b) through (1)(d)" for "15-60-102(1)(b) and (1)(c)"; in (2)(b) at beginning substituted "Money collected under 15-60-102(1)(b)" for "Money in the account" and near middle substituted "maintaining the average price paid for medicaid nursing facility services at the fiscal year 2017 level" for "increasing the average price paid for medicaid nursing facility services above the fiscal year 2003 level", inserted (2)(c) concerning how money collected under 15-60-102(1)(c) and (1)(d) must be used; and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: Section 5, Ch. 541, L. 2003, provided that this section is effective July 1, 2003.

CHAPTER 61
MEDICAL CARE SAVINGS ACCOUNT

Chapter Compiler's Comments

Effective Date: Section 11, Ch. 295, L. 1995, provided: "[This act] [15-61-101, 15-61-102, and 15-61-201 through 15-61-205] is effective January 1, 1996."

Contingent Voidness: Section 12, Ch. 295, L. 1995, provided: "In order to maintain a balanced budget, because [this act] [House Bill No. 560] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void." The boilerplate language of sec. 13 of House Bill No. 2 stated that a corresponding spending reduction had been accounted for in House Bill No. 2; therefore, the enactment of Ch. 295, L. 1995, was effective as approved.

Chapter Administrative Rules

Title 42, chapter 15, subchapter 6, ARM Medical savings accounts.

Part 1
General Provisions

15-61-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 701, L. 2023. Amendment effective May 19, 2023.

Retroactive Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022.

2017 Amendment: Chapter 152 inserted definitions of consumer price index, family leave expense, and immediate family member; in definition of eligible medical expense in (a) at end deleted "for the employee or account holder or a dependent of the employee or account holder" and inserted (b) and (c) regarding an expense for long-term care and a family leave expense; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 6, Ch. 152, L. 2017, provided: "[This act] applies to income tax years beginning after December 31, 2017."

2015 Amendment: Chapter 169 in definition of account administrator in (h) before "a person" deleted "a licensed public accountant or". Amendment effective October 1, 2015.

2005 Amendment: Chapter 130 in definition of ERISA at end substituted "29 U.S.C. 1001, et seq." for "Public Law 93-406". Amendment effective October 1, 2005.

1999 Amendment: Chapter 51 in (1)(e) after "holder" deleted "of". Amendment effective March 15, 1999.

1997 Amendment: Chapter 296 in definition of account administrator inserted (e) through (h) to include the account holder or an employee, a broker, insurance producer, or investment adviser, an attorney, or a licensed public accountant or an enrolled agent; and made minor changes in style. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.605 Medical savings accounts — definitions.

Part 2
Medical Care Savings Account — Administration

15-61-201. Establishment of account.

Administrative Rules

ARM 42.15.401 Income tax — personal and dependent exemptions — definitions.

15-61-202. Tax exemption — conditions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 701, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

2021 Amendment: Chapter 503 in (1) in first sentence near beginning after exception clause deleted "the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and" and inserted "that was contributed to a medical care savings account prior to January 1, 2024", and near middle substituted "Montana taxable income" for "adjusted gross income" and substituted "15-30-2120" for "15-30-2110(2)(j)"; deleted former (2)(a) that read: "(a) An employee or account holder may annually contribute not more than:

(i) $3,500 in tax year 2018;

(ii) $4,000 in tax year 2019;

(iii) an amount determined for each subsequent tax year by multiplying the amount in subsection (2)(a)(ii) by an inflation factor determined by dividing the consumer price index for June of the previous tax year by the consumer price index for June 2018 and rounding the resulting figure to the nearest $500 increment"; in (2) at beginning inserted "For contributions that were made prior to January 1, 2024"; deleted former (3) that read: "(3) A deduction pursuant to 15-30-2131 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-2131 or exclude pursuant to 15-30-2110 an amount representing a loss in the value of an investment contained in an account"; in (5)(b) at beginning deleted "contribute to the account"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2017 Amendments — Composite Section: Chapter 152 in (1) near middle after "contained within the account" inserted "distributed to an immediate family member as provided in subsection (7)", after "payment of eligible medical expenses" substituted "or for paying the expenses of administering the account" for "or for the long-term care of the employee or account holder or a dependent of the employee or account holder", and at end substituted "or for paying the expenses of administering the account" for "or the long-term care of the employee or account holder or a dependent of the employee or account holder"; in (2)(a) substituted "may annually contribute not more than" for "may exclude as an annual contribution in 1 year not more than $3,000"; inserted (2)(i) allowing $3,500 in tax year 2018; inserted (2)(ii) allowing $4,000 in tax year 2019; inserted (2)(iii) allowing an amount multiplied by an inflation factor in subsequent tax years; deleted former (4) that read: "(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. An employee or account holder who deposits more than $3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-2110(2)(j) in a subsequent year any part of $3,000 per year not previously excluded"; in (4) after "another employee or account holder" substituted "who is an immediate family member" for "within the immediate family"; in (6) at end inserted "An immediate family member who receives the distribution provided for in this subsection becomes the account holder and may"; inserted (6)(a) and (6)(b) regarding actions an account holder may take with an account; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 298 deleted former (7) that read: "(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 6, Ch. 152, L. 2017, provided: "[This act] applies to income tax years beginning after December 31, 2017."

1999 Amendment: Chapter 429 in (8) at end inserted provision relating to pay-on-death beneficiary; and made minor changes in style. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.602 Medical savings account administrator reporting and payments.

15-61-203. Withdrawal of funds from account for purposes other than eligible medical expenses.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) near middle of last sentence inserted "that had been excluded from taxation"; and in (2) at end of second sentence after "department" deleted "of revenue", and at end of last sentence inserted "if it had been excluded from taxation". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2017 Amendment: Chapter 152 in (1) in middle substituted "or for paying the expenses of administering the account" for "or the long-term care of the employee or account holder or a dependent of the employee or account holder"; in (2) in first sentence at beginning substituted "There is a penalty equal to 10% of the amount of a withdrawal for a withdrawal" for "If the employee or account holder withdraws money from the account" and in middle substituted "for expenses of administering the account" for "long-term care", and in second sentence substituted "The administrator may withhold the penalty from the amount" for "the administrator shall withhold from the amount" and after "department of revenue" deleted "an amount equal to 10% of the amount of the withdrawal"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 6, Ch. 152, L. 2017, provided: "[This act] applies to income tax years beginning after December 31, 2017."

1997 Amendment: Chapter 296 inserted (3) defining last business day of the account administrator's business year. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.603 Medical savings account — withdrawals.

ARM 42.15.604 Individual liability.

Case Notes

Bankruptcy Exemption for Health Savings Accounts — Recent Legislation: The Bankruptcy Court sent a certified question to the Supreme Court asking whether a debtor may claim an exemption in a health savings account pursuant to 25-13-608. The Supreme Court held that Montana applies a principle of liberal construction as it relates to bankruptcy exemptions, that the nature of a health savings account qualified as a benefit under 25-13-608, that the statute explicitly provided that medical, surgical, or hospital benefits are exempt, and that certain funds in a health savings account are exempt. The court then noted that the Montana Legislature subsequently exempted certain health or medical savings accounts through Ch. 298, L. 2017, consistent with their opinion. In re Giacometto, 2017 MT 162, 388 Mont. 82, 397 P.3d 1264.

15-61-204. Administration of account.

Compiler's Comments

2021 Amendment: Chapter 328 in (1)(b) near beginning after "a medical care savings account" deleted "as a regular deposit or share account" and after "pertaining to the account as" substituted " the person for whose benefit the account is administered. A financial institution may provide investment options to each employee and account holder, including a regular deposit account, share account, stock account, bond account, mutual fund account, or a combination of these accounts. An investment option that is allowable for a health savings account under 26 U.S.C. 223 automatically qualifies" for "pertain to a regular deposit or share account"; inserted (1)(b)(i) regarding losses based on an investment option selected by an employee or account holder; and made minor changes in style. Amendment effective April 30, 2021.

Transition — Rollover: Section 2, Ch. 328, L. 2021, provided: "Each employee and account holder with a medical care savings account that was in existence before [the effective date of this act] [effective April 30, 2021] may withdraw money in the account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability."

Retroactive Applicability: Section 5, Ch. 328, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020."

Saving Clause: Section 3, Ch. 328, L. 2021, was a saving clause.

2017 Amendment: Chapter 152 in (1)(b) near beginning substituted "medical care savings account" for "medical savings account"; in (3) in first sentence after "paying eligible medical expenses" deleted "of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder" and in second sentence after "long-term care insurance policy or annuity" deleted "of the employee or account holder or a dependent of the employee or account holder"; in (4) in first sentence after "paid by the employee or account holder" deleted "or a dependent of the employee or account holder" and in second sentence substituted "medical care savings account" for "medical savings account"; inserted (6) requiring annual report of starting and ending balances of medical care savings account; in (8)(d) substituted "medical care savings account" for "medical savings account"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 6, Ch. 152, L. 2017, provided: "[This act] applies to income tax years beginning after December 31, 2017."

1999 Amendment: Chapter 429 in (1)(a) inserted exception clause; in (1)(b) at end substituted "regular deposit or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. Notwithstanding any other provision of this chapter, a financial institution is not responsible for determining whether a medical expense is eligible or nonreimbursable or for the use or application of funds if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses" for "regular deposit. A financial institution is not responsible for the use or application of funds"; in (7)(b) at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 296 in (1) inserted second and third sentences requiring financial institution to administer account as regular deposit and relieving institution from responsibility for use or application of funds; in (4) inserted second sentence placing burden of proving eligible withdrawal on the account holder; and inserted (7) outlining procedures for an account administrator who is also the account holder. Amendment effective April 18, 1997.

Retroactive Applicability: Section 4, Ch. 296, L. 1997, provided: "[This act] [15-61-102, 15-61-203, and 15-61-204] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act]." Effective April 18, 1997.

Administrative Rules

ARM 42.15.601 Medical savings account administrator registration.

ARM 42.15.602 Medical savings account administrator reporting and payments.

CHAPTER 62
FAMILY EDUCATION SAVINGS ACT

Chapter Compiler's Comments

Effective Date: Section 15, Ch. 540, L. 1997, provided: "[This act] is effective July 1, 1997."

Chapter Administrative Rules

Title 42, chapter 15, subchapter 8, ARM Family Education Savings Act.

Part 1
General Provisions

15-62-102. Family education savings program established — legislative intent — purpose.

Compiler's Comments

2021 Amendment: Chapter 349 inserted (1) establishing the family education savings program and providing that the program may consist of one or more qualified tuition programs at the discretion of the board of regents; in (2) near end after "an accessible, affordable" deleted "postsecondary"; deleted former (2) that read: "The legislature further intends that the board achieve this purpose most effectively through a public-private partnership using selected financial institutions to serve as depositories for individuals' postsecondary education savings accounts"; and made minor changes in style. Amendment effective April 30, 2021.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

15-62-103. Definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 349 in definition of account after "individual" deleted "participating trust"; in definition of account owner substituted "participation agreement and establishes an account on behalf of a designated beneficiary" for "participating trust agreement and who is designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary"; in definition of designated beneficiary near middle substituted "education expenses" for "higher education expenses"; inserted definition of education expense; in definition of financial institution near middle substituted "investment company" for "investment adviser"; in definition of higher education institution in two places substituted "529" for "529(e)(5)"; in definition of member of the family in two places substituted "529" for "529(e)(2)"; in definition of participation agreement changed defined term "participating trust agreement" to "participation agreement"; in definition of program at end substituted "costs of education" for "costs of higher education"; in definition of qualified education expenses changed defined term "qualified higher education expenses" to "qualified education expenses", substituted "any education expense permitted by" for "qualified higher education expenses as defined in", and in two places substituted "529" for "529(e)(3)"; inserted definition of qualified tuition program; in definition of qualified withdrawal substituted "qualified education expenses" for "qualified higher education expenses"; in definition of trust interest substituted "participation agreement" for "participating trust agreement"; and made minor changes in style. Amendment effective April 30, 2021.

Chapter 503 in definition of designated beneficiary near middle after "person whose" deleted "higher"; inserted definition of education expense; in definition of higher education institution in two places substituted "529" for "529(e)(5)"; in definition of member of the family in two places substituted "529" for "529(e)(2)"; in definition of program near end after "a share of the costs of" deleted "higher"; in definition of qualified education expenses at beginning after ""Qualified" deleted "higher" and near beginning substituted "any education expense permitted by section 529 of the Internal Revenue Code, 26 U.S.C. 529" for "qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3)"; inserted definition of qualified tuition program; in definition of qualified withdrawal near middle after "pay the qualified" deleted "higher"; and made minor changes in style. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment: Chapter 108 inserted definition of contributor; and made minor changes in style. Amendment effective April 1, 2019.

2005 Amendment: Chapter 549 in definition of account inserted "participating" and after "account" deleted "or savings account"; in definition of account owner inserted "who enters into a participating trust agreement and who is"; inserted definitions of participating trust agreement, trust, trustee, and trust interest; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in definition of financial institution after "trust company" substituted "investment adviser" for "mutual fund"; inserted definition of investment products; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in definition of higher education institution after "means" substituted "an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5)" for "(a) an institution described in the Higher Education Act of 1965, 20 U.S.C. 1141(a) and 1088(a); or

(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state"; in definition of member of the family after "means" substituted "with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2)" for "(a) an ancestor of a person;

(b) the spouse of a person;

(c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of a parent of a person; or

(d) the spouse of any lineal descendant described in subsection (8)(c)"; in definition of nonqualified withdrawal at end of (d) after "beneficiary" inserted "described in 15-62-202"; in definition of qualified higher education expenses after "means" substituted "qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3)" for "tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution"; and made minor changes in style. Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.15.805 Definitions.

Part 2
Family Education Savings Program Account — Administration

15-62-201. Program requirements — establishment of account — qualified and nonqualified withdrawal — penalties.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 349 inserted (1) concerning establishing the program in the form determined by the board; inserted (2) concerning specific requirements when the program is divided into multiple portfolios; substituted current (3) for former (1) through (8) (see 2021 Session Law for former text); in (4) after "for each account" deleted "for each designated beneficiary"; inserted (7) concerning account holder statements; deleted former (12) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective April 30, 2021.

Chapter 503 in (1) near end of introductory sentence after "pay the qualified" deleted "higher"; and in (3)(a) near middle after "bills for qualified" deleted "higher". Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2005 Amendment: Chapter 549 in (1) inserted first and second sentences regarding accounts in trust and in last sentence near beginning substituted "participate in the program and open" for "deposit money into" and inserted "into which funds will be deposited"; inserted (1)(a) regarding entry into participating trust agreement; inserted (1)(b)(v) regarding designation of financial institution; in (10) near middle inserted reference to violation of Internal Revenue Code; deleted former (11) that read: "(11) If, pursuant to 15-62-203(10), the board terminates the authority of a financial institution to serve as program manager and accounts held by or through the program manager must be moved from that financial institution to another financial institution, the board shall select the financial institution to which the accounts are to be moved. If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts unless the account owner is permitted under the applicable rules of the internal revenue service to select new investments for the account without violating rules prohibiting investment direction"; in (12) in first sentence near middle inserted "whose participating trusts are invested with the institution"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in (3) at end of second sentence of introductory clause after "withdrawal" inserted "to the extent that the board concludes that it is necessary for the board or program manager to make that determination"; in (4) at beginning after "If" substituted "the board determines that it is required to impose a penalty on nonqualified withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in" for "a nonqualified withdrawal is made from an account"; in (5) near end after "state tuition program" inserted "or a qualified tuition program"; in (6)(a) near middle after "state tuition program" inserted "or qualified tuition program"; in (7) near beginning of introductory clause after "penalty" substituted "imposed under subsection (4)" for "amount"; in (11) at beginning of first sentence after "If" inserted "pursuant to 15-62-203(10)", after "institution to" substituted "serve as program manager" for "hold accounts", after "accounts" inserted "held by or through the program manager", and at end after "institution" substituted "to which the accounts are to be moved" for "and type of investment to which the balance of the account is moved" and at beginning of second sentence inserted "If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts", near middle after "unless the" inserted "account owner is permitted under the applicable rules of the", and at end after "service" substituted "to select new investments for the account without violating rules prohibiting investment direction" for "provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified state tuition plan"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in (4) deleted former second sentence that read: "A nonqualified withdrawal constitutes income for Montana purposes to the extent it was previously deducted from income in calculating Montana individual income taxes." Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

Title 42, chapter 15, subchapter 8, ARM Family Education Savings Act.

15-62-202. Changes in designated beneficiary.

Compiler's Comments

2021 Amendment: Chapter 349 in (3)(b) substituted "15-62-201(5)" for "15-62-201(10)". Amendment effective April 30, 2021.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

15-62-203. Selection of financial institution as program manager — contract — termination.

Compiler's Comments

2021 Amendment: Chapter 349 in (1) after "the operation of the program" substituted "and may contract with" for "through the use of", at end inserted "to provide management services to the program, including but not limited to investment management, account administration, customer service, and marketing services", and deleted former second through fourth sentences (see 2021 Session Law for former text); in (2) near beginning of first sentence substituted "may" for "shall", near end of first sentence substituted "program managers of the program" for "managers of the program", and deleted former last sentence that read: "Financial institutions that submit proposals shall describe the investment products that they propose to offer through the program"; in (3)(b) near beginning substituted "quality" for "safety" and at end deleted "taking into account any insurance provided with respect to these products"; deleted former (3)(c) that read: "(c) the ability of the investment products to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder"; in (3)(d) at beginning inserted "if applicable"; in (3)(f) in two places substituted "contribution" for "deposit" and after "minimum contributions" substituted "to maintain accounts in the program and the ability" for "that the financial institution will require and the willingness of the financial institution or its subcontractors"; in (3)(g) at end deleted "including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board"; deleted former (4) and (5) (see 2021 Session Law for former text); in (4)(a) near middle after "it is treated as a" deleted "qualified state tuition program or"; in (4)(b) and (4)(c) near end substituted "15-62-201(6) through (8)" for "15-62-201(11) through (13)"; in (4)(d) near middle substituted "compliance with policies" for "compliance with rules"; in (4)(f) near beginning substituted "money" for "participating trusts"; in (4)(g) at beginning substituted "prepare and file" for "assist the trustee with respect to" and near middle inserted "assist the trustee"; deleted former (8) that read: "(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years"; in (6)(a) substituted current text for former text that read: "accounts previously established through the efforts of the financial institution may not be terminated by the trustee or board and additional contributions may be made to those accounts"; deleted former (6)(c) (see 2021 Session Law for former text); in (7)(a) in second sentence substituted "shall seek to promptly reinvest program assets directly in its capacity as trustee of the trust or" for "shall take custody of account funds or assets held at that financial institution and shall seek to promptly reinvest the funds or assets" and after "by the board and into" deleted "the same investment products or"; deleted former (7)(b) (see 2021 Session Law for former text); in (7)(b) at end deleted last sentence that read: "After taking emergency action, the board shall provide notice and opportunity for action to account owners as provided in subsection (10)(b)"; and made minor changes in style. Amendment effective April 30, 2021.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

2005 Amendment: Chapter 549 in (1) in first sentence near beginning inserted "operation of the", in second sentence near middle inserted reference to submittal of application to program manager and inserted "in the trust", and inserted third sentence regarding deposit of money by payment to program manager; in (4) inserted second sentence regarding terms and conditions in contracts; in (6)(f) near beginning substituted reference to participating trusts in name of and for benefit of trust for "all accounts in trust for the benefit of this state"; inserted (6)(g) authorizing assistance to trustee; in (9) inserted first sentence regarding action by board in event of nonrenewal of institution as program manager and in second sentence at beginning inserted exception clause; in (9)(a) inserted "through the efforts of the financial institution", inserted "by the trustee or the board", and at end after "accounts" deleted "in existence at the time of nonrenewal of a contract"; in (9)(b) at beginning inserted "the funds in" and after "new accounts" substituted "established after the termination may not be invested by or through the" for "may not be placed with that"; in (9)(c) at beginning substituted "participating trusts invested by or through the financial institution" for "except as provided in subsection (10), accounts under the supervision of the program manager" and after "prior to the nonrenewal" inserted reference to selection by account owner of different investment product; inserted (9)(d) regarding role of financial institution and services provided by institution; in (10)(a) in first sentence near middle after "financial institution" inserted reference to prohibiting investment of funds under subsection (9) and in second sentence near beginning inserted "or investment is prohibited", substituted "trustee" for "board", substituted "account funds or assets" for "accounts", substituted "reinvest the funds or assets by or through" for "transfer the accounts to", after "program manager" inserted "by the board", inserted "the same investment products or", and inserted "selected by the board that are"; inserted (10)(b) regarding notice to account owners; inserted (10)(c) authorizing emergency action by board or trustee; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 throughout section substituted references to program manager for references to depository and manager or depository and program manager and substituted references to investment products for references to financial instruments or investment instruments; in (1) at end of second sentence after "accounts at" substituted "the location of or through the program manager" for "the depository" and inserted third sentence allowing investment of accounts in one or more approved investment products; in (2) at end substituted "that they propose to offer through the program" for "that will be held in accounts"; in (5) near beginning of first and second sentences of introductory clause substituted "board" for "committee"; in (5)(a) after "state tuition program" inserted "or qualified tuition program"; in (6)(a) near middle after "state tuition" substituted "program or qualified tuition program" for "plan"; in (6)(d) at end inserted "and to comply with any state or federal tax reporting requirements"; in (9)(a) after "established" deleted "and held in investment instruments at the financial institution"; inserted (9)(d) requiring that accounts continue to be invested in the financial products in which they were invested prior to the nonrenewal; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 468 in (5) near beginning of introductory clause after "one financial institution" substituted "to serve as depository and program manager. The committee may select more than one kind of investment instrument to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment instruments must take into account:

(a) the requirements for qualifying as a qualified state tuition program under section 529 of the Internal Revenue Code (26 U.S.C. 529);

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision" for "and investment for the program if:

(a) the internal revenue service has provided guidance that giving a contributor a choice of two or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and

(b) the committee concludes that the choice of instrument vehicles is in the best interest of program participants and will not interfere with the promotion of the program". Amendment effective April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-206. Limitations.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 349 in (1)(b) in two places after "higher education institution" inserted "or an elementary or secondary school"; in (1)(d) substituted "qualified education expenses" for "qualified higher education expenses"; in (3) at beginning substituted "Under policies" for "Under rules"; and made minor changes in style. Amendment effective April 30, 2021.

Chapter 503 in (1)(d) after "cover the qualified" deleted "higher". Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2003 Amendment: Chapter 566 in (3) near beginning after "application" substituted "offering or disclosure document, and any other type of document identified by the board" for "deposit slip, or other document". Amendment effective October 1, 2003.

15-62-207. Deductions for contributions.

Compiler's Comments

2021 Amendment: Chapter 503 in first sentence near middle after "in accordance with" substituted "15-30-2120" for "15-30-2110(11)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2007 Amendment: Chapter 509 in first sentence after "accordance with" substituted "15-30-111(11)" for "15-30-111(8)". Amendment effective May 16, 2007.

Retroactive Applicability: Section 5, Ch. 509, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006."

2003 Amendment: Chapter 566 near beginning of first sentence after "contributes to" substituted "one or more accounts" for "an account" and near end after "by the" substituted "total amount of the contributions" for "amount of the contribution"; in second sentence inserted requirement that contributor's child be a Montana resident; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

ARM 42.15.802 Contributions to family education savings program accounts.

15-62-208. Tax on certain withdrawals of deductible contributions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 102, L. 2023. Amendment effective January 1, 2024.

2021 Amendments — Composite Section: Chapter 349 in (2) in first sentence in two places substituted "529" for "529(c)(3)(A)"; and in (5)(b) substituted "1 year" for "3 years". Amendment effective April 30, 2021.

Chapter 503 in (1) at end after "amounts that" substituted "were deducted from income in calculating Montana individual income taxes" for "reduced adjusted gross income under 15-30-2110(11)"; in (2) in five places and (4) in two places substituted "Montana individual income taxes" for "adjusted gross income"; and in (4) deleted former last sentence that read: "Contributors who claim deductions for contributions shall report on their Montana income tax returns the amount of deductible contributions made to accounts for each designated beneficiary and the social security number of each designated beneficiary." Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2007 Amendment: Chapter 509 in (1) at end after "under" substituted "15-30-111(11)" for "15-30-111(8)". Amendment effective May 16, 2007.

Retroactive Applicability: Section 5, Ch. 509, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006."

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

Administrative Rules

Title 42, chapter 3, ARM Departmental rules on waiver of penalty and interest.

ARM 42.15.803 Withdrawals from family education savings program accounts.

ARM 42.15.804 Verification of family education savings program account contributions and withdrawals.

15-62-209. Access to records.

Compiler's Comments

2015 Amendment: Chapter 348 in middle substituted "is confidential information as defined in 2-6-1002 and is exempt from any" for "is exempt from the provisions of 2-6-102 and 2-6-104 and any other" and substituted "public examination" for "public inspection". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

Effective Date: Section 10, Ch. 468, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 11, Ch. 468, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

15-62-210. Exemption from claims of creditors.

Compiler's Comments

Effective Date: Section 6, Ch. 108, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 1, 2019.

Part 3
Family Education Savings Trust

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

15-62-301. Family education savings trust.

Compiler's Comments

2021 Amendment: Chapter 349 in (1) at end deleted former second through fifth sentences (see 2021 Session Law for former text); in (2) substituted "contributions" for "deposits"; in (3) near middle of first sentence substituted "contributed to each account " for "deposited in each participating trust" and in second sentence near middle substituted "account" for "participating trust" and after "nonqualified withdrawals" deleted "penalties"; deleted former (4) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective April 30, 2021.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

CHAPTER 63
FIRST-TIME HOME BUYER SAVINGS ACCOUNT

Chapter Compiler's Comments

Effective Date: Section 10, Ch. 544, L. 1997, provided: "[This act] is effective January 1, 1998."

Chapter Administrative Rules

Title 42, chapter 15, subchapter 9, ARM First-time home buyer deductions.

Part 1
General Provisions

15-63-102. Definitions.

Compiler's Comments

2015 Amendment: Chapter 169 in definition of account administrator in (b) after "certified public accountant" deleted "or a licensed public accountant". Amendment effective October 1, 2015.

Administrative Rules

ARM 42.15.901 Definitions.

ARM 42.15.902 First-time home buyer account administrator registration.

ARM 42.15.907 First-time home buyer account — noneligible withdrawal for nonresident.

Part 2
Account Administration

15-63-201. Establishment of account.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 701, L. 2023. Amendment effective January 1, 2024.

Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies to tax years beginning after December 31, 2023.

15-63-202. Tax exemption — conditions.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) in first sentence near beginning after "subsection (2) contributed" substituted "prior to January 1, 2024" for "annually", and near middle after "income on the principal" inserted "that was contributed prior to January 1, 2024", after "be excluded from" substituted "Montana taxable income" for "the adjusted gross income", and after "in accordance with" substituted "15-30-2120" for "15-30-2110(2)(k)"; deleted former (2)(a) and (2)(b) that read: "(a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to $3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to $6,000"; in (2) at beginning inserted "For contributions to principal that were made prior to January 1, 2024"; deleted former (2)(d) that read: "(d) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years"; deleted former (3), (4), and (5) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

1999 Amendment: Chapter 429 in (9) at end inserted provision relating to pay-on-death beneficiary. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.903 Account administrator reporting and payments.

15-63-203. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.

Administrative Rules

ARM 42.15.904 First-time home buyer account - withdrawals.
ARM 42.15.905 Individual liability.
ARM 42.15.906 Tax exemption for first-time home buyer.
ARM 42.15.907 First-time home buyer account — noneligible withdrawal for nonresident.

15-63-204. Administration of account.

Compiler's Comments

1999 Amendment: Chapter 429 in (5)(b) at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

Administrative Rules

ARM 42.15.902 First-time home buyer account administrator registration.
ARM 42.15.903 Account administrator reporting and payments.

CHAPTER 64
TAXATION OF DRUGS AND DRUG LICENSING

Chapter Case Notes

Dangerous Drug Tax — Prohibited as Double Jeopardy: The U.S. Supreme Court held that Montana's dangerous drug tax was barred under the double jeopardy doctrine of the fifth amendment to the U.S. Constitution. The tax is conditioned on the commission of a crime; the rate of the tax was eight times the drug's market value; and, although the tax purports to be a property tax, it is levied on goods that the taxpayer neither owns nor possesses when the tax is imposed. A tax on possession of goods that no longer exist and that the taxpayer never lawfully possessed has a punitive character. Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

Dangerous Drug Tax Not Double Jeopardy — Civil Remedy Versus Criminal Penalty — Constitutionality of Dangerous Drug Tax: The Department of Revenue assessed a dangerous drug tax on two men who were convicted of possession of dangerous drugs, sentenced, and fined under the criminal code. Two District Courts found that the tax was excessive and punitive rather than remedial and that it constituted a second criminal penalty imposed for the same crime in violation of the constitutional prohibition against double jeopardy. The Supreme Court disagreed, noting that the dangerous drug tax is an excise tax based on the quantity of drugs in the taxpayer's possession and does not impose any affirmative disability or restraint of liberty or privileges upon the taxpayer. Under Helvering v. Mitchell, 303 US 391, 82 L Ed 917, 58 S Ct 630 (1938), both a civil and criminal penalty are allowed for the same act or omission. Although the conduct of possessing dangerous drugs subjects a taxpayer to both a criminal penalty and a tax, the tax is not so punitive in purpose or effect that it negates the legislative intent to create a civil sanction. Rather, the tax is remedial and is collected through a separate administrative procedure. In distinction to U.S. v. Halper, 490 US 735, 104 L Ed 2d 487, 109 S Ct 1892 (1989), the tax does not serve the goal of punishment rather than its remedial purpose of compensating the government for its loss and needs no proof of remedial costs on the part of the state. The method of reporting the tax due and the method of collecting the tax do not transform it into a criminal penalty. After applying the factors in Kennedy v. Mendosa, 372 US 144, 9 L Ed 2d 644, 83 S Ct 554 (1963), the court held that the dangerous drug tax is not a criminal penalty and does not rest on a criminal conviction but constitutes a separate civil remedy and as such is not a multiple punishment that violates double jeopardy. The Dangerous Drug Tax Act is constitutional on its face. Sorensen v. Dept. of Revenue, 254 M 61, 836 P2d 29, 49 St. Rep. 624 (1992).

Chapter Law Review Articles

State v. Yang: Excessive Fine or Unconstitutional Tax?, Redeen, 82 Mont. L. Rev. 467 (2021).

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 31(3), Ch. 408, L. 2017, provided that this part is effective July 1, 2017.

Severability: Section 30, Ch. 408, L. 2017, was a severability clause.

15-64-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 inserted definitions of adult-use dispensary, dispensary, licensee, marijuana, and medical marijuana dispensary; substituted current definition of marijuana product for former definition that read: ""Marijuana product" means marijuana as defined in 50-32-101 and marijuana-infused products as defined in 50-46-302"; deleted former definition that read ""Marijuana product provider" means provider or a marijuana-infused products provider as those terms are defined in 50-46-302"; in definition of purchaser before "a marijuana product" inserted "marijuana or"; in definition of retail price after "the established price for which" substituted "an adult-use dispensary or medical marijuana dispensary sells marijuana or a marijuana product" for "a marijuana product provider sells a marijuana product"; in definition of sale or sell before "marijuana products" inserted "marijuana or"; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-102. Tax on marijuana sales.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) substituted current text concerning the 4% tax on the retail price of marijuana, marijuana products, and live marijuana plants sold in medical marijuana dispensaries for former text that read: "(1) (a) There is a tax equal to the percentage provided in subsection (1)(b) on a marijuana product provider's gross sales that is payable four times a year.

(b) The percentage of tax on gross sales in subsection (1)(a) is as follows:

(i) for gross sales during the calendar quarters beginning October 1, 2019, and ending September 30, 2021, the amount is 4%; and

(ii) for gross sales during the calendar quarters beginning October 1, 2021, and thereafter, the amount is 2%"; inserted (2) concerning the 20% tax on the retail price of marijuana, marijuana products, and live marijuana plants sold in adult-use dispensaries; inserted (3) concerning collection of the taxes set forth in (1) and (2); in (4) at beginning substituted "A dispensary licensed under Title 16, chapter 12," for "A marijuana product provider" and at end of first sentence deleted "from any registered premises, as defined in 50-46-302, operated by the marijuana product provider, including dispensaries"; in (5) near middle substituted "dispensary" for "marijuana product provider" and near end substituted "subsection (1) or (2)" for "subsection (1)(b)"; in (6) before "state special revenue account" deleted "medical marijuana" and at end substituted "16-12-111 within the state special revenue fund established in 17-2-102" for "50-46-345"; inserted (11) concerning separation of the tax levied pursuant to this section from any general state and local sales and use taxes that apply to retail sales; inserted (12) requiring that the tax levied under this section must be used as designated in 16-12-111; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2019 Amendment: Chapter 292 in (1)(b)(i) substituted "beginning October 1, 2019, and ending September 30, 2021" for "beginning July 1, 2017, and ending June 30, 2018"; and in (1)(b)(ii) substituted "October 1, 2021" for "July 1, 2018". Amendment effective October 1, 2019.

15-64-103. Returns — payment — recordkeeping — authority of department.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) at beginning substituted "Each dispensary licensed under Title 16, chapter 12" for "Each marijuana product provider"; and in (3)(a)(ii) near middle before "marijuana products" inserted "marijuana and" and after "marijuana products" deleted "showing the name and address of each purchaser". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-104. Deficiency assessment — penalty and interest — statute of limitations.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) in two places substituted "licensee" for "marijuana product provider". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-105. Procedure to compute tax in absence of statement — estimation of tax — failure to file — penalty and interest.

Compiler's Comments

2021 Amendment: Chapter 576 throughout section substituted "licensee" for "marijuana product provider". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-106. Authority to collect delinquent taxes.

Compiler's Comments

2021 Amendment: Chapter 576 throughout section substituted "licensee" for "marijuana product provider". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-111. Information — confidentiality — agreements with another state.

Compiler's Comments

2021 Amendment: Chapter 576 in (2)(a) near middle after "the department of justice" inserted "the internal revenue service", after "investigation and prevention of" inserted "criminal activity", and at end deleted "or the department of public health and human services to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the Montana Medical Marijuana Act"; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

15-64-112. Department to make rules.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) at end substituted "collecting the tax on the sale of marijuana and marijuana products" for "collecting the marijuana tax on gross sales on marijuana product providers". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Part 10
Opioid Seller License Tax

15-64-1001. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 413, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 9, 2019.

Applicability: Section 10, Ch. 413, L. 2019, provided: "[This act] applies to a person selling opioids into the state after June 30, 2019."

Severability: Section 8, Ch. 413, L. 2019, was a severability clause.

15-64-1002. License requirements — rulemaking.

Compiler's Comments

Effective Date: Section 9, Ch. 413, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 9, 2019.

Applicability: Section 10, Ch. 413, L. 2019, provided: "[This act] applies to a person selling opioids into the state after June 30, 2019."

Severability: Section 8, Ch. 413, L. 2019, was a severability clause.

CHAPTER 65
LODGING FACILITY USE TAX

Chapter Administrative Rules

Title 42, chapter 14, ARM Lodging facility use tax.

Chapter Attorney General's Opinions

Applicability of Open Meeting Law to Local Chamber of Commerce Receiving Bed Tax Funds: A local chamber of commerce, when acting as a nonprofit convention and visitor bureau, is an organization supported at least in part by public funds in the form of bed tax money. By accepting public funds and deciding how those funds are to be spent, the convention and visitor bureau takes on the responsibility of accounting to the public for those funds. Therefore, meetings of a local chamber of commerce or other organization recognized and acting as a nonprofit convention and visitor bureau must be open to the public in accordance with the open meeting law unless the demands of individual privacy of the chamber clearly exceed the merits of public disclosure. 44 A.G. Op. 40 (1992).

Chapter Collateral References

Promoting Montana Through Lodging Taxes Used for Historic, Current Projects, Final Report of the Economic Affairs Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Part 1
General Provisions

Part Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

Lodging Facility Use Tax and Sales Tax Inconsistent and Incompatible — Not to Be Construed In Pari Materia: The Department of Revenue sought to have defendants, online travel companies, remit and collect lodging facility use taxes and sales taxes on their fees. The District Court concluded that the travel companies were not required to pay either tax. On appeal, the defendants argued that the two taxes have the same scope and therefore needed to be construed in pari materia. The Supreme Court concluded that the two separate acts creating the taxes were enacted 16 years apart and taxed separate transactions. The Supreme Court held that the taxes were inconsistent and incompatible and that they did not need to be construed in pari materia. Dept. of Revenue v. Priceline.com, Inc., 2015 MT 241, 380 Mont. 352, 354 P.3d 631.

Plain Language of Lodging Facility Use Tax Statutes — No Basis for Taxing Online Travel Company Fees: The Department of Revenue sought to have the defendants, online travel companies, remit and collect lodging facility use taxes on their fees. The District Court concluded that the defendants were not required to pay the lodging facility use tax under the plain language of the statute. On appeal, the Supreme Court affirmed and agreed that the plain language of the lodging facility use tax provided no basis for taxing the fees charged by the defendants. Dept. of Revenue v. Priceline.com, Inc., 2015 MT 241, 380 Mont. 352, 354 P.3d 631.

15-65-101. Definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 240 in definition of Indian tourism region before "federally recognized" deleted "seven". Amendment effective April 19, 2021.

Chapter 484 deleted former definitions of accommodation charge, campground, and facility (see 2021 Session Law for former text); inserted definitions of accommodations, person, purchaser, sales price, seller, and short-term rental marketplace; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

2017 Amendment: Chapter 405 inserted definition of Indian tourism region; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 49 in definition of resort area substituted "7-6-1501" for "7-6-1531"; and made minor changes in style. Amendment effective November 4, 2015.

2001 Amendment: Chapter 195 in definition of nonprofit convention and visitors bureau near end after "consolidated city-county" inserted "resort area, or resort area district"; inserted definitions of resort area and resort area district; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

ARM 42.14.101 Definitions.
ARM 42.14.303 Exempt lodging facilities.

Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

15-65-102. Rulemaking authority.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 607, L. 1987, provided: "This bill needs a statement of intent because it allows the department of revenue and department of commerce to adopt rules negotiating the administration of this act.

The rules will be necessary to effectively and efficiently collect the tax and disburse the funds. This includes rules clarifying persons subject to the tax, reporting requirements, recordkeeping requirements, qualification for funds requirements, delineation/clarification of the statutorily created council powers, and other requirements. Since this is a new tax in Montana, it is anticipated that many issues will arise requiring rulemaking for resolution.

The intent of the legislature in exempting certain facilities that charge rates not exceeding 60% of the state rate for state officers and employees traveling in Montana is to avoid taxing rooms that are primarily used by pensioners and similarly disposed persons who may use a hotel as a residence, but who nonetheless rent a room by the day or week. Such facilities may also rent rooms to drop-in trade from time to time, but such trade is not the primary business of the facility. Rules adopted should be sensitive to drawing the distinction authorized by the legislature."

Administrative Rules

Title 42, chapter 3, ARM Departmental rules on waiver of penalty and interest.

Title 42, chapter 14, ARM Lodging facility use tax.

15-65-111. Tax rate.

Compiler's Comments

2021 Amendment: Chapter 484 near beginning substituted "accommodations" for "a facility" and at end substituted "sales price paid by the purchaser" for "accommodation charge collected by the facility"; and deleted former (2) that read: "Accommodation charges do not include charges for rooms used for purposes other than lodging"; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

Administrative Rules

ARM 42.14.202 Combined charge for services.

ARM 42.14.303 Exempt lodging facilities.

Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

15-65-112. Collection and reporting.

Compiler's Comments

2021 Amendment: Chapter 484 in (1) near beginning substituted "seller of accommodations" for "owner or operator of a facility"; in (2) near beginning substituted "seller" for "owner or operator", and in middle substituted "the sales price paid by the purchaser" for "accommodation charges for the use of the facility"; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

1991 Amendment: In (2), in second sentence after "due", substituted "on or before the last day of the month" for "within 30 days". Amendment effective April 27, 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Administrative Rules

ARM 42.14.203 Collecting, reporting, and paying the tax.

ARM 42.14.205 Application of tax payment.

15-65-113. Audits — records.

Compiler's Comments

2021 Amendment: Chapter 484 throughout section substituted references to the seller for references to the "owner or operator" or "owner or operator of a facility"; in (3) near end substituted "sales price and tax collections" for "collection of accommodation charges"; in (4) near end after "recomputing the tax due" substituted "after the department has determined the tax" for "thereon"; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

Administrative Rules

ARM 42.14.202 Combined charge for services.

15-65-114. Seller's permit — application to department — collection by short-term rental marketplace.

Compiler's Comments

2021 Amendment: Chapter 484 deleted former subsections that read: "(1) The owner or operator of a facility shall apply to the department of revenue for a registration number.

(2) The application must be made on a form provided by the department.

(3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate"; inserted (1) concerning requirement for a seller of accommodations to obtain a seller's permit in accordance with 15-68-401 before engaging in business within the state; and inserted (2) inserted concerning requirement for a short-term rental marketplace to register with the department of revenue and collect the tax imposed by this chapter as provided in 15-68-111. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

Administrative Rules

ARM 42.14.106 Registration and permit.

15-65-115. Failure to pay or file — penalty and interest — review — interest.

Compiler's Comments

2021 Amendment: Chapter 484 throughout section substituted references to the seller for references to the "owner or operator" or "owner or operator of a facility" and in (3)(a) near beginning of last sentence substituted "seller" for "taxpayer". Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

2005 Amendment: Chapter 594 in (3)(b) deleted former second sentence that read: "The tax is due and payable at the expiration of 30 days after the notice and demand were mailed" and in second sentence at beginning substituted "Penalty and interest must be added to" for "Interest on" and after "assessment" deleted "must be computed"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

1999 Amendment: Chapter 427 in (1) at end substituted "a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206" for "a penalty of 10% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty"; in (2) at end substituted "penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206" for "a penalty of 10% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty"; in (3)(b) increased delinquency from 10 days to 30 days and at end substituted reference to 15-1-216 for reference to a 1% a month interest rate; deleted former (4) that read: "(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1991 Amendments: Chapter 676 in (1) and (2) increased penalty from 2% to 10%; and inserted (3)(b) providing for notice, date of payment, interest, and interest on delinquency. Amendment effective April 27, 1991.

Chapter 811 in (3) inserted last two sentences relating to review of assessment under 15-1-211.

Coordination: Section 19, Ch. 676, L. 1991, was a coordination section that provided that if Senate Bill No. 445 was passed and approved and if it included a section adopting a uniform tax appeal procedure, the bracketed language that constituted subsection (3)(b) of this section was void. Senate Bill No. 445 was passed and approved as Ch. 811, L. 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Administrative Rules

ARM 42.14.203 Collecting, reporting, and paying the tax.

ARM 42.14.204 Penalties and interest.

15-65-116. Credit for overpayment — interest on overpayment.

Compiler's Comments

1999 Amendment: Chapter 427 in (2) substituted "unpaid taxes as provided in 15-1-216" for "deficiency assessments"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

15-65-121. Distribution of tax proceeds.

Compiler's Comments

2023 Amendment — Composite Section — Version Not Codified: Section 1, Ch. 67, L. 2023, in (1) near middle of last sentence in temporary version and second to last sentence in version effective July 1, 2027, substituted "federal funds to the department of administration for return to the federal government" for "federal funds to the agency that made the in-state lodging expenditure". Amendment effective October 1, 2023.

Section 2, Ch. 699, L. 2023, in (2) near middle after "commerce for" substituted "the purposes designated under 90-1-122" for "tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials"; and in (2)(e) after "commerce" inserted "as provided in 90-1-122". Amendment effective October 1, 2023.

(Temporary Version) Section 3, Ch. 758, L. 2023, in (2) near middle inserted provision regarding deposit in account for emergency lodging; in (2)(e) at beginning substituted "60.2%" for "60.3%"; inserted (2)(f) regarding account for emergency lodging; in (5) inserted last sentence regarding emergency lodging appropriation; and made minor changes in style. Amendment effective July 1, 2023, and terminates June 30, 2027.

(Temporary version) Section 13, Ch. 763, L. 2023, in (2)(e) inserted provision regarding renovation of Miles City train depot. Amendment effective May 11, 2023, and terminates June 30, 2025.

The amendment made by sec. 3, Ch. 758, L. 2023, to the version effective July 1, 2027, was not codified because sec. 10, Ch. 758, L. 2023, terminated the amendments June 30, 2027.

Applicability: Section 9, Ch. 758, L. 2023, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after [the effective date of this act] and to the use of accommodations or campgrounds on or after [the effective date of this act], even if the sale occurred before [the effective date of this act]." Effective July 1, 2023.

Severability: Section 29, Ch. 763, L. 2023, was a severability clause.

2021 Amendment: Chapter 563 in (1) after "provided in subsections (2)(a) through" substituted "(2)(i)" for "(2)(h)" and deleted former final sentence that read: "The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004"; in (2)(e) substituted "60.3%" for "63%"; inserted (2)(i) regarding the Montana heritage preservation and development account; in (6) after "pursuant to subsection (2)(h)" inserted "and to the Montana heritage preservation and development account pursuant to subsection (2)(i)"; and made minor changes in style. Amendment effective July 1, 2021, and terminates June 30, 2027.

2019 Amendments — Composite Section: Chapter 356 inserted (2)(d) concerning an allocation to the invasive species state special revenue account; in (2)(e) substituted "63%" for "64.4%"; in (6) after "transferred to" inserted "the invasive species state special revenue account pursuant to subsection (2)(d) and to"; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 459 in (2) in last sentence after "university system" inserted "to the state-tribal economic development commission"; in (3) inserted reference to 15-68-820(5)(b)(iii); and made minor changes in style. Amendment effective January 1, 2020.

Applicability: Section 17, Ch. 459, L. 2019, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after January 1, 2020, and to the use of accommodations or use of campgrounds on or after January 1, 2020, even if the sale occurred before January 1, 2020."

2017 Amendment: Chapter 405 in (2)(d) substituted "64.4%" for "64.9%"; inserted (2)(f) concerning an allocation for use by the state-tribal economic development commission; and made minor changes in style. Amendment effective July 1, 2017.

2013 Amendment: Chapter 32 in (1) substituted fourth sentence regarding distribution of funds for "The department shall deposit 30% of the amount deducted in the state general fund and distribute the portion of the amount deducted that was paid with federal funds to the department of administration for return to the federal government as provided in 17-3-106(2)"; and in (2) in first sentence substituted "distributed to agencies that paid the tax with federal funds" for "distributed to the department of administration". Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 319 in (1) in fourth sentence substituted current language requiring 30% of tax to be deposited to general fund for former language that read: "The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies"; in (2) near beginning after "appropriation" substituted "deposited in the state general fund, distributed to the department of administration, or" for "deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or". Amendment effective July 1, 2011.

Chapter 358 in (2) near middle after "development account" deleted "is statutorily appropriated, as provided in 17-7-502, and" and near end inserted reference to historical interpretation state special revenue account; in (2)(d) at beginning substituted "64.9%" for "67.5%"; inserted (2)(f) regarding historical interpretation state special revenue account; inserted (5) and (6) regarding appropriation of tax proceeds; and made minor changes in style. Amendment effective July 1, 2011.

Applicability: Section 4, Ch. 319, L. 2011, provided: "[Sections 1 and 2] [amendments to 15-65-121 and 15-65-131] apply to expenditures by state agencies for in-state lodging that are paid after June 30, 2011."

2007 Amendment: Chapter 475 in (1) in first and third sentences after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Termination Provision Repealed: Section 1, Ch. 113, L. 2007, repealed sec. 3, Ch. 469, L. 2001, which terminated the 2001 amendments to this section on July 1, 2007. Repealer effective March 30, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: (Temporary version) Chapter 130 in (1) deleted former sixth sentence that read: "For the fiscal year ending June 30, 2003, the amount of $1.7 million must be deposited in the state general fund"; in (1)(d) after "commerce" deleted "except as provided in section 1, Chapter 11, Special Laws of August 2002"; and made minor changes in style. Amendment effective October 1, 2005.

2002 Amendments — Composite Section: (Temporary version) Chapter 11 in (1)(d) inserted "except as provided in section 1, Chapter 11, Special Laws of August 2002". Amendment effective August 16, 2002.

(Temporary version) Chapter 13 in (1) near middle inserted "For the fiscal year ending June 30, 2003, the amount of $1.7 million must be deposited in the state general fund." Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendments — Composite Section: Chapter 195 in (1)(e)(ii) in three places after "consolidated city-county" inserted "resort area, or resort area district"; in (2) near beginning and near end after "consolidated city-county" inserted "resort area, or resort area district"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 469 in (1) inserted fifth sentence requiring deposit of $400,000 each year in the Montana heritage preservation and development account and near middle of sixth sentence after "state agencies" inserted "or deposited in the heritage preservation and development account"; and made minor changes in style. Amendment effective April 30, 2001, and terminates July 1, 2007.

1999 Amendment: (Temporary version) Chapter 490 in (1) in fourth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund" and in seventh sentence inserted "fund or funds from which in-state lodging expenditures were paid by state agencies or in the" and after "development account" deleted "or the general fund"; and made minor changes in style. Amendment effective July 1, 1999.

(Version effective July 1, 2001) In (1) in fourth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund" and in fifth sentence substituted "fund or funds from which in-state lodging expenditures were paid by state agencies" for "general fund"; and made minor changes in style.

Effective Date — Applicability: Section 3, Ch. 490, L. 1991, provided: "[This act] is effective July 1, 1999, and applies to in-state lodging expenditures incurred by state agencies after June 30, 1999."

1997 Amendment: Chapter 469 in (1) inserted fifth sentence concerning allocation to heritage preservation and development account, inserted sixth sentence concerning allocation to Fort Peck Interpretive Center, and in seventh sentence inserted "Montana heritage preservation and development account or the". Amendment effective May 1, 1997, and terminates July 1, 2001.

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

Termination: Section 23(3), Ch. 469, L. 1997, provided: "[Section 11] [15-65-121] terminates July 1, 2001."

1995 Amendments: Chapter 18 in (1), in first and third sentences after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 442 in (1)(d) deleted introductory clause that read: "the balance of the proceeds as follows" and changed allocation from 75% of remainder to 67.5% of total; in (1)(e)(i) and (1)(e)(ii) changed allocation from 25% of balance to 22.5% of total; deleted (4) that read: "(4) The department of commerce may use general fund loans for efficient implementation of this section"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Correction: In (1)(c), the Code Commissioner deleted a reference to 23-1-131 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

1993 Amendments: Chapter 455 in first and third sentences of (1) inserted "in accordance with the provisions of 15-1-501(6)". Amendment effective April 21, 1993.

Chapter 574 in (1), near middle, substituted "subsections (1)(a) through (1)(d)" for "subsections (1)(a) through (1)(c)" and near end inserted "and to the department of fish, wildlife, and parks"; inserted (1)(c) giving that Department 6.5% for maintenance of state park facilities; in (1)(d) substituted "subsection (1)(d)(iii)" for "subsection (1)(c)(iii)"; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 11, Sp. L. July 1992, in (1), at beginning, inserted exception clause; and inserted (5) transferring $220,000 from the accommodations tax account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

1989 Amendments: Chapter 83 in (2) substituted "regional nonprofit tourism corporation in the region" for "tourism region".

Chapter 647 in (1) inserted third and fourth sentences relating to determining and deducting 4% of state agency in-state lodging expenses for deposit in the state general fund and in fifth sentence inserted "or deposited in the general fund". Amendment effective July 1, 1989.

1987 Amendment: In (1) substituted second sentence and introductory portion of third sentence relating to allocation of tax proceeds.

Termination of Statutory Appropriation: Section 15, Ch. 607, L. 1987, terminated the statutory appropriation contained in the temporary version and amended (1) of the version effective July 1, 1989, as indicated in the compiler's comment.

15-65-122. Qualification of nonprofit entities for receipt of funds — limitation on administrative costs.

Compiler's Comments

2001 Amendment: Chapter 195 in (1) near end after "consolidated city-counties" inserted "resort areas, and resort area districts"; and made minor changes in style. Amendment effective July 1, 2001.

15-65-131. State agencies to account for in-state lodging expenditures.

Compiler's Comments

2013 Amendment: Chapter 32 at end substituted "agency that made the in-state lodging expenditure" for "federal government as provided in 15-65-121". Amendment effective October 1, 2013.

2011 Amendment: Chapter 319 in first sentence after "make" substituted "a deposit" for "an allocation", after "15-65-111" substituted "in the state general fund and distribute the portion of taxes paid with federal funds to the federal government" for "to the appropriate fund or funds", and deleted former second sentence that read: "Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state general fund for the deposit made pursuant to 15-65-121." Amendment effective July 1, 2011.

Applicability: Section 4, Ch. 319, L. 2011, provided: "[Sections 1 and 2] [amendments to 15-65-121 and 15-65-131] apply to expenditures by state agencies for in-state lodging that are paid after June 30, 2011."

1999 Amendment: Chapter 490 in first sentence near end substituted "appropriate fund or funds" for "general fund" and inserted second sentence regarding reimbursement of state general fund; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 3, Ch. 490, L. 1991, provided: "[This act] is effective July 1, 1999, and applies to in-state lodging expenditures incurred by state agencies after June 30, 1999."

Effective Date: Section 5, Ch. 647, L. 1989, provided that this section is effective July 1, 1989.

CHAPTER 66
HOSPITAL FACILITY UTILIZATION FEE

Chapter Compiler's Comments

Extension of Termination Date: Section 4, Ch. 606, L. 2005, amended sec. 20, Ch. 390, L. 2003, by extending the termination date imposed by Ch. 390 to June 30, 2007.

Severability: Section 17, Ch. 390, L. 2003, was a severability clause.

Effective Date: Section 19, Ch. 390, L. 2003, provided: "[This act] is effective July 1, 2003."

Termination: Section 20, Ch. 390, L. 2003, provided: "[This act] terminates June 30, 2005."

Part 1
General Provisions

15-66-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 602, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 415 substituted current definition of hospital for former definition that read: "(a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5, and includes a critical access hospital.

(b) The term does not include the Montana state hospital"; inserted definition of hospital outpatient revenue; in definition of report inserted "and hospital outpatient revenue"; in definition of utilization fee substituted "fees" for "fee" and after "paid" deleted "for each inpatient bed day"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

2007 Amendment: Chapter 517 in definition of inpatient bed day in fifth sentence at end substituted "section 20.1 of chapter 3 of the centers for medicare and medicaid services publication 100-02, the Medicare Benefit Policy Manual" for "section 216 of the centers for medicaid and medicare services publication 10, the Hospital Manual". Amendment effective May 18, 2007, and terminates June 30, 2009.

Extension of Termination Date: Sections 4 through 6, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and secs. 4 and 7, Ch. 606, L. 2005, by extending the termination date for this section to June 30, 2009.

2005 Amendment: Chapter 606 in definition of hospital at end inserted "and includes a critical access hospital"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

15-66-102. Utilization fees — inpatient bed days — hospital outpatient revenue.

Compiler's Comments

2019 Amendment: Chapter 415 in (1) substituted "$70" for "$50"; inserted (2) concerning a utilization fee in an amount of hospital outpatient revenue; in (3)(a) at beginning inserted exception clause; inserted (3)(b) concerning the HELP Act special revenue account; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2011 Amendment: Chapter 19 in (1) after "fee" deleted: "(a) in the amount of $27.70 for each inpatient bed day between January 1, 2006, and June 30, 2007;

(b) in the amount of $47 for each inpatient bed day between July 1, 2007, and December 31, 2007;

(c) in the amount of $43 for each inpatient bed day between January 1, 2008, and December 31, 2008;

(d) in the amount of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and

(e) beginning January 1, 2010"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 489 deleted former (1)(a) through (1)(c) that read: "(a) in the amount of $27.70 for each inpatient bed day between January 1, 2006, and June 30, 2007;

(b) in the amount of $47 for each inpatient bed day between July 1, 2007, and December 31, 2007;

(c) in the amount of $43 for each inpatient bed day between January 1, 2008, and December 31, 2008"; in (2) at beginning inserted "Subject to subsection (3)"; inserted (3) specifying amounts to be deposited in state general fund for fiscal years 2009, 2010, and 2011; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Contingent Voidness: Section 79, Ch. 489, L. 2009, provided: "(1) If the federal government refuses to participate in or denies approval of any state plan amendment related to [section 11] [15-66-102] for medicaid payments to hospitals, then [section 11] is void.

(2) The department of public health and human services shall notify the code commissioner of the occurrence of any determination made pursuant to subsection (1) and the date of the occurrence." Pursuant to sec. 82, Ch. 489, L. 2009, the amendments to this section contained in [section 11] terminated June 30, 2011, so this contingent voidness provision is inoperative.

2007 Amendment — Coordination: Section 29, Ch. 475, L. 2007, a coordination section, in (1)(a) increased utilization fee from $19.43 to $27.70 and substituted "2006" for "2004" and "2007" for "2005"; in (1)(b) increased utilization fee from $29.75 to $47 and in two places substituted "2007" for "2005"; in (1)(c) increased utilization fee from $27.70 to $43 and in two places substituted "2008" for "2006"; inserted (1)(d) establishing a utilization fee of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; in (1)(e) substituted "beginning January 1, 2010, in the amount of $50 for each inpatient bed day" for "after January 1, 2007, in an amount determined by rule as provided in subsection (2)"; deleted former (2) that read: "(2) Prior to each calendar year that will be subject to the fee, the department by rule shall determine the amount of the fee, not to exceed $50, based upon:

(a) an estimate of the unpaid medicaid hospital costs, total inpatient days, and the federal medical assistance percentages;

(b) an estimate of any federal limit on federal financial participation for hospital services; and

(c) an estimate of federal disproportionate share funds not matched by state general funds"; in (2) near beginning after "must" inserted "in accordance with the provisions of 17-2-124"; deleted former (2)(b) that read: "(b) A hospital may not place a fee created in this chapter on a patient's bill"; and made minor changes in style. Amendment effective May 8, 2007.

The amendments to this section made by sec. 12, Ch. 475, L. 2007, and by sec. 2, Ch. 517, L. 2007, were rendered void by sec. 29, Ch. 475, L. 2007, a coordination section.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

Extension of Termination Date: Sections 4 through 6, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and secs. 4 and 7, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

2005 Amendment: Chapter 606 deleted former (1)(a) that read: "(a) $32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003"; inserted (1)(b) establishing the fee for each inpatient bed day between July 1, 2005, and December 31, 2005; inserted (1)(c) establishing the fee for each inpatient bed day between January 1, 2006, and December 31, 2006; inserted (1)(d) providing that the fee be set by rule after January 1, 2007; inserted (2) requiring that the department determine the fee by rule prior to each calendar year; in (3)(a) near end after "revenue" substituted "account" for "fund"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Cessation on Collection and Expenditure: Section 5, Ch. 606, L. 2005, provided: "The collection of the utilization fee under 15-66-102 and 15-66-201 and related expenditures of the revenue authorized in House Bill No. 2 must cease if a court issues a final order that the state expenditure limit contained in 17-8-106 has been exceeded. If expenditures of the revenue authorized in House Bill No. 2 cease, any collected but unexpended utilization fees must be returned to the hospital."

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

15-66-103. Relation to other taxes and fees.

Compiler's Comments

2019 Amendment: Chapter 415 substituted "utilization fees" for "utilization fee"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-104. Rulemaking.

Compiler's Comments

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

Part 2

Collection of Fee

15-66-201. Reporting and collection of fees.

Compiler's Comments

2019 Amendment: Chapter 415 in (1) in first sentence near beginning substituted "March 31" for "January 31", near middle after "bed days" inserted "and of hospital outpatient revenue", and in last sentence substituted "fees" for "fee"; and in (2) after "state" inserted "and subject to the provisions of 15-66-102". Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

2007 Amendment: Chapter 517 deleted former (1) that read: "(1) On or before January 31, 2006, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during each of the 6-month periods beginning January 1, 2005, and ending June 30, 2005, and beginning July 1, 2005, and ending December 31, 2005. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the appropriate fee required to be paid under 15-66-102"; in (1) at beginning deleted "Except as provided in subsection (1)"; and made minor changes in style. Amendment effective May 18, 2007, and terminates June 30, 2009.

Extension of Termination Date: Sections 4 through 6, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and secs. 4 and 7, Ch. 606, L. 2005, by extending the termination date for this section to June 30, 2009.

2005 Amendment: Chapter 606 in (1) near beginning of first sentence after "January 31" substituted "2006" for "2004" and near middle after "during" substituted "each of the 6-month periods beginning January 1, 2005, and ending June 30, 2005, and beginning July 1, 2005, and ending December 31, 2005" for "the 6-month period beginning July 1, 2003, and ending December 31, 2003" and in second sentence after "equal to the" inserted "appropriate" and at end after "15-66-102" deleted "(1)(a)"; deleted former (1)(b) that read: "(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003"; in (2)(a) at end after "15-66-102" deleted "(1)(b)"; in (2)(b) at beginning deleted "Except as provided in subsection (1)"; and made minor changes in style. Amendment effective May 6, 2005, and terminates June 30, 2007.

Cessation on Collection and Expenditure: Section 5, Ch. 606, L. 2005, provided: "The collection of the utilization fee under 15-66-102 and 15-66-201 and related expenditures of the revenue authorized in House Bill No. 2 must cease if a court issues a final order that the state expenditure limit contained in 17-8-106 has been exceeded. If expenditures of the revenue authorized in House Bill No. 2 cease, any collected but unexpended utilization fees must be returned to the hospital."

Effective Date: Section 6, Ch. 606, L. 2005, provided: "[This act] is effective on passage and approval." Chapter 606 was passed by the legislature and delivered to the governor on April 25, 2005. Pursuant to 5-4-307(1), the bill became law on May 6, 2005, without being returned by the governor within 10 days after delivery.

15-66-202. Audit — records.

Compiler's Comments

2019 Amendment: Chapter 415 in (1) at end substituted "fees have been collected" for "fee has been collected"; and in (3) in first sentence after "facility" inserted "and the hospital outpatient revenue" and at end substituted "fees" for "fee". Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-203. Periods of limitation.

Compiler's Comments

2019 Amendment: Chapter 415 in (1) in last sentence in two places substituted "fees" for "fee". Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-204. Penalty and interest for delinquent fees — waiver.

Compiler's Comments

2019 Amendment: Chapter 415 in two places substituted "fees" for "fee"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-205. Department authority to request information.

Compiler's Comments

2019 Amendment: Chapter 415 near middle of introductory clause after "use" inserted "or hospital outpatient revenue"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

2005 Amendment: Chapter 594 in (2) in first sentence at end after "hospital" deleted "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand" and in second sentence at beginning before "any" inserted "Penalty and interest must be added to" and after "assessment" substituted "as provided in 15-1-216" for "bears interest"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-66-207. Closing agreements.

Compiler's Comments

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-208. Credit for overpayment — interest on overpayment.

Compiler's Comments

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

15-66-209. Warrant for distraint.

Compiler's Comments

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

CHAPTER 67

INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED — UTILIZATION FEE

Chapter Compiler's Comments

Severability: Section 19, Ch. 531, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 531, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 29, 2003.

Retroactive Applicability: Section 21, Ch. 531, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

Part 1
General Provisions

15-67-101. Definitions.

Compiler's Comments

2013 Amendment: Chapter 68 in (3) substituted "intellectually disabled" for "mentally retarded". Amendment effective October 1, 2013.

2005 Amendment: Chapter 377 in definition of intermediate care facility at end after "50-5-238" inserted "or an intermediate care facility for the mentally retarded that is in compliance with the federal standards provided in 42 CFR, part 483, subpart I, for medicaid conditions of participation". Amendment effective April 25, 2005.

Retroactive Applicability: Section 4, Ch. 377, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

15-67-102. Utilization fee for resident bed days.

Compiler's Comments

2007 Amendment: Chapter 475 in (3) after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 377 in (2) near beginning increased utilization fee from 5% to 6%. Amendment effective April 25, 2005.

Retroactive Applicability: Section 4, Ch. 377, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004."

Part 2
Collection of Fee

15-67-206. Deficiency assessment — penalty and interest — hearing.

Compiler's Comments

2005 Amendment: Chapter 594 in (2) in first sentence at end after "facility" deleted "and the fees become due and payable at the expiration of 10 days from the date of the notice and demand" and in second sentence at beginning inserted reference to penalty and after "assessment" inserted "and". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

CHAPTER 68
SALES TAX

Chapter Compiler's Comments

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Effective Date: Section 61(1), Ch. 544, L. 2003, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval." Approved April 30, 2003.

Applicability: Section 62(1)(b) and (1)(c), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

[. . .]

(b) accommodation and campground charges under [section 3(1)(b) and (3)(a)(ii)] [15-68-102(1)(a) and (3)(a)(i)] made on or after June 1, 2003; and

(c) base rental charges for rental vehicles under [section 3(1)(c) and (3)(a)(iii)] [15-68-102(1)(b) and (3)(a)(ii)] made on or after July 1, 2003." In sec. 62(1)(b) and (1)(c), pursuant to sec. 138, Ch. 114, L. 2003, the code commissioner substituted "(1)(a)" for "(1)(b)", "(3)(a)(i)" for "(3)(a)(ii)", "(1)(b)" for "(1)(c)", and "(3)(a)(ii)" for "(3)(a)(iii)".

Chapter Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

Liability of Online Travel Companies for Payment of Sales Tax — Accrues From Date Lawsuit Filed: The Department of Revenue sought to have the defendants, online travel companies, remit and collect lodging facility use taxes and sales taxes on their fees. The District Court concluded that the defendants were not required to pay either tax. After the Department appealed, the defendants argued that if they were required to pay either tax their liability should accrue from the date of the decision by the Supreme Court. The Supreme Court ultimately concluded that the defendants should pay a sales tax on their fees and held that the liability to do so ran from the date the Department filed suit. Dept. of Revenue v. Priceline.com, Inc. 2015 MT 241, 380 Mont. 352, 354 P.3d 631.

Lodging Facility Use Tax and Sales Tax Inconsistent and Incompatible — Not to Be Construed In Pari Materia: The Department of Revenue sought to have defendants, online travel companies, remit and collect lodging facility use taxes and sales taxes on their fees. The District Court concluded that the travel companies were not required to pay either tax. On appeal, the defendants argued that the two taxes have the same scope and therefore needed to be construed in pari materia. The Supreme Court concluded that the two separate acts creating the taxes were enacted 16 years apart and taxed separate transactions. The Supreme Court held that the taxes were inconsistent and incompatible and that they did not need to be construed in pari materia. Dept. of Revenue v. Priceline.com, Inc., 2015 MT 241, 380 Mont. 352, 354 P.3d 631.

Tax of Online Travel Company Fees Required Under Plain Meaning of Sales Tax: The Department of Revenue sought to have the defendants, online travel companies, remit and collect sales taxes on their fees. The District Court concluded that the defendants were not required to pay sales tax. On appeal, the Supreme Court reversed, holding that the plain meaning of the sales tax provided a basis for taxing the fees. Dept. of Revenue v. Priceline.com, Inc., 2015 MT 241, 380 Mont. 352, 354 P.3d 631.

Chapter Law Review Articles

Montana (1959-1989) Political Evolution — Political Revolution, Schwinden, 43 Pub. Land & Resources L. Rev. 27 (2020).

Chapter Collateral References

Promoting Montana Through Lodging Taxes Used for Historic, Current Projects, Final Report of the Economic Affairs Interim Committee, Mont. Leg. Serv. Div. (2020).

Study of State and Local Tax Policy, Final Report of the Revenue Interim Committee, Mont. Leg. Serv. Div. (2020).

Part 1
Imposition of Tax

15-68-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 758, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2027.

Applicability: Section 9, Ch. 758, L. 2023, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after [the effective date of this act] and to the use of accommodations or campgrounds on or after [the effective date of this act], even if the sale occurred before [the effective date of this act]." Effective July 1, 2023.

2021 Amendment: Chapter 484 in definition of accommodation in (a) substituted "short-term rentals or individual sleeping rooms, suites, camping spaces, or other units offered for overnight lodging periods of less than 30 days to the general public for compensation" for "a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation", in (b) near beginning substituted "include units located in property" for "includes a facility" and at end inserted "vacation home, home, apartment, timeshare, room, or rooms rented by or on behalf of the owner or seller", in (c)(iii) at beginning inserted "a facility" and at end deleted former text that read "any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more", and inserted (c)(iv) concerning rooms or spaces offered separately to the public for nonlodging purposes; deleted former definition that read: "(a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university"; in definition of base rental change in (a)(ii) before "insurance" deleted "personal accident"; deleted former definition of lease, leasing or rental (see 2021 Session Law for former text); inserted definition of online hosting platform; deleted former definition that read: ""Permit" or "seller's permit" means a seller's permit as described in 15-68-401"; in definition of person after "limited liability partnership," inserted "online hosting platform"; in definition of purchaser in middle substituted "accommodations or a rental vehicle" for "personal property"; in definition of sale or selling near middle substituted "rental or use of accommodations or rental vehicles" for "transfer of property"; in definition of sales price in (a) substituted "the tax under Title 15, chapter 65, and this chapter and means the total amount paid by the purchaser in the form of consideration" for "sales tax and means the total amount or consideration" and after "services, for which" substituted "sales of accommodations, rental vehicles, or services are provided, sold" for "personal property or services are sold", in (a)(iii) at end deleted "other than delivery and installation charges", and deleted former (a)(vi) and (a)(vii) that read: "(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in", in (b) at end inserted "and the charge is not subject to subsection (12)(d)", deleted former (c), (d), and (e) (see 2021 Session Law for former text), inserted (c) concerning exceptions to the term, and inserted (d) concerning inclusion in the term of separate charges and fees unless specifically included; in definition of seller at end substituted "makes sales of accommodations or rental vehicles, including an online hosting platform" for "makes sales, leases, or rentals of personal property or services"; in definition of service in (a) at end of first sentence substituted "accommodations or rental vehicles" for "property" and at end of second sentence substituted "an online hosting platform" for "a person for its members or shareholders"; inserted definitions of short-term rental, short-term rental marketplace, and timeshare; deleted former definition that read ""Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business"; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

2005 Amendment: Chapter 542 in definition of motor vehicle after first "defined in" substituted "61-1-101" for "61-1-139", after second "defined in" substituted "61-1-101" for "61-1-105", after third "defined in" substituted "61-1-101" for "61-1-106", and after fourth "defined in" substituted "61-1-101" for "61-1-133". Amendment effective January 1, 2006.

Administrative Rules

ARM 42.14.303 Exempt lodging facilities.

ARM 42.14.1201 Rental vehicle sales subject to the tax.

Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

15-68-102. Imposition and rate of sales tax and use tax — exceptions.

Compiler's Comments

2019 Amendment: Chapter 459 in (1)(a) and (3)(a)(i) increased the tax rate on accommodations and campgrounds from 3% to 4%. Amendment effective January 1, 2020.

Applicability: Section 17, Ch. 459, L. 2019, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after January 1, 2020, and to the use of accommodations or use of campgrounds on or after January 1, 2020, even if the sale occurred before January 1, 2020."

Administrative Rules

ARM 42.14.202 Combined charge for services.

ARM 42.14.303 Exempt lodging facilities.

ARM 42.14.1201 Rental vehicle sales subject to the tax.

Case Notes

Lodging Facilities Use Tax and Sales Tax Distinguished — Treatment of Service Charges Different — Subsequent Legislative Action: The state imposed a lodging facilities use tax (use tax) pursuant to Title 15, ch. 65, and a sales tax that covers lodging (sales tax) pursuant to Title 15, ch. 68. Prior to legislative action in Ch. 484, L. 2021, the definitions for the two taxes were different. After an audit, the state determined that the petitioner ski resort owed use taxes, sales taxes, and interest for service fees and collected but forfeited deposits on lodging. On appeal, the Supreme Court affirmed, holding that the petitioner was not subject to the use tax on the service fees but was subject to the sales tax and that the petitioner was not subject to the use tax or the sales tax on the forfeited deposits. Boyne USA, Inc. v. Dept. of Revenue, 2021 MT 155, 404 Mont. 347, 490 P.3d 1240. Note: See changes to use tax made by Ch. 484, L. 2021.

15-68-111. Short-term rental marketplace registration — collection of tax.

Compiler's Comments

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Effective Date: This section is effective October 1, 2021.

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

Part 4
Permits and Certificates

15-68-401. Seller's permit.

Administrative Rules

ARM 42.14.106 Registration and permit.

ARM 42.14.1002 Registration and permit.

ARM 42.14.1003 Seasonal registration and permit.

15-68-402. Permit application — requirements — place of business — form.

Administrative Rules

ARM 42.14.106 Registration and permit.

ARM 42.14.1002 Registration and permit.

15-68-405. Revocation or suspension of permit — appeal.

Compiler's Comments

2021 Amendment: Chapter 142 in (4) near middle substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Part 5

Returns and Payment

15-68-501. Liability for payment of tax — security for retailer without place of business — penalty.

Administrative Rules

ARM 42.14.1201 Rental vehicle sales subject to the tax.
ARM 42.14.1202 Exempt rental vehicle charges.

15-68-502. Returns — payment — authority of department.

Compiler's Comments

2021 Purported Amendment: Although sec. 9, Ch. 484, L. 2021, purported to amend this section, the final version of the text remained unamended, except for nonsubstantive style changes. Amendment effective October 1, 2021.

Applicability: Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

Saving Clause: Section 13, Ch. 484, L. 2021, was a saving clause.

Administrative Rules

ARM 42.14.202 Combined charge for services.
ARM 42.14.203 Collecting, reporting, and paying the tax.
ARM 42.14.205 Application of tax payment.
ARM 42.14.1102 Quarterly returns and payments.
ARM 42.14.1103 Combined tax return.
ARM 42.14.1104 Failure to furnish requested information.
ARM 42.14.1105 Records required — audit.

15-68-510. Vendor allowance.

Compiler's Comments

2019 Amendment: Chapter 459 in (1) at end deleted "not to exceed $1,000 a quarter". Amendment effective January 1, 2020.

Applicability: Section 17, Ch. 459, L. 2019, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after January 1, 2020, and to the use of accommodations or use of campgrounds on or after January 1, 2020, even if the sale occurred before January 1, 2020."

Administrative Rules

ARM 42.14.205 Application of tax payment.

15-68-513. Examination of return — adjustments — penalty and interest — delivery of notices and demands.

Compiler's Comments

2005 Amendment: Chapter 594 in (2)(a) after "department" deleted "within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return"; inserted (2)(b) related to penalty and interest; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

Administrative Rules

ARM 42.14.203 Collecting, reporting, and paying the tax.
ARM 42.14.1102 Quarterly returns and payments.
ARM 42.14.1105 Records required — audit.

15-68-514. Penalties and interest for violation.

Administrative Rules

ARM 42.14.204 Penalties and interest.
ARM 42.14.1106 Penalties and interest.

15-68-520. Limitations.

Administrative Rules

ARM 42.14.1104 Failure to furnish requested information.

Part 8
General Administration

15-68-805. Revocation of corporate license — appeal.

Compiler's Comments

2021 Amendment: Chapter 142 in (4) at end substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

15-68-815. Information — confidentiality — agreements with another state.

Compiler's Comments

2013 Amendment: Chapter 268 in (1)(b) at end substituted "corporate income tax information" for "corporation license information". Amendment effective October 1, 2013.

Saving Clause: Section 39, Ch. 268, L. 2013, was a saving clause.

Applicability: Section 40, Ch. 268, L. 2013, provided: "[This act] applies to tax years beginning after December 31, 2013."

Administrative Rules

ARM 42.2.325 Access to information.

15-68-820. Sales tax and use tax proceeds.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 67, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 8 in (3) at beginning substituted "December 31" for "December 30". Amendment effective October 1, 2021.

2019 Amendment — Coordination: Section 14, Ch. 459, L. 2019, a coordination section, in (1) near beginning substituted "subsections (2) through (6)" for "subsection (2)"; and inserted (3) through (6) regarding distribution and allocation of revenue collected on the sale or use of accommodations and campgrounds. Amendment effective January 1, 2020.

The amendments to this section made by sec. 11, Ch. 459, L. 2019, were rendered void by sec. 14, Ch. 459, L. 2019, a coordination section.

Applicability: Section 17, Ch. 459, L. 2019, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after January 1, 2020, and to the use of accommodations or use of campgrounds on or after January 1, 2020, even if the sale occurred before January 1, 2020."

2015 Amendment: Chapter 430 in (1) at beginning inserted exception clause; inserted (2) regarding funds deposited in the senior citizen and persons with disabilities transportation services account; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 7, Ch. 430, L. 2015, provided: "[This act] applies to rental car sales and use taxes levied after December 31, 2015."

2007 Amendment: Chapter 475 near middle after "must" inserted "in accordance with the provisions of 17-2-124"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

CHAPTER 70
GASOLINE AND VEHICLE FUELS TAXES

Chapter Compiler's Comments

Transfer of Functions: Sections 12 through 14, Ch. 512, L. 1991, provided: "Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation [of] the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. Governor to implement. The governor shall implement the provisions of [sections 1 through 14] by executive order."

Section Not Codified: Section 84-723, R.C.M. 1947, which transferred the duty of collecting the gasoline distributors' and dealers' license tax from the State Treasurer to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991), was not codified in the MCA. This clause has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 79, L. 1927, as amended by sec. 13, Ch. 516, L. 1973, and sec. 7, Ch. 286, L. 1977.

Powers of State Board of Equalization Transferred: Chapter 405, L. 1973, transferred the powers and duties of the State Board of Equalization to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991) and the State Tax Appeal Board (now Montana Tax Appeal Board). In Dept. of Revenue v. Burlington N., Inc., 169 M 202, 545 P2d 1083 (1976), the Montana Supreme Court held that State Board of Equalization's administrative functions were transferred to the Department of Revenue (transferred to Department of Transportation by Ch. 512, L. 1991), while the appellate functions were transferred to the State Tax Appeal Board (now Montana Tax Appeal Board).

Chapter Administrative Rules

Title 18, chapter 15, ARM Motor fuels tax.
Title 18, chapter 15, subchapter 1, ARM Motor fuels tax — administration.
Title 18, chapter 15, subchapter 2, ARM Distributor's license tax.
Title 18, chapter 15, subchapter 3, ARM Exemptions from distributor's license tax.
Title 18, chapter 15, subchapter 4, ARM Refunds of gasoline and special fuel tax.
Title 18, chapter 15, subchapter 5, ARM Dyed fuel.
Title 18, chapter 15, subchapter 6, ARM International fuel tax agreement.
Title 18, chapter 15, subchapter 7, ARM Ethanol tax incentive.
Title 18, chapter 15, subchapter 8, ARM Alternative fuels.

Part 1
General Provisions

15-70-101. Disposition of funds.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 123, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 267 in (1) at beginning deleted "All taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account", in first sentence after "the department" deleted "of transportation", and substituted "highway restricted account provided for in 15-70-126" for "state special revenue fund"; in (2) near beginning substituted "$16,816,000" for "$16,766,000", after "under this chapter" inserted "and deposited in the highway restricted account in 15-70-126", near middle substituted "distributed" for "allocated", and at end inserted "as follows"; in (2)(a) substituted "$150,000" for "$100,000"; and made minor changes in style. Amendment effective July 1, 2017.

2013 Amendment: Chapter 170 in (5) substituted "the amounts provided in 7-5-2301 and 7-5-4302" for "$25,000". Amendment effective July 1, 2013.

2007 Amendments — Composite Section: Chapter 22 in (4) inserted third sentence allowing a town or third-class city to place all or part of certain gas tax funds in a restricted asset account within the gas tax apportionment fund until an expenditure is needed. Amendment effective July 1, 2007.

Chapter 475 in (1) in first and third sentences after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2003 Amendment: Chapter 594 in (5) at end after "excess of" substituted "$25,000" for "$4,000". Amendment effective May 9, 2003.

2001 Amendment: Chapter 158 in (2)(a) increased amount from $54,000 to $100,000; in (2)(b) decreased amount from $6,323,000 to $6,306,000; in (2)(c) decreased amount from $10,389,000 to $10,360,000; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) inserted second sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

1999 Amendment: Chapter 415 in middle of second sentence in (3)(a) after "former city" inserted "unless revised boundaries based on the location of the urban area have been approved by the department of transportation". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 415, L. 1999, provided: "WHEREAS, gasoline and fuel tax revenue is allocated among cities, towns, and counties pursuant to 15-70-101, MCA, based on a formula that distinguishes between rural and urban areas; and

WHEREAS, the boundaries between urban and rural areas change over time; and

WHEREAS, the boundary between the urban area and the rural area for a consolidated city-county government should be revised to reflect changes in settlement patterns over time."

1997 Amendment: Chapter 239 throughout section, in seven places, inserted "and consolidated city-county governments"; in (2)(a) substituted "local" for "rural"; in (2)(a)(i) and (2)(c)(ii), in two places, substituted "national highway system" for "federal aid interstate system" and in two places, before "primary system", deleted "federal aid"; inserted (3) regarding allocation of funds to consolidated city-county governments; in (4), near end of first sentence after "that are part of the", deleted "federal aid"; in (6), at end, substituted "annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census" for "by the last preceding official federal census"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 in (1), in two places after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 509 in (1) and (2), after "chapter", deleted "except those collected by a justice's court"; near beginning, after "taxes", deleted "interest and penalties" and after "placed in" inserted "a highway revenue account in"; in (2), near beginning before "collected", substituted "taxes" for "funds"; in (8), at end, deleted "only"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 10 in (1), before "must be allocated", inserted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and". Amendment effective December 20, 1993.

Retroactive Applicability: Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

1993 Amendments: Chapter 455 in first sentence of introductory clause, after "must", substituted "in accordance with the provisions of 15-1-501(6), be placed" for "be turned over promptly to the state treasurer, who shall place the money" and in second sentence, after "must", inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 605 in (1), at beginning, substituted "$16,766,000" for "$14,000,000" and near beginning, after "justice's court", deleted "is statutorily appropriated, as provided in 17-7-502, to the department of transportation and"; and in (1)(c), at beginning, substituted "$10,389,000" for "$7,623,000". Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendments: Chapter 82 deleted former (3) that read: "(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements"; and made minor changes in style. Amendment effective March 18, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1987 Amendments: Chapter 292, in (1), at end of introductory clause, changed reference to reflect inserted material; inserted (1)(a) relating to rural technical assistance transportation program; in (1)(b) substituted "$6,323,000" for "$6,350,000"; and in (1)(c) substituted "$7,623,000" for "$7,650,000".

Chapter 557 near beginning of first sentence of introduction and near beginning of (1) inserted "except those collected by a justice's court".

1985 Amendments: Chapter 257 at end of (2) after "there to", inserted remainder of subsection relating to expenditures by towns or third-class cities; and at beginning of (7) inserted exception clause.

Chapter 703 near beginning of (1) after "chapter", inserted "is statutorily appropriated, as provided in 17-7-502, to the department of highways and".

1983 Amendments: Chapter 238, in introductory clause, before "funds hereinbelow allocated" substituted "Those" for "except those"; after "counties" deleted "which funds"; near end of introductory clause after "paid by the" substituted "department of highways from the earmarked revenue fund" for "state treasurer directly"; and in (6) after "department of highways" deleted "and state treasurer".

Chapter 277, in introduction, substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 624, in introductory portion, inserted "special" before "revenue fund"; in (1) at beginning changed $6,500,000 to $14,000,000; in (1)(a) at beginning changed $2,950,000 to $6,350,000; in (1)(b) changed $3,550,000 to $7,650,000; and inserted (8) relating to use of funds for construction and maintenance programs.

Effective Date: Section 6, Ch. 632, L. 1979, provided: "Sections 1 and 4 are effective for fiscal years 1980 and 1981 only." The reference to sec. 4 is apparently an error. The correct reference is apparently a reference to sec. 5, Ch. 632.

Purported 1979 Amendment: Although sec. 4, Ch. 632, L. 1979, purports to amend this code section, all amendments were removed from sec. 4 during the legislative process and no actual amendment was made. If normal procedure had been followed, sec. 4 would have been stricken in its entirety from the bill.

Coordination: Section 7, Ch. 473, L. 1975, provided: "If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1 [15-70-321, now repealed]." House Bill No. 198 was enacted and is 15-70-101.

Severability: Section 4, Ch. 6, Ex. L. 1967, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4, Ch. 355, L. 1969, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2, Ch. 384, L. 1971, read: "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Case Notes

Local Government's Right to Do Work or Contract It Out: This section's provision that funds allocated to local governments shall be disbursed to the lowest bidder when the contract for construction or repair is above $4,000 (2003 amendment increased amount to $25,000) means either that all work above $4,000 (2003 amendment increased amount to $25,000) must be contracted out by bid or that the local government may do the work itself or contract it out by bid. The court construed the provision to mean the latter. Numerous other statutes relating to construction and repair of roads authorize the local government to do the work itself. It would not be reasonable to assume that only construction and repair funded by gas tax dollars must be contracted out. Attempts to require this by legislation in 1979 and 1985 failed, and the failure is significant. Finally, the entities administering that provision have for 12 years interpreted it to mean that a local government may do the work itself and must follow the provision only if the work is contracted out. Mont. Contractors' Ass'n, Inc. v. Dept. of Highways, 220 M 392, 715 P2d 1056, 43 St. Rep. 470 (1986).

Funds From Sources Other Than Gasoline Tax Used for Nonhighway Purposes: Prohibition against expenditure of gasoline tax revenues for nonhighway purposes has no application to street funds derived from other sources; thus proceeds of levy under another statute could be committed to finance proportionate share of construction costs of city shop complex to be used by various city departments. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Effect of Appropriation: The appropriation by L. 1947, p. 761, from the gasoline drawback fund "as much as may be necessary to comply with the provisions of the law" was likewise an appropriation of the 1 cent per gallon transferred to the aviation fund under the provisions of 67-1-301. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948), overruled in part in Bd. of Regents v. Judge, 168 M 433, 543 P2d 1323 (1975).

Use of Funds for Erection of Highway Building: Under the implied powers of the Highway Commission (now Transportation Commission) considered necessary to render the granted powers efficacious and the performance of its duties effectual, the erection of the building is a proper function in the administration of the highway program, providing expenditures therefor do not exceed 8% of the Commission's available funds. Guillot v. Highway Comm'n, 102 M 149, 56 P2d 1072 (1936).

Use of Funds Collected Under Prior Act: The fact that a road was a part of the federal forest road did not deprive the Highway Commission (now Transportation Commission) of authority of expending any portion of the gasoline license tax funds derived under a prior act, in matching funds provided by the Federal Aid Act. State ex rel. Mineral County v. Highway Comm'n, 82 M 63, 265 P 1 (1928).

Attorney General's Opinions

Construction of Streets With Gas Tax Revenues — Subject to General Debt Limitation: If a city contracts for street construction work to be paid exclusively from gasoline tax revenue received from the state, the indebtedness is considered part of the city's general debt limitation under 7-7-4201 unless the conditions of some specific exception are otherwise met. 42 A.G. Op. 120 (1988).

Municipal Construction of Storm Sewers With Gas Tax Revenues Allowed — Sinking Fund for General Obligation Bonds Allowed: A city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city streets for removal of runoff water. The city may also place the money allocated in a sinking fund used to pay general obligation bonds sold to finance construction of those sewers, as the only statutory restriction on the use of the funds is that the funds must be used exclusively for city streets. Nor do the statutes governing municipal financing prohibit the use of such money in a sinking fund for general obligation bonds. 40 A.G. Op. 19 (1983).

15-70-102. Allocation of funds — participation in railroad grade crossing protection.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 133, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 299 in (1) in first sentence near end substituted "the national, primary, or urban highway systems, as defined in 60-1-103" for "the interstate, primary, or urban systems"; in (2) in first sentence near end substituted "commission-designated highway systems, as defined in 60-1-103" for "federal-aid roads"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 267 in (1) in first sentence substituted "the highway restricted account provided for in 15-70-126" for "the state special revenue fund, highway revenue account", and in second sentence at end substituted "allocation" for "fund"; and in (2) near middle before "account" inserted "highway restricted". Amendment effective July 1, 2017.

1995 Amendment: Chapter 509 in (1), at beginning, substituted "The amount determined necessary" for "The sum of $100,000", after "fund" substituted "highway revenue account" for "state highway account", and after "account" substituted "for each fiscal year for expenditures and commitments made" for "for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at $100,000 at the beginning of each fiscal year thereafter"; in (2), near beginning of first sentence, substituted "this section is" for "the fund shall be" and at beginning of second sentence substituted "The account" for "the fund"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

15-70-104. Rules to be established by department.

Compiler's Comments

2015 Amendment: Chapter 220 in (2) following "enforcement of" deleted "part 2"; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 236 inserted (2)(a) concerning part 2; and made minor changes in style. Amendment effective April 11, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 236, L. 1997, provided: "A statement of intent is required for this bill because it requires the department of transportation to establish rules to govern the bidding process determining the licensed Montana distributor that will be allowed to purchase improperly imported fuel seized by the department."

1995 Amendment: Chapter 405 inserted (2)(b) allowing rules implementing part 7; and made minor changes in style. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 405, L. 1995, provided: "A statement of intent is required for this bill because the department of transportation is required by 15-70-104 to adopt rules for the administration and enforcement of the tax on compressed natural gas. The legislature contemplates that rules promulgated under 15-70-104 address, at a minimum, the licensing of compressed natural gas dealers and, with respect to compressed natural gas dealers, requirements established by the department for reporting, recordkeeping, and invoicing."

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Inserted (2)(b) referring to International Fuel Tax Agreement; and made minor change in form.

Administrative Rules

Title 18, chapter 15, ARM Motor fuels tax.
Title 18, chapter 15, subchapter 1, ARM Motor fuels tax — administration.
Title 18, chapter 15, subchapter 2, ARM Distributor's license tax.
Title 18, chapter 15, subchapter 3, ARM Exemptions from distributor's license tax.
Title 18, chapter 15, subchapter 4, ARM Refunds of gasoline and special fuel tax.
Title 18, chapter 15, subchapter 5, ARM Dyed fuel.
Title 18, chapter 15, subchapter 6, ARM International fuel tax agreement.
Title 18, chapter 15, subchapter 7, ARM Ethanol tax incentive.
Title 18, chapter 15, subchapter 8, ARM Alternative fuels.

15-70-105. Writeoff of collection of tax, penalty, or interest — rules.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 428, L. 1993, provided: "A statement of intent is required for this bill because [section 3] [15-70-105 and 15-71-110 (now repealed)] grants the department of transportation authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax, penalty, or interest. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax."

Applicability: Section 5, Ch. 428, L. 1993, provided: "[This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales." Effective July 1, 1993.

Effective Date: Section 6, Ch. 428, L. 1993, provided: "[This act] is effective July 1, 1993."

15-70-108. Payment of taxes by negotiable instrument.

Compiler's Comments

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Effective Date: Section 10(1), Ch. 158, L. 1995, provided that this section is effective on passage and approval. Approved March 17, 1995.

15-70-110. Authority to collect delinquent motor fuel taxes — offset — hearing.

Compiler's Comments

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Effective Date: Section 10(1), Ch. 158, L. 1995, provided that this section is effective on passage and approval. Approved March 17, 1995.

15-70-111. Judicial review and appeals.

Compiler's Comments

2021 Amendment: Chapter 142 in middle of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

15-70-112. Definitions.

Compiler's Comments

1999 Amendment: Chapter 77 inserted definition of total remittance. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

15-70-113. Total remittance payable by electronic funds transfer.

Compiler's Comments

2015 Amendment: Chapter 220 in (3) after "pursuant to" deleted "15-70-205 and"; and made minor changes in style. Amendment effective October 1, 2015.

2001 Amendment: Chapter 110 near end of (3) substituted "5 days after the 25th day of each calendar month" for "the 28th day of each calendar month". Amendment effective July 1, 2001.

1999 Amendment: Chapter 77 at beginning of (1) substituted "Total remittance" for "Taxes"; near beginning of (2) substituted "total remittance" for "taxes"; and inserted (3) concerning due date of electronic tax payments. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.15.111 Late file and pay penalties when filing electronically.

15-70-114. Electronic filing of tax returns and required information.

Compiler's Comments

1999 Amendment: Chapter 77 near middle substituted "fuel" for "taxable fuels"; and made minor changes in style. Amendment effective October 1, 1999.

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.15.111 Late file and pay penalties when filing electronically.

15-70-115. Rules.

Compiler's Comments

1999 Amendment: Chapter 77 in (1) substituted "total remittance" for "taxes"; and at end of (2) substituted "payment of total remittance" for "tax payment". Amendment effective October 1, 1999.

1995 Statement of Intent: The statement of intent attached to Ch. 561, L. 1995, provided: "A statement of intent is required for this bill because the department of transportation is required in [section 7] [15-70-115] to adopt rules relating to the filing of certain tax returns by electronic means and to the payment of certain taxes by electronic funds transfer. It is anticipated that the department will adopt rules that address, at a minimum:

(1) coordinating the filing of tax returns with the payment of taxes by electronic funds transfer;

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the tax payment; and

(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information."

Effective Date: Section 9, Ch. 561, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 18.15.111 Late file and pay penalties when filing electronically.

15-70-121. International Fuel Tax Agreement.

Compiler's Comments

2015 Amendment: Chapter 220 in (8)(b) substituted "includes gasoline" for "means gasoline as defined in 15-70-201"; and made minor changes in style. Amendment effective October 1, 2015.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 111, L. 1989, provided: "[Section 1] [15-70-121] of the bill requires the department of revenue [now department of transportation] to adopt rules implementing the International Fuel Tax Agreement. The rules are intended to provide for the exchange of information with member states, the timely collection and distribution of motor fuel taxes, and the efficient administration and enforcement of the provisions contained in the agreement.

The legislature intends that the rules to be adopted by the department should, at a minimum, address the following:

(1) the issuance of licenses and decals to Montana-based interstate carriers;

(2) the necessary forms and required procedures for an interstate carrier to report mileage, fuel consumption, and taxes due;

(3) the timely collection and distribution of taxes to member states;

(4) auditing and monitoring procedures for the enforcement of the agreement; and

(5) definition of terms and establishment of administrative policies and procedures to adhere to the terms of the agreement."

Severability: Section 6, Ch. 111, L. 1989, was a severability clause.

Administrative Rules

ARM 18.15.601 IFTA agreement.

ARM 18.15.603 IFTA license bond requirement.

15-70-122. Collection of fuel tax.

Compiler's Comments

1991 Amendment: At beginning changed "department of revenue and the department of highways" to "department of transportation" and near end, after "department", deleted "of highways". Amendment effective July 1, 1991.

Severability: Section 6, Ch. 111, L. 1989, was a severability clause.

15-70-123. Report by unlicensed fuel dealer — definition — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1999 Amendment: Chapter 340 in middle of first sentence in (1) after "chapter 70" deleted "or 71"; in (2)(a) after "delivering" inserted "transporting" and after "(CNG)" deleted "to a consumer. Amendment effective October 1, 1999.

Effective Date: Section 3, Ch. 34, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 10, 1993.

15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

Effective Date: Section 2, Ch. 438, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 21, 1993.

15-70-125. Highway nonrestricted account.

Compiler's Comments

2017 Special Session Amendment: Chapter 6 inserted (2) providing for legislative fund transfer; and made minor changes in style. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2007 Amendment: Chapter 475 in second sentence after "provisions of" substituted "17-2-124" for "15-1-501", and at beginning of third sentence deleted "Beginning July 1, 2001"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted third sentence concerning deposit of interest and income earned on account. Amendment effective January 1, 2001.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52, Ch. 515, L. 1999, provided: "(1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001."

1997 Amendments: Chapters 42 and 422 in second sentence, after "15-1-501", deleted "(6)". Amendment effective March 12, 1997.

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

15-70-126. Highway restricted account.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 164, L. 2023. Amendment effective July 1, 2023.

2017 Amendment — Coordination: Section 27, Ch. 384, L. 2017, a coordination instruction, deleted (3)(e) that read: "to the department of justice for expenses of the highway patrol as provided in 44-1-501"; in (3)(e) inserted "until June 30, 2018"; and made minor changes in style. Amendment effective July 1, 2017.

Section 28(2), Ch. 384, L. 2017, a coordination instruction, in (2)(a) at end substituted "15-70-403(2)(b), (2)(c), (3)(b), and (3)(c)" for "15-70-403(2)(b)". Amendment effective July 1, 2017.

Effective Date: Section 28, Ch. 267, L. 2017, provided: "[This act] is effective July 1, 2017."

15-70-128. Local government road construction and maintenance restricted account — statutory appropriation.

Compiler's Comments

Effective Date: Section 10, Ch. 123, L. 2023, provided: "[This act] is effective July 1, 2023."

15-70-131. Securing access to federal expenditures to repair Montana roads and bridges.

Compiler's Comments

Effective Date: Section 6, Ch. 49, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 13, 2023.

Preamble: The preamble attached to Ch. 49, L. 2023, provided: "WHEREAS, state and federal stewardship is necessary for the maintenance of Montana's highway system; and

WHEREAS, creating the Securing Access to Federal Expenditures to Repair (SAFER) Montana Roads and Bridges Account will promote safe road transportation across the state; and

WHEREAS, establishing the SAFER account as a stable funding source for state match dollars will allow access to one-time-only federal grant opportunities awarded to the state."

15-70-132. Local road and bridge account — appropriation.

Compiler's Comments

Effective Date: Section 7, Ch. 698, L. 2023, provided: "[This act] is effective July 1, 2023."

Distribution of Funds for City Road Maintenance: Section 2, Ch. 698, L. 2023, provided for the distribution of $20 million deposited in the local road and bridge account provided for in this section to incorporated cities and towns with a population of less than 10,000 for the construction, reconstruction, maintenance, and repair of city or town streets and alleys.

Part 4
Gasoline and Special Fuel Tax

Part Attorney General's Opinions

Vehicles Operated Solely on Forest Development Roads Exempt: The special fuels tax does not apply to vehicles operated solely on forest development roads. 37 A.G. Op. 9 (1977).

15-70-401. Definitions.

Compiler's Comments

2015 Amendment: Chapter 220 throughout section substituted references to gasoline or special fuel for references to special fuel; inserted definitions of aviation fuel, ethanol, ethanol-blended gasoline, and gasoline; in definition of cardtrol before "fuel dealer's" deleted "special"; in definition of distributed substituted introductory language in (a) for "means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following" and deleted former (b) that read: "(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license"; in definition of distributor in (a)(iii) before "special fuel tax" inserted "gasoline tax or" and inserted (a)(v) and (a)(vi) referencing a dealer licensed as of January 1, 1969, and a person who blends ethanol with gasoline; in definition of improperly imported fuel in (a) before "distributor license" deleted "special fuel"; in definition of motor vehicle substituted "public roads and highways" for "public highways or streets"; deleted definition that read: ""Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer"; in definition of special fuel user after "consumes" deleted "in this state" and before "highways" inserted "public roads and"; in definition of use substituted current definition for former definition that read: ""Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 188 deleted definitions that read: ""Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel" and ""Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation"; and made minor changes in style. Amendment effective April 12, 2013.

2009 Amendment: Chapter 260 inserted definitions of special biodiesel fuel producer and waste vegetable oil; in definition of distributor inserted (b) exempting special biodiesel fuel producers from definition; in definition of special fuel user inserted (b)(ii) exempting special biodiesel fuel producers from definition; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 5, Ch. 260, L. 2009, provided: "[This act] applies to biodiesel produced from waste vegetable oil feedstock produced after June 30, 2009."

2005 Amendments — Composite Section: Chapter 130 in definition of biodiesel in (a) substituted "American society for testing and materials" for "American society of testing and materials". Amendment effective October 1, 2005.

Chapter 525 in definition of biodiesel in (a) substituted language defining biodiesel as a fuel produced from monoalkyl esters meeting the requirements of ASTM D6751 for former language that read: "(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials" and in (b) substituted "B-100" for "B-20"; inserted definition of biodiesel blend; and made minor changes in style. Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 7, Ch. 525, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 8, Ch. 525, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

(Version effective on occurrence of contingency) Chapter 568 inserted definition of biodiesel; in definition of special fuel near beginning of second sentence after "fuel includes" substituted "biodiesel and additives of all types" for "all other types of additives"; and made minor changes in style. Amendment effective on occurrence of contingency.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.*Termination Provision Repealed:* Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in definition of agricultural use after "person" substituted "who earns income while engaging in" for "whose major endeavor is" and after "ranching" substituted "and who files farm income reports for tax purposes as required by the United State internal revenue service" for "and whose primary source of earned income is from the business of farming or ranching". Amendment effective July 1, 1999, and terminates June 30, 2001.

1997 Amendment: Chapter 236 inserted definition of improperly imported fuel; and made minor changes in style. Amendment effective April 11, 1997.

1995 Amendment: Chapter 43 in definition of agricultural use, after "endeavor is", inserted "the business of farming or ranching"; in definition of distributor, in (d) after "exporter", deleted "as defined in this section"; in definition of special fuel inserted second sentence regarding additives; near beginning of definition of special fuel user, after "other than", inserted "the U.S. government, a state, or"; and made minor changes in style. Amendment effective February 9, 1995.

Effective Date — Retroactive Applicability: Section 6, Ch. 43, L. 1995, provided: "[This act] is effective on passage and approval [approved February 9, 1995], and [sections 1 and 4] [amending 15-70-301 (renumbered 15-70-401and 15-70-321 (now repealed)] apply retroactively, within the meaning of 1-2-109, to January 1, 1995."

1993 Special Session Amendment: Chapter 10 deleted definition of authorization that read: ""Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department." Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 inserted definitions of agricultural use, bulk delivery, distributed, distributor, export, exporter, import, and importer; in definition of bond, in (a), near beginning after "executed by a", deleted "special fuel dealer or" and near end, after "obligations of the", deleted "special fuel dealer or" and in (b), after "department by the", deleted "special fuel dealer or"; substituted definition of motor vehicle for former definition that read: "any vehicle which is self-propelled upon the highways"; in definition of special fuel, near end, substituted "operating" for "propelled" and deleted last sentence that read: "The term includes compressed natural gas"; in definition of special fuel dealer deleted former (b) that read: "(b) For the purposes of subsection (9)(a), the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly from cargo tanks for propulsion of the vehicle"; in definition of special fuel user, near end, substituted "operation" for "propulsion"; in definition of use, at beginning, inserted "when the term relates to a special fuel user", deleted (a) that read: "(a) the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state", and near end substituted "the operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: Inserted definition of authorization; and made minor changes in form and phraseology.

1987 Amendment: Inserted definition of cardtrol or keylock; and in middle of (8), after "any person who", inserted "sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device or who".

1985 Amendment: In (6) inserted last sentence relating to compressed natural gas.

Administrative Rules

Title 18, chapter 15, subchapter 1, ARM Motor fuels tax — administration.
Title 18, chapter 15, subchapter 2, ARM Distributor's license tax.
ARM 18.15.304 Blending stocks.
ARM 18.15.503 Dyed special fuel allowance.

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

15-70-402. License and security of distributors — denial or disciplinary action.

Compiler's Comments

2015 Amendment: Chapter 220 in (1)(a) substituted "Prior to doing business, each gasoline or special fuel distributor" for "Each special fuel distributor" and before "shall file" deleted "prior to the commencement of doing business"; in (1)(b)(i) before "special fuel" inserted "gasoline or"; in (1)(b)(ii) substituted "imports or exports fuel" for "imports or exports special fuel, or both"; in (2) before "distributor license" deleted "special fuel" and substituted "take disciplinary action against the distributor" for "revoke a special fuel distributor license"; in (2)(e) substituted "gasoline or special fuel tax" for "special fuel license tax"; inserted (3) regarding disciplinary action; in (4) before "distributor license" deleted "special fuel" and after "revoked" inserted "or if the distributor is under disciplinary action"; deleted former (4) that read: "(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100"; inserted (5) regarding licensed distributor withdrawals; in (6) before "distributor license" deleted "special fuel"; in (8) before "special fuel" inserted "gasoline or"; in (9) near end before "tax" inserted "special fuel"; inserted (10) regarding license requirements for blending ethanol with gasoline; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 525 in (8) at end substituted "biodiesel fuel on which the tax has been paid" for "preblended biodiesel". Amendment effective April 28, 2005.

Contingent Effective Date Revised: Section 7, Ch. 525, L. 2005, amended sec. 12, Ch. 568, L. 2001, to remove this section from its application.

Contingent Termination Revised: Section 8, Ch. 525, L. 2005, amended sec. 13, Ch. 568, L. 2001, to remove this section from its application.

Contingent Effective Date: Section 12, Ch. 568, L. 2001, provided: "[This act] is effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least $20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Contingent Termination: Section 13, Ch. 568, L. 2001, provided: "[This act] terminates June 30 of the fourth year following [the effective date of this act]." Effective on occurrence of contingency.

2001 Amendments — Composite Section: Chapter 142 in (1)(b)(i) at beginning inserted exception clause; inserted (1)(b)(ii) regarding minimum required security for distributor of special fuel; inserted (2) regarding denial or revocation of special fuel distributor license; inserted (3) regarding right to appeal denial or revocation of special fuel distributor license; inserted (7) providing exception for owner of commercial motor vehicle under certain conditions; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 568 inserted (8) requiring licensing of a distributor who blends biodiesel and requiring the distributor to buy preblended biodiesel if the distributor cannot be licensed. Amendment effective on occurrence of contingency.

1999 Amendment: Chapter 37 deleted former (2) that read: "(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200"; and made minor changes in style. Amendment effective February 24, 1999.

Retroactive Applicability: Section 7, Ch. 37, L. 1999, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the license year after December 31, 1998."

1997 Amendment: Chapter 236 inserted (4) regarding penalty for failure to obtain license; and made minor changes in style. Amendment effective April 11, 1997.

1993 Special Session Amendment: Chapter 10 in (2) substituted "15-70-301(7)(c)" for "15-70-301(8)(c)"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.202 Distributor's bond.
ARM 18.15.225 Incidence of fuel tax.

15-70-403. Gasoline, special fuel, and aviation fuel tax — incidence — rates.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 123, L. 2023. Amendment effective July 1, 2023.

2019 Amendments — Composite Section: Chapter 428 in (8) near end substituted "must be fuel" for "must be undyed fuel". Amendment effective May 10, 2019.

Chapter 455 in (1)(c) increased tax on aviation fuel from 4 cents to 5 cents per gallon. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2017 Amendments — Coordination: Chapter 384 in (1)(a) at beginning deleted "27 cents"; inserted (1)(a)(i) through (1)(a)(iv) regarding tax on each gallon of gasoline distributed by a distributor within the state; in (1)(b) at beginning deleted "27 ¾ cents"; inserted (1)(b)(i) through (1)(b)(iv) regarding tax on each gallon of special fuel distributed by a distributor within the state; inserted (2) and (3) regarding how to allocate the deposits for the gas tax and the special fuel tax; and made minor changes in style. Amendment effective July 1, 2017.

The amendments made to this section by sec. 8, Ch. 267, L. 2017, and sec. 9, Ch. 384, L. 2017, were rendered void by sec. 30, Ch. 384, L. 2017, a coordination section.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2015 Amendment: Chapter 220 in (1) inserted first sentence regarding incidence of fuel tax and substituted "a tax in an amount equal to" for "a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor"; inserted (1)(a), (1)(b), and (1)(c) setting certain tax rates; in (2) at beginning inserted "Gasoline or" and after "distributor's" deleted "license"; deleted former (2)(a) that read: "(a) dyed by injector at a refinery or terminal for off-highway use"; inserted (3), (4), (5), (6), and (7) regarding special fuel for off-highway use, fuel taxes collected from owners or operators, vehicles equipped with feed delivery boxes, use of undyed fuel on which Montana fuel tax is paid, and material used pursuant to work performed under a contract awarded by a public agency for construction or improvement of highways, streets, and appurtenances; and made minor changes in style. Amendment effective October 1, 2015.

1999 Amendment: Chapter 340 in (2)(a) after "dyed" inserted "by injector". Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 10 in (1), in second sentence, substituted "amount imposed under 15-70-321" for "amount of 20 cents"; in (2), at end of introductory clause after "tax if", deleted "sold" and inserted "it is", substituted (2)(a) concerning fuel dyed for off-highway use for "to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state", deleted former (2)(b) that read: "in bulk delivery quantities of 200 gallons or more"; at beginning of (2)(b) inserted "sold"; and made minor changes in style. Amendment effective January 1, 1994.

Code Commissioner Clarification: In second sentence of (1), after "amount", the Code Commissioner substituted the bracketed reference to 15-70-321 for "of 20 cents" to reflect the coordination of Ch. 575 and Ch. 605, L. 1993.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

Title 18, chapter 15, subchapter 1, ARM Motor fuels tax — administration.
Title 18, chapter 15, subchapter 2, ARM Distributor's license tax.
ARM 18.15.218 Treatment of ethanol-blended gasoline.
ARM 18.15.225 Incidence of fuel tax.
Title 18, chapter 15, subchapter 3, ARM Exemptions from distributor's license tax.
ARM 18.15.301 Intrastate fuel deliveries.
ARM 18.15.303 Import deliveries.
ARM 18.15.304 Blending stocks.
ARM 18.15.305 Exemption — U.S. and other states.
ARM 18.15.418 Cardtrol compliance and administration.
ARM 18.15.504 Dyed special fuel.
ARM 18.15.701 Ethanol distributors.

Case Notes

Chippewa-Cree Tribal Member Without Standing to Challenge Gas Tax — Incidence of Tax Upon Distributor: Carter, an enrolled member of the Chippewa-Cree Tribe, sold gasoline from a convenience store on the Rocky Boy's Reservation. Carter held a business license issued by the tribe and was not licensed by the state. She alleged that the gasoline tax was unconstitutionally applied to sales by tribal members inside the reservation because the tax is preempted by federal law. The District Court granted summary judgment, holding that Carter lacked standing. Citing Okla. Tax Comm'n v. Chickasaw Nation, 515 US 450, 132 L Ed 2d 400, 115 S Ct 2214 (1995), the Supreme Court affirmed, holding that the incidence of the tax fell upon the distributor and not upon the retailer and that the distributor is not a member of the tribe. For this reason, Carter was not directly and adversely affected by the tax and had no standing to bring the action. Carter v. Dept. of Transportation, 274 M 39, 905 P2d 1102, 52 St. Rep. 1111 (1995), followed in Fleenor v. Darby School District, 2006 MT 31, 331 M 124, 128 P3d 1048 (2006). Fleenor was overruled in Schoof v. Nesbit, 2014 MT 6, 373 Mont. 226, 316 P.3d 831, to the extent Fleenor requires a plaintiff in a right to know or right to participate case to allege an injury beyond failure to receive notice or to allege a personal stake in a particular governmental decision for purposes of establishing standing to pursue a claim.

Effect of Appropriation: The appropriation by Laws 1947, p. 761 from the gasoline drawback fund "as much as may be necessary to comply with the provisions of the law" was likewise an appropriation of the 1 cent per gallon transferred to the aviation fund under the provisions of 67-1-301. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948), overruled in part in Bd. of Regents v. Judge, 168 M 433, 543 P2d 1323 (1975).

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

15-70-404. Computation.

Compiler's Comments

2017 Amendments — Coordination: Chapter 384 in (2) substituted "15-70-403(5)" for "15-70-403(4)". Amendment effective July 1, 2017.

Section 31, Ch. 384, L. 2017, a coordination section in (2) substituted "15-70-403(6)" for "15-70-403(5)".

2015 Amendment: Chapter 220 inserted (1) regarding rounding; in (2) substituted "under 15-70-343(4) [renumbered 15-70-403(4)] on owners or operators of the motor vehicles operating on the public roads and highways of this state" for "by this part", in two places before "special fuel" inserted "gasoline or", after "purchaser" deleted "as a special fuel user", inserted "corresponding", substituted "15-70-343(1) [renumbered 15-70-403(1)]" for "this part", substituted "person" for "special fuel user", and at end inserted "public roads and"; and made minor changes in style. Amendment effective October 1, 2015.

Repeal of 2001 Amendments: Section 9, Ch. 525, L. 2005, repealed sec. 9, Ch. 568, L. 2001, amending 15-70-326 (renumbered 15-70-404).

2001 Amendment: Chapter 568 near middle after "multiplying the" inserted "appropriate" and after "gallons of" inserted "the type of". Amendment effective on occurrence of contingency.

1993 Amendment: Chapter 525 deleted (1) that provided that the tax must be computed "with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle"; after "has not been paid" deleted "to a special fuel dealer" and near end, after "in the", substituted "operation" for "propulsion"; and made minor changes in style. Amendment effective January 1, 1994.

15-70-405. Exemption from special fuel tax.

Compiler's Comments

2015 Amendment: Chapter 220 in (1) substituted "15-70-343 [renumbered 15-70-403]" for "15-70-321". Amendment effective October 1, 2015.

Effective Date: Section 4, Ch. 260, L. 2009, provided that this section is effective July 1, 2009.

Applicability: Section 5, Ch. 260, L. 2009, provided: "[This act] applies to biodiesel produced from waste vegetable oil feedstock produced after June 30, 2009."

15-70-410. Distributor's statement and payment — confidentiality.

Compiler's Comments

2019 Amendment: Chapter 455 in (1) near end before "tax on aviation fuel" deleted "4-cent". Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2015 Amendment: Chapter 220 in (1) and (3)(d) before "special fuel" inserted "gasoline or"; in (1) in middle substituted "the fuel tax law" for "the special fuel license tax law" and inserted last sentence regarding aviation fuel; and in (3) after "purchaser of" deleted "special". Amendment effective October 1, 2015.

1999 Amendment: Chapter 77 in (1) near beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.203 Distributor's statements.

ARM 18.15.305 Exemption — U.S. and other states.

Case Notes

Loss of Gasoline — Refund: The fact that Ch. 39, L. 1945, providing for license tax on gasoline to provide funds for payment of state highway debentures allowed a deduction of 2% "for evaporation and other loss of gasoline handled by such dealer" did not preclude refund for entire amount where entire gallonage of gasoline was destroyed in derailment of tank cars. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

15-70-411. Recordkeeping requirements.

Compiler's Comments

2015 Amendment: Chapter 220 before "special fuel" inserted "gasoline or", after "shall keep" deleted "for a period not to exceed 3 years the", and at end inserted "for a minimum of 3 years". Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.204 Distributor's records.

ARM 18.15.401 Sellers' invoice.

15-70-412. Invoice of distributors and aviation fuel dealers.

Compiler's Comments

2017 Amendment: Chapter 275 near beginning after "distributor and aviation" inserted "fuel". Amendment effective October 1, 2017.

2015 Amendment: Chapter 220 near beginning inserted "and aviation dealer" and near end before "special fuel" inserted "gasoline or"; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.205 Distributor's invoice.

ARM 18.15.401 Sellers' invoice.

15-70-415. Examination of records.

Compiler's Comments

2015 Amendment: Chapter 220 in (1) in two places and in (2) before "special fuel" inserted "gasoline or"; in (1) substituted "any distributor, special fuel user, or person" for "any special fuel distributor or any person", after "in order to" deleted "ascertain and", and before "taxes due" deleted "license"; in (2) near end substituted "to determine the amount of gasoline or special fuel tax" for "in order to ascertain the amount of license tax"; inserted (4), (5), and (6) regarding prima facie evidence of delivery and consumption, establishing vehicle inspection sites, and distribution of information to other government entities; and made minor changes in style. Amendment effective October 1, 2015.

1993 Special Session Amendment: Chapter 10 inserted (3) authorizing the Department to physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities and making it a misdemeanor punishable by a fine not exceeding $500 for first offense, not exceeding $1,000 for second offense, and not exceeding $2,000 for subsequent offenses to purposely or knowingly refuse to permit an authorized inspection; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-416. Information reports — penalty — confidentiality.

Compiler's Comments

2015 Amendment: Chapter 220 in (1) in three places, in (3), and in (3)(d) before "special fuel" inserted "gasoline or". Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.102 Waiver of motor fuel penalties.
ARM 18.15.103 Payment application.
ARM 18.15.111 Late file and pay penalties when filing electronically.
ARM 18.15.227 Prepayment of motor fuel taxes.

15-70-417. Penalties for delinquency.

Compiler's Comments

2015 Amendments — Composite Section — Coordination: Chapter 220 in (1) at beginning substituted "fuel tax" for "license tax"; and in (2) in two places, in (3) in two places, and in (4) in two places substituted "tax" for "license tax" (amendments in (2) and (3) rendered void by Ch. 284). Amendment effective October 1, 2015.

Chapter 284 in (1) inserted exception clause, after "1%" inserted "per month", substituted "from the date of the delinquency until paid" for "on the tax due for each calendar month", and deleted former last sentence that read: "Upon a showing of good cause by the distributor, the department may waive the penalty"; deleted former (2) and (3) that read: "(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of $100 or 10% of the amount due, whichever is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have been made and the license tax should have been paid"; inserted (2), (3), and (4) regarding penalties; in (5) inserted exception clause and before "license tax" inserted "delinquent"; and made minor changes in style. Amendment effective October 1, 2015.

Section 3, Ch. 284, L. 2015, a coordination section, in (4) in two places substituted "pay the tax" for "pay the license tax".

2001 Amendment: Chapter 120 in (1) and (3) substituted daily proration of interest for interest determined on a fraction of a month; in (3) increased penalty from $25 to $100; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 120, L. 2001, provided: "[This act] applies to gasoline and special fuel tax liabilities occurring after June 30, 2001."

1999 Amendment: Chapter 77 in (1) near beginning of first sentence inserted "15-70-113(3) and". Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.102 Waiver of motor fuel penalties.
ARM 18.15.103 Payment application.
ARM 18.15.227 Prepayment of motor fuel taxes.

15-70-418. Fraudulent returns — penalty.

Compiler's Comments

2015 Amendment: Chapter 220 near beginning before "distributor" deleted "special fuel" and near end substituted "at the rate of 1% a month, prorated daily" for "at 1% per month or fraction of a month". Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.103 Payment application.

15-70-419. Improperly imported fuel — seizure.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 123, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 267 in (1) deleted definition that read: ""Department" means the department of transportation"; in (3) after "the department" deleted "of transportation"; in (7)(c)(i) substituted current language for "the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101"; inserted (7)(c)(ii) regarding the deposit of interest and penalties collected under this chapter; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 220 in (2)(b) before "15-70-341 [renumbered 15-70-402]" deleted "15-70-202 and". Amendment effective October 1, 2015.

2007 Amendment: Chapter 44 in (9)(a) at end after "subsection" substituted "(6)" for "(5)". Amendment effective October 1, 2007.

2005 Amendment: Chapter 366 in (1)(c) in definition of peace officer after "transportation" inserted "designated or" and after "under" inserted "61-10-154 or"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 8, Ch. 236, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 11, 1997.

Administrative Rules

Title 18, chapter 15, subchapter 1, ARM Motor fuels tax — administration.

15-70-420. Warrant for distraint.

Compiler's Comments

2015 Amendment: Chapter 220 at end before "tax" deleted "license". Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-421. Statute of limitations.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-425. Refund or credit authorized.

Compiler's Comments

2019 Amendment: Chapter 455 in (1) at beginning of last sentence deleted "Except as provided in subsection (6)"; deleted former (6) that read: "(6) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline tax has been paid. The refund must be paid from the account established in 67-1-301(3)(a)(ii)"; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2015 Amendment: Chapter 220 in (1) in four places, in (3), in (4)(a), and in (5) in two places before "special fuel" inserted "gasoline or"; in (1) before "tax" deleted "license", inserted "denaturing ethanol to be used in ethanol-blended gasoline", following "used off the" substituted "public roads and highways of this state" for "public highways and streets", after "on any of the" substituted "public roads and highways" for "public highways or streets", and inserted last sentence regarding prohibition on refund for aviation fuel tax and an exception; in (3) after "fuel" deleted "license"; inserted (6) regarding refund for certified scheduled passenger air carriers; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 188 in (1) substituted "15-70-361" for "15-70-323". Amendment effective April 12, 2013.

2005 Amendment: Chapter 384 in (1) in first sentence at end inserted "if the person has records, as provided in 15-70-323, to prove nontaxable use". Amendment effective October 1, 2005.

1999 Amendment: Chapter 340 in first sentence in (1) after "engines" deleted "tractors"; in second sentence in (4)(a) after "federal" inserted "or state"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 569 inserted (2)(b)(i) authorizing a nonpublic school to use dyed special fuel in buses owned by the nonpublic school for transporting pupils for school-related purposes; and inserted (2)(b)(ii) describing nonpublic schools as schools accredited under 20-7-102. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 10 inserted (2) concerning refund of the taxes paid on special fuel by government entities; deleted former (3) that read: "(3) A distributor who sells special fuel that is not subject to taxation under 15-70-343 shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.302 Export deliveries.

ARM 18.15.408 Refund percentages for PTO or auxiliary engines.

ARM 18.15.409 Refund for gasoline lost or destroyed.

Case Notes

Fuel Used in Motorboat — Constitutionality: Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of Due Process and Equal Protection Clauses of constitution, since dealer rather than the consumer is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P2d 902 (1968). (Annotator's Note: The 1979 amendment to former 15-70-221 removed motorboats from the uses for which a refund is authorized.)

Gasoline Lost or Destroyed:

Since there has been no amendment to this law expressing disapproval of an earlier Supreme Court decision that gasoline lost or destroyed should be included in the provision for a refund of the tax paid, the Legislature in effect approved the interpretation. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

When gasoline was lost during a flood that tipped over storage tank, the purchaser was entitled to a refund of the tax paid. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

When gasoline was lost in derailment of tank cars, the purchaser of the gasoline was entitled to a refund of the license tax paid. State ex rel. Great N. Ry. v. St. Bd of Equalization, 121 M 583, 194 P2d 627 (1948).

Sufficiency of Claim — Substantial Compliance:

When it has been decided that a claimant is entitled to a refund but the claim is such that it cannot be regularly itemized on prescribed forms, the Board (now Department of Transportation) could not set up the failure to comply with technical regulations as a reason for denying the claim. State ex rel. Roeder v. St. Bd. of Equalization, 133 M 393, 324 P2d 1057 (1958).

The State Board of Equalization (now Department of Transportation) could not deny a valid refund claim for the reason that the claim did not comply with the forms provided by the Board when the nature of the claim was such that it could not be regularly itemized on the prescribed form. Where the claimant has complied with the administrative regulations insofar as it was possible under the circumstances, he has substantially complied and is entitled to the refund. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 126 M 187, 246 P2d 220 (1952).

Assignment of Claim: There was nothing in a predecessor to this statute which prevented the claimant who was the actual purchaser of the gasoline from assigning his claim for refund to another where he himself has made the application for refund before assignment. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

Mandamus: In action for mandamus to require approval of claim for refund, the petition must allege that the invoice accompanied the claim. State ex rel. Great N. Ry. v. St. Bd. of Equalization, 121 M 583, 194 P2d 627 (1948).

Application for Refund by County: When county brought mandamus to compel State Board of Equalization (now Department of Transportation) to grant county's application for refund of gasoline taxes paid, the entry of a money judgment for the county was error but the court should have ordered a peremptory Writ of Mandate to issue requiring the Board to rescind its action in rejecting claim and requiring that such claim be allowed in proper sum and transmitted to Board of Examiners and Auditor for approval and payment. Roosevelt County v. St. Bd. of Equalization, 118 M 31, 162 P2d 887 (1945).

Attorney General's Opinions

School District Not Allowed to Claim Special Fuel Tax Refund Paid by Bus Service Contractor: When a school district has paid a tax on special fuels, the district may seek a special fuel tax refund regardless of the district activity for which the fuels were used. However, a school district may not claim a special fuel tax refund paid on special fuels by a company that contracts with the school district to provide bus service for the district. 51 A.G. Op. 7 (2005).

15-70-426. Required records.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 122, L. 2023. Amendment effective April 18, 2023.

2015 Amendment: Chapter 220 in (1) in two places, (2), (4) in two places, (5), (5)(b), (5)(c), and (7) in two places substituted references to gasoline or special fuel for references to special fuel; inserted (3) regarding identifying special storage facilities; in (5) before "tax" deleted "license"; and made minor changes in style. Amendment effective October 1, 2015.

1993 Special Session Amendment: Chapter 10 at beginning of (1) inserted exception clause; near end of (2), after "fuel for", deleted "own use upon"; inserted (5) exempting government entities from keeping dispersal records in order to claim a refund of special fuel taxes; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.401 Sellers' invoice.
ARM 18.15.402 Filing invoices.
ARM 18.15.408 Refund percentages for PTO or auxiliary engines.
ARM 18.15.409 Lost or destroyed gasoline, special fuel, or aviation fuel.
ARM 18.15.410 Gasoline, special fuel, or aviation fuel lost from storage.

15-70-430. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 122, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: Chapter 429 in (1)(b) near middle after "tax on the gallons of" inserted "gasoline or"; in (2)(b) near middle of first sentence after "receipt for the sale of" inserted "gasoline or". Amendment effective July 1, 2021.

2019 Amendment: Chapter 91 in (1)(b) and in (2)(b) in two places substituted "retail purchases" for "credit or debit card purchases"; in (2)(b) at end of first sentence deleted "and that specifically identifies the transaction as a credit or debit card purchase"; and in (3) near beginning after "special fuel" deleted "as indicated by bulk delivery invoices or by evidence of keylock, cardtrol, or credit or debit card purchases". Amendment effective July 1, 2019.

2017 Amendment: Chapter 266 inserted (1)(b) allowing person whose use qualifies as agricultural to apply for refund of fuel tax using credit or debit purchases as evidence; inserted (2)(b) requiring department to accept as evidence a receipt for sale of special fuel under certain circumstances; in (3) after "cardtrol" inserted "or credit or debit card"; and made minor changes in style. Amendment effective January 1, 2018.

2015 Amendment: Chapter 220 in (1), (3), (3)(a), (3)(b), (3)(c), and (3)(d) before "special fuel" inserted "gasoline or"; in (1) in middle substituted "off-highway" for "off-roadway" and inserted last sentence regarding request for state or federal income tax information; inserted (2) regarding acceptance of statement of sale of gasoline or special fuel; in (3) substituted "indicated by" for "evidenced by"; and made minor changes in style. Amendment effective October 1, 2015.

Termination Provision Repealed: Section 1, Ch. 127, L. 2001, repealed sec. 7, Ch. 461, L. 1999, which terminated the amendments to this section June 30, 2001. Effective March 26, 2001.

1999 Amendment: Chapter 461 in (1) after "refund" deleted "of 60%"; inserted (2) authorizing applicant to apply for refund and outlining ratios for refund percentages; inserted (3) requiring use of highest ratio to calculate eligible refunds if ratio in any of 3 previous years is higher than present ratio; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2001.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.412 Agricultural use fuel tax refund.
ARM 18.15.418 Cardtrol compliance and administration.
ARM 18.15.419 Statement for keylock cardtrol reporting.

15-70-431. Determination of highway use.

Compiler's Comments

1999 Amendment: Chapter 340 inserted second sentence authorizing department, when records are not available, to use average of 4 miles per gallon or other acceptable methods to determine fuel use. Amendment effective October 1, 1999.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-432. Application for refund or credit — filing — correction by department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 122, L. 2023. Amendment effective April 18, 2023.

2019 Amendment: Chapter 455 in (1)(a) near end of second sentence after "gasoline or special fuel purchased" deleted "or aviation fuel purchased by a certified scheduled passenger air carrier". Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2015 Amendment: Chapter 220 in (1) in two places and in (3) before "special fuel" inserted "gasoline or"; in (1) in second sentence near beginning before "taxes" inserted "special fuel" and near end inserted "or aviation fuel purchased by a certified scheduled passenger air carrier"; and made minor changes in style. Amendment effective October 1, 2015.

2001 Amendment: Chapter 110 at beginning of (1)(a) inserted exception clause and near middle of second sentence after "of this state" inserted exception for refund claim filed electronically; inserted (1)(b) providing that a signature or original invoice is not required for claiming refund filed electronically; inserted (1)(c) providing that claim for refund filed electronically does not relieve taxpayer from maintaining refund records; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 340 in first sentence in (3) increased refund filing time from 14 months to 36 months. Amendment effective October 1, 1999.

1993 Special Session Amendment: Chapter 10 in (1), near beginning of second sentence after "unpaid accounts", inserted "or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state"; and made minor changes in style. Amendment effective January 1, 1994.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.226 Distributor — supporting documentation for bad debt credit.
ARM 18.15.411 Processing claims for refunds.

15-70-433. Refund for taxes paid on biodiesel by distributor or retailer — statement — payment — appropriation — records — report to interim committee.

Compiler's Comments

2019 Amendment: Chapter 163 in (7) substituted "transportation interim committee" for "revenue and transportation interim committee" and after "biennially" inserted "in accordance with 5-11-210"; and made minor changes in style. Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2015 Amendment: Chapter 3 in (7) substituted "biennially" for "at least once each year". Amendment effective October 1, 2015.

Effective Date: Section 11, Ch. 525, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Applicability: Section 12(2), Ch. 525, L. 2005, provided: "(2) [Section 2] [15-70-369, renumbered 15-70-433] applies to biodiesel blend distributed or purchased in calendar quarters beginning after June 30, 2005."

15-70-434. Approval or rejection of claim.

Compiler's Comments

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

Administrative Rules

ARM 18.15.411 Processing claims for refunds.

15-70-440. Unlawful use of aviation fuel.

Compiler's Comments

2015 Amendment: Chapter 220 in middle substituted "public roads and highways" for "public highways or streets" and at end substituted "15-70-366 [renumbered 15-70-443]" for "15-70-232"; and made minor changes in style. Amendment effective October 1, 2015.

1993 Amendment: Chapter 642 in first sentence, in two places, substituted "fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993.

15-70-441. Dyed special fuel restrictions — penalties.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (1)(a)(ii) substituted "subsection (1)(c)" for "subsection (2)(c)". Amendment effective October 1, 2019.

Chapter 428 in (1)(a) substituted "untaxed dyed special fuel in violation of 15-70-403(8) or (9) or" for "dyed special fuel"; in (1)(a)(ii) substituted "subsection (1)(c)" for "subsection (2)(c)"; and in (1)(b)(i) before "dyed special fuel" inserted "untaxed" and after "in violation of" inserted "15-70-403(8) or (9) or". Amendment effective May 10, 2019.

2015 Amendment: Chapter 220 deleted former (1) that read: "(1) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid"; in (1)(b)(i) substituted "subsection (1)(b)(ii)" for "15-70-372(2)" and inserted last sentence regarding civil and criminal penalties; inserted (1)(b)(ii) regarding imposing civil penalties for first and subsequent offenses; in (1)(c) substituted "the public roads and highways of this state" for "public highways, public roads, or streets" and after "dyed" inserted "special"; in (2) in two places substituted "15-70-343 [renumbered 15-70-403]" for "15-70-321" and before "special fuel" inserted "dyed"; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendments — Composite Section: Chapter 188 deleted former (1) that read: "(1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section"; in (2)(a) substituted "person" for "special fuel user"; and made minor changes in style. Amendment effective April 12, 2013.

Chapter 418 inserted (2)(a)(i) regarding motor vehicles with gross vehicle weight of greater than 12,000 pounds; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 384 in (3) in first sentence near middle after "unless" deleted "the fuel is subject to taxation under 15-70-321(1)(b) or", in second sentence at end after "under" substituted "15-70-372(2)" for "15-70-372 for the first offense", and deleted former third sentence that read: "A subsequent offense is a misdemeanor punishable as provided in 15-70-336." Amendment effective October 1, 2005.

2001 Amendment: Chapter 115 at end of second sentence in (3)(a) inserted language imposing civil penalty under 15-70-372 for first offense and in third sentence substituted language providing that subsequent offense is punishable as provided in 15-70-336 for "punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 43 in (3)(a), in two places, substituted reference to public roads for reference to public streets; inserted (4) imposing operator liability for payment of the special fuel tax imposed in 15-70-321; and made minor changes in style. Amendment effective February 9, 1995.

1993 Special Session Amendment: Chapter 10 inserted (3) prohibiting the use of dyed special fuel to operate a motor vehicle unless the fuel is subject to taxation or the use is permitted by adopted rules, making it a misdemeanor to purposely or knowingly use a dyed special fuel in a motor vehicle in violation of subsection (3) punishable by a fine not to exceed $500 for first offense, not to exceed $1,000 for second offense, and not to exceed $2,000 for subsequent offenses, and requiring the Department to adopt and enforce reasonable rules for movement of off-highway vehicles traveling from one location to another on public roads when using dyed or nontaxed fuels; and made minor changes in style. Amendment effective January 1, 1994.

1993 Amendment: Chapter 525 in (1), near beginning after "case of any", deleted "special fuel dealer or" and near middle, after "that if any", deleted "such special fuel dealer"; in (2), at beginning, substituted "Whenever" for "Where a special fuel dealer or"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.15.111 Late file and pay penalties when filing electronically.
ARM 18.15.501 Estimate of diesel-powered vehicles supply tanks.
ARM 18.15.502 Off-highway vehicle equipment.
ARM 18.15.503 Dyed special fuel allowance.
ARM 18.15.504 Dyed special fuel.

Case Notes

Use of Dyed Diesel on Public Highway — No Exemption for Vehicle: After the plaintiff was cited for violating this section for using dyed diesel in a nonexempt vehicle driven on a public highway, he appealed, arguing that his vehicle was entitled to an exemption for off-highway vehicles under ARM 18.10.110. The Supreme Court affirmed, concluding that the vehicle was not an off-highway vehicle and that even if it was, the plaintiff was not driving the vehicle on the public highway for an allowable purpose of moving between job sites or for repairs. Coleman v. Dept. of Transportation, 2013 MT 80, 369 Mont. 350, 298 P.3d 426.

15-70-442. Marking of dyed diesel fuel pumps.

Compiler's Comments

2001 Amendment: Chapter 119 near beginning of (1) inserted "motor fuel"; inserted (2) authorizing the department, after a requested hearing, to impose a $100 civil penalty for failure to mark a dyed fuel pump; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 3, Ch. 295, L. 1999, provided: "[This act] is effective July 1, 1999."

15-70-443. Penalties.

Compiler's Comments

2015 Amendment: Chapter 220 in middle substituted "gasoline or special fuel tax" for "license tax". Amendment effective October 1, 2015.

Effective Date: Section 47, Ch. 525, L. 1993, provided that this section is effective January 1, 1994.

15-70-450. Cooperative agreement — motor fuels taxes.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 36, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 163 in third sentence substituted "transportation interim committee" for "revenue and transportation interim committee". Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

1999 Amendment: Chapter 19 in third sentence at end substituted "to the revenue and taxation interim committee" for "to each meeting of the revenue oversight committee" and in fourth sentence inserted "and if the legislature is not in session" and before "committee" deleted "revenue oversight"; and made minor changes in style. Amendment effective February 17, 1999.

1993 Amendment: Chapter 625 at end, after "approval", inserted "pursuant to 18-11-105" and deleted last two sentences of former (1) specifying level of taxation to be addressed in agreement and that agreement provide for nonwaiver of rights (see 1993 Session Law for text); deleted (2) authorizing agreement to prohibit dual taxation of distributor (see 1993 Session Law for text); deleted (3) and (4) authorizing agreement to provide for distribution of tax (see 1993 Session Law for text); and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Coordination Instruction: Section 5, Ch. 772, L. 1991, provided: "If Senate Bill No. 164 is passed and approved and if it includes a section that provides for the transfer of motor fuels tax functions to the department of transportation, then any reference to the department of revenue in [this act] is changed to the department of transportation." Senate Bill No. 164 was approved April 20, 1991, as Ch. 512, L. 1991, and included a transfer of motor fuels tax functions to the Department of Transportation. Therefore, the Code Commissioner has changed references to the respective Departments in this section in conformity with the coordination instruction.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-451. Tribal motor fuels administration account.

Compiler's Comments

2015 Amendment: Chapter 220 in (2) substituted current text concerning deposit in the account for "The administrative expenses and refund amounts deducted by the department of transportation under an agreement must be deposited in the tribal motor fuels administration account"; in (3) substituted "gasoline tax" for "motor fuels tax" and at end inserted "cooperative"; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 42 in (2) substituted "an agreement" for "15-70-234(3)"; and in (3) substituted "an agreement" for "15-70-234". Amendment effective March 12, 1997.

1995 Amendment: Chapter 158 in (3), after "transportation", inserted "or by the department of justice". Amendment effective March 17, 1995.

Saving Clause: Section 9, Ch. 158, L. 1995, was a saving clause.

Coordination Instruction: Section 5, Ch. 772, L. 1991, provided: "If Senate Bill No. 164 is passed and approved and if it includes a section that provides for the transfer of motor fuels tax functions to the department of transportation, then any reference to the department of revenue in [this act] is changed to the department of transportation." Senate Bill No. 164 was approved April 20, 1991, as Ch. 512, L. 1991, and included a transfer of motor fuels tax functions to the

Department of Transportation. Therefore, the Code Commissioner has changed references to the respective Departments in this section in conformity with the coordination instruction.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-452. Tribal motor fuels tax account.

Compiler's Comments

2015 Amendment: Chapter 220 in (2) inserted "department shall deposit in the tribal motor fuels tax account" and substituted "refunds deducted under a cooperative agreement" for "refund amounts deducted under an agreement, must be deposited in the tribal motor fuels tax account"; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 42 in (2) substituted "an agreement" for "15-70-234(3)". Amendment effective March 12, 1997.

Effective Date: Section 6, Ch. 772, L. 1991, provided: "[This act] is effective July 1, 1991."

15-70-455. Nonresident special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit — nonresident special fuel user's agricultural product temporary trip permit.

Compiler's Comments

2013 Amendment: Chapter 188 in (1) and (3) near beginning before "person" inserted "nonresident" and substituted "is not covered under the International Fuel Tax Agreement provided for in 15-70-121" for "fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302"; in (2) near beginning after "nonresident" inserted "person" and substituted "is not covered under the International Fuel Tax Agreement provided for in 15-70-121" for "fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302"; and made minor changes in style. Amendment effective April 12, 2013.

2005 Amendment: Chapter 397 inserted (3) regarding special fuel user's agricultural product temporary trip permit. Amendment effective July 1, 2005.

1993 Special Session Amendment: Deleted (3) that read: "(3) A resident or nonresident operating a special fuel powered vehicle up to 26,000 pounds gross weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase." Amendment effective January 1, 1994.

1993 Amendments: Chapter 525 in (1) and (2), near beginning, inserted "over 26,000 pounds gross vehicle weight or registered gross vehicle weight" and substituted "motor carrier services division employees" for "scale house personnel, gross vehicle weight patrol crews"; in (1), near middle after "special fuel vehicle permit", deleted "or registration card indicating the special fuel use permit number"; inserted (3) concerning exemption from authorization; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 575 near end of (1) and (2) substituted "motor carrier services division personnel" for "gross vehicle weight patrol crews"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

1989 Amendment: In two places changed "patrolmen" to "patrol officers".

1985 Amendment: In first sentence of (1) inserted "or registration card indicating the special fuel use permit number".

Administrative Rules

ARM 18.8.426 Custom combines.

15-70-456. Fees for temporary permits — duration of temporary permits.

Compiler's Comments

2017 Amendment: Chapter 267 in (4) substituted "highway restricted account provided for in 15-70-126" for "state special revenue fund". Amendment effective July 1, 2017.

2005 Amendment: Chapter 397 in (1) in first sentence inserted "issued under 15-70-311(1)"; inserted (3) regarding cost of special fuel user's agricultural product temporary trip permit; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 525 in (1), in first sentence after "cost", deleted "the special fuel vehicle user a fee of"; in (2)(a) substituted "commodities" for "produce"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendments: Chapter 48, at end of first sentence of (2), substituted "the calendar year in which the fee is collected" for "a period beginning July 1 and ending October 31".

Chapter 277, in (3), substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Increased the special fuel permit from $20 to $30.

15-70-458. Penalty for operation without temporary permit — compliance bond — policy continued.

Compiler's Comments

2013 Amendment: Chapter 188 in (1) after "Any" deleted "unlicensed" and after "permit" inserted "required by 15-70-311"; and made minor changes in style. Amendment effective April 12, 2013.

Part 5
Ethanol Tax Incentive and Administration

Part Administrative Rules

Title 18, chapter 15, subchapter 7, ARM Ethanol tax incentive.

15-70-501. Short title.

Compiler's Comments

2007 Amendment: Chapter 100 near beginning substituted ""Ethanol" for ""Alcohol". Amendment effective March 30, 2007.

15-70-502. Purpose.

Compiler's Comments

2007 Amendment: Chapter 100 in first sentence after "production of" substituted "ethanol" for "alcohol" and after "blended for" substituted "ethanol-blended gasoline" for "gasohol" and in second sentence after "development of" substituted "ethanol" for "alcohol fuel". Amendment effective March 30, 2007.

15-70-503. Definitions.

Compiler's Comments

2015 Amendment: Chapter 220 near beginning substituted "15-70-301 [renumbered 15-70-401]" for "15-70-201" and deleted former definition that read: ""Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle." Amendment effective October 1, 2015.

2007 Amendment: Chapter 100 inserted definitions of ethanol distributor and ethanol-blended gasoline dealer; deleted definition of alcohol distributor that read: ""Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution"; deleted definition of gasohol that read: ""Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10"; deleted definition of gasohol dealer that read: ""Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state"; and made minor changes in style. Amendment effective March 30, 2007.

2005 Amendment: Chapter 452 inserted definition of gasohol; and made minor changes in style. Amendment effective April 28, 2005.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 723 in definition of alcohol distributor deleted (b) that read: "(b) imports alcohol for sale, use, or distribution"; and made minor changes in style. Amendment effective April 29, 1991.

Retroactive Applicability: Section 4, Ch. 723, L. 1991, provided: "If [this act] is passed and approved after April 1, 1991, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1991." Approved April 29, 1991.

1985 Amendment: In (1)(a) and (1)(b), after "distribution", deleted "in this state"; and inserted definition of export.

15-70-511. Licensing of ethanol distributors.

Compiler's Comments

2007 Amendment: Chapter 100 at beginning of first sentence substituted "An ethanol" for "Every alcohol"; and made minor changes in style. Amendment effective March 30, 2007.

15-70-512. Distributor's statement.

Compiler's Comments

2007 Amendment: Chapter 100 throughout section in three places substituted "ethanol" for "alcohol"; in (2) near beginning after "each" substituted "ethanol-blended gasoline" for "gasohol"; and made minor changes in style. Amendment effective March 30, 2007.

Administrative Rules

Title 18, chapter 15, subchapter 2, ARM Distributor's license tax.
ARM 18.15.701 Ethanol distributors.
ARM 18.15.710 Quarterly reports.

15-70-513. Recordkeeping requirements.

Compiler's Comments

2007 Amendment: Chapter 100 near beginning after "each" substituted "ethanol" for "alcohol" and after "distributor and" substituted "ethanol-blended gasoline" for "gasohol"; and made minor changes in style. Amendment effective March 30, 2007.

15-70-514. Examination of records.

Compiler's Comments

2007 Amendment: Chapter 100 near middle after "any" substituted "ethanol" for "alcohol" and after "distributor or" substituted "ethanol-blended gasoline" for "gasohol". Amendment effective March 30, 2007.

15-70-521. Denaturing ethanol — refund authorized.

Compiler's Comments

2015 Amendment: Chapter 220 substituted "15-70-356 [renumbered 15-70-425]" for "15-70-221". Amendment effective October 1, 2015.

2007 Amendment: Chapter 100 in two places substituted "ethanol" for "alcohol"; and made minor changes in style. Amendment effective March 30, 2007.

15-70-522. Tax incentive for production of ethanol — rules.

Compiler's Comments

2015 Amendment: Chapter 220 in (1)(b) substituted "15-70-343 [renumbered 15-70-403]" for "15-70-204"; in (4)(a) substituted "15-70-344 [renumbered 15-70-410]" for "15-70-205"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 277 in (3)(b) near end substituted "18-2-414" for "18-2-401(13)(a)". Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

2007 Amendment: Chapter 100 throughout section in 18 places substituted "ethanol" for "alcohol"; in (1)(a)(i) and (1)(a)(ii) substituted "ethanol-blended gasoline" for "gasohol"; in (7) at end of first sentence after "section" deleted "within 1 year of April 28, 2005"; and made minor changes in style. Amendment effective March 30, 2007.

2005 Amendment: Chapter 452 in (2) in first sentence near middle lowered tax incentive from 30 cents to 20 cents a gallon, deleted former second sentence that read: "Beginning July 1, 2010, there is no tax incentive", and inserted second through fourth sentences regarding facility producing distilled alcohol; inserted (3)(b) regarding prevailing rate of wages; inserted (3)(c) regarding percent of Montana product used to produce alcohol; in (4)(a) in first sentence decreased payments from $3 million to $2 million and inserted second and third sentences regarding distributor tax incentive payments and reports to department; inserted (4)(b) regarding contents of distributor's report; inserted (5) regarding incentive payments; deleted former (5) through (7) that read: "(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;

(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and

(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.

(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:

(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;

(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and

(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.

(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments"; in (6) after "verified production" inserted reference to application provisions and proof of financing and at end inserted reference to subsection (4); deleted former (9) and (10) that read: "(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.

(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9)"; in (7) at end of first sentence after "this section" inserted reference to date for adoption of rules and inserted second sentence regarding rulemaking process; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 535 in (1)(a)(i) and (1)(a)(iii) at beginning substituted "is to be" for "was"; in (1)(a)(ii) after "Montana" substituted "to be" for "and has been"; in (5)(a) in first sentence near middle after "written" inserted "business" and at end inserted "and has complied with the schedule provided for in subsection (6)"; in (5)(a), (5)(b), and (5)(c) after "production of" inserted "alcohol for use in"; in (6) at beginning of introductory clause deleted "Except as provided in subsection (6)(b)"; deleted former (6)(b) that read: "(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan"; inserted (6) establishing a schedule that an applicant must meet in order to receive alcohol tax incentive payments; inserted (7) providing that an applicant who does not adhere to the schedule loses its priority for receiving incentive payments; inserted (8) requiring that payments begin following verification of production; in (9) deleted former second sentence that read: "Payment of the alcohol tax incentives must be based on actual production"; and made minor changes in style. Amendment effective April 29, 2003.

2001 Amendment: Chapter 532 in (2) in second sentence substituted "July 1, 2010" for "July 1, 2005"; in (5) near beginning after "distributor" deleted "who begins production after July 1, 1991" and near middle after "at least" substituted "24 months" for "18 months"; deleted former (6) that read: "(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5)"; and made minor changes in style. Amendment effective October 1, 2001.

Saving Clause: Section 2, Ch. 532, L. 2001, was a saving clause.

1997 Amendment: Chapter 510 in (2), after "30 cents per gallon", inserted "for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol" and substituted "2005" for "2001"; in (4) substituted "$3 million" for "$1.5 million"; and made minor changes in style.

1993 Amendment: Chapter 592 in (1)(a)(iii), after "ethyl", inserted "tertiary"; deleted former (2)(a) that read: "(a) beginning July 1, 1983, 70 cents per gallon"; deleted former (2)(b) that read: "(b) beginning April 1, 1985, 50 cents per gallon"; in (2)(a), before "30 cents", deleted "beginning April 1, 1987" and after "gallon" inserted language regarding the tax incentive; in (4) increased cap on incentive payments from $1.5 million to $3 million; in (5)(a), (5)(b), and (5)(c) substituted "alcohol" for "gasohol"; and made minor changes in style. Amendment terminates July 1, 1997.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Revenue. Amendment effective July 1, 1991.

Chapter 723 in (1)(a), after "wood products", inserted "or if the alcohol was produced from non-Montana agricultural products when Montana products are not available"; inserted (1)(a)(iii) concerning production of ethyl butyl ether; in (2) deleted reference to subsection (5); in (2)(d) extended termination of tax incentive from 1993 to 2001; deleted former (3) that read: "(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations"; in (3) deleted reference to subsection (3) and increased maximum credit payments from $1,250,000 to $6 million; in (4) increased maximum credit from $1 million to $1.5 million and after "1985" deleted "except as follows. If total tax incentive payments to all eligible alcohol distributors in any consecutive 12-month period beginning April 1, 1985, do not reach the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4), an alcohol distributor who has received the maximum payment of $1,000,000 as herein provided may receive additional tax incentive payments subject to the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4)"; inserted (5) concerning providing written plan provided by an alcohol distributor; inserted (6) exempting producer in production before July 1, 1991, from providing a plan; inserted (7) providing for reservation of tax incentive payments in order that plans are received and providing for determination of compliance with the plan; inserted (8) providing for administration of payments in certain circumstances; inserted (9) granting rulemaking authority; and made minor changes in style. Amendment effective April 29, 1991.

Composite Section: The Code Commissioner has not codified subsection (6) enacted by Ch. 723, L. 1991, because that subsection contemplated that the Department of Revenue share the information provided under subsection (5) with the Department of Transportation. Both the Motor Fuel Division of the Department of Revenue and the Department of Highways are within the Department of Transportation created by Ch. 512, L. 1991. Subsection (6) would have required the Department of Transportation to provide certain information to itself. The Code Commissioner has corrected internal references to reflect the deletion of subsection (6).

1991 Statement of Intent: The statement of intent attached to Ch. 723, L. 1991, provided: "A statement of intent is required for this bill because [section 2(10)] [15-70-522(10)] grants rulemaking authority to the department of revenue to allow the reservation of alcohol tax incentives for alcohol distributors who begin production after July 1, 1991, and to reduce or cancel those incentives if a new alcohol distributor does not comply with the written plan. The legislature intends that the department adopt rules that specify the information that must be contained in the written plan. The department shall also develop procedures to verify that the alcohol distributor has obtained financing for the acquisition of the plant, land, and equipment and has secured an adequate supply of agricultural products for the production of alcohol. The rules may include procedures for the review of a new alcohol distributor's business plan or prospectus, architectural plans, and process flows. The department shall also develop procedures for reducing or canceling the reservation of alcohol tax incentives if the department determines that the new alcohol distributor does not comply with the written plan."

Retroactive Applicability: Section 4, Ch. 723, L. 1991, provided: "If [this act] is passed and approved after April 1, 1991, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1991." Approved April 29, 1991.

1989 Amendment: In (2)(d) changed date from April 1, 1989, to July 1, 1993; and in (4) decreased allowable incentive payments from $2,500,000 to $1,250,000. Amendment effective April 20, 1989.

Contingent Retroactive Applicability: Section 4, Ch. 593, L. 1989, provided: "If [this act] is passed and approved after April 1, 1989, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1989." Approved April 20, 1989.

1985 Amendment: At beginning of (1)(a) inserted "Provided the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products"; in (1)(a)(i) at end substituted "in Montana" for "provided the alcohol is distilled in Montana from Montana agricultural products"; inserted (1)(a)(ii) relating to tax incentive for distilling alcohol exported from Montana and blended as gasohol; in (2) substituted "subsections (3) through (5)" for "subsection (3)"; in (2)(c) substituted "1987" for "1986"; in two places each in (3)(a), (3)(b), and (3)(c), after "gallons of gasohol sold", inserted "or that have received the benefit of the tax incentive during those quarters" and after "gasoline and gasohol sold", inserted "in Montana"; in (3)(d) inserted "and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations"; inserted (4) limiting total incentive payments to $2,500,000 in any 12-month period beginning April 1, 1985; inserted (5) relating to limitations on incentive payments to individual distributors; and made minor changes in phraseology.

Administrative Rules

Title 18, chapter 15, subchapter 7, ARM Ethanol tax incentive.

15-70-523. Application for payment of tax incentive.

Compiler's Comments

2007 Amendment: Chapter 100 in (1)(a) after "issued to the" substituted "ethanol-blended gasoline" for "gasohol" and at end and in (1)(b) in two places substituted "ethanol" for "alcohol"; and made minor changes in style. Amendment effective March 30, 2007.

1985 Amendment: Inserted (1)(b) relating to certificate of blending; deleted former (3) that read: "The payment of the tax incentives shall be reduced by the amount of tax provided for in 15-70-204(3) that is due on alcohol to be blended for gasohol"; and made minor changes in phraseology.

Administrative Rules

ARM 18.15.218 Treatment of ethanol-blended gasoline.

ARM 18.15.701 Ethanol distributors.

15-70-527. Penalty for failure to file.

Compiler's Comments

2007 Amendment: Chapter 100 at beginning substituted "An ethanol" for "Any alcohol"; and made minor changes in style. Amendment effective March 30, 2007.

Part 7
Alternative Fuel Tax

Part Compiler's Comments

Effective Date: Section 21(1), Ch. 405, L. 1995, provided that this part is effective January 1, 1996.

Part Administrative Rules

Title 18, chapter 15, subchapter 8, ARM Alternative fuels.

15-70-701. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

2001 Amendment: Chapter 125 in definition of public roads and highways of this state in (c) inserted references to Title 60, chapter 4, and Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.*1997 Amendment:* Chapter 125 in definition of bond, in three places, inserted reference to liquefied petroleum gas dealer; inserted definitions of liquefied petroleum gas and liquefied petroleum gas dealer or dealer; in definition of motor vehicle inserted reference to liquefied petroleum gas; and made minor changes in style. Amendment effective January 1, 1998.

15-70-702. Alternative fuel dealer's license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer and valid liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.15.801 CNG and LPG dealer license.

15-70-703. Application for license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

15-70-704. Bonding, release of surety, and additional bond.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1999 Amendment: Chapter 38 in (2) near middle of introductory clause after "estimated" substituted "quarterly" for "monthly". Amendment effective July 1, 1999.

1997 Amendment: Chapter 125 throughout section inserted references to liquefied petroleum gas dealer; and in two places inserted reference to liquefied petroleum gas dealer's license. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.15.805 CNG or LPG dealer's bond.

15-70-705. Issuance of license — grounds for refusal — hearing.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (1), at end of first sentence, inserted reference to liquefied petroleum gas dealer; in (2) and (4) inserted reference to liquefied petroleum gas dealer's license; and made minor changes in style. Amendment effective January 1, 1998.

15-70-706. Revocation of license — notice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (1), in first sentence, inserted reference to liquefied petroleum gas dealer. Amendment effective January 1, 1998.

15-70-707. Cancellation of license on surrender.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 inserted reference to liquefied petroleum gas dealer. Amendment effective January 1, 1998.

15-70-711. Tax on compressed natural gas, hydrogen fuel, liquefied petroleum gas, and alternative fuels.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (2)(a), after "total tax due", inserted "on compressed natural gas"; in (3) substituted "compressed natural gas dealer" for "dealer"; inserted (4) requiring liquefied petroleum gas dealer to collect tax from user; inserted (5) establishing formula for computing total tax due on liquefied petroleum gas; inserted (6) requiring liquefied petroleum gas dealer to pay tax to department; and made minor changes in style. Amendment effective January 1, 1998.

15-70-712. Recordkeeping.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (1) inserted reference to liquefied petroleum gas dealer and to liquefied petroleum gas. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.15.803 Dealer records — audit.

ARM 18.15.804 Dealer invoices.

15-70-713. Examination of records — enforcement — reciprocity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (2), in first sentence, inserted reference to liquefied petroleum gas dealer and inserted two references to liquefied petroleum gas; in (3) inserted reference to liquefied petroleum gas tax law, liquefied petroleum gas, and liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

15-70-714. Returns required — payment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1999 Amendment: Chapter 38 in (1) near end substituted "quarterly" for "monthly"; in (2) at end of first sentence substituted "quarter to which it relates" for "month for which the tax is due"; in (3) at end substituted "quarter" for "month"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 125 in (1) inserted reference to liquefied petroleum gas dealer; and in (3) inserted reference to liquefied petroleum gas. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.15.802 Quarterly tax returns.

15-70-715. Penalties for refusal or failure to file return or pay tax when due.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in three places inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

15-70-716. Deficiency — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in first sentence inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

Administrative Rules

ARM 18.15.103 Payment application.

15-70-717. Determination if no return made — penalty — presumption.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in (1) inserted two references to liquefied petroleum gas dealer and inserted reference to liquefied petroleum gas tax return. Amendment effective January 1, 1998.

15-70-718. Fraudulent return — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 17, Ch. 399, L. 2023. Amendment effective January 1, 2024.

Transition: Section 18, Ch. 399, L. 2023, provided: "Compressed natural gas dealer licenses and liquefied petroleum gas dealer licenses expire on December 31, 2023. Existing licensees shall submit an application for an alternative fuel dealer's license before the date established by the department of transportation."

1997 Amendment: Chapter 125 in introductory phrase inserted reference to liquefied petroleum gas dealer; and made minor changes in style. Amendment effective January 1, 1998.

15-70-719. Warrant for distraint.

Compiler's Comments

2015 Amendment: Chapter 220 at end before "tax" deleted "license". Amendment effective October 1, 2015.

Part 8
Electric Vehicles

Part Compiler's Comments

Effective Date: Section 8, Ch. 619, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 19, 2023.

Part Collateral References

Electric Vehicles in Montana and Other States, Final Report of the Transportation Interim Committee, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/content/Committees/Interim/2021-2022/Transportation/Final%20Intrium%20Documents/EVs_V4-editedHB_Final%20.pdf.

CHAPTER 72
ELECTRICAL GENERATION TAX AND INVASIVE SPECIES FEE

Chapter Compiler's Comments

Saving Clause: Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

Effective Date: Section 38(1), Ch. 556, L. 1999, provided that this chapter, except for promulgating rules under 15-72-117, is effective January 1, 2000.

Applicability: Section 39(1), Ch. 556, L. 1999, provided that this chapter applies to tax years beginning after December 31, 1999.

Part 1
Electrical Generation Tax Reform Act

15-72-102. Legislative findings and declaration of purpose.

Compiler's Comments

2003 Amendment: Chapter 114 in (3) substituted "transaction tax" for "transmission tax". Amendment effective October 1, 2003.

15-72-103. Definitions.

Compiler's Comments

2007 Amendment: Chapter 491 in definition of distribution services provider in second sentence near middle after "line" inserted "or substation"; and in definition of transmission services provider near beginning inserted "or entity" and at end substituted "facilities used for the transmission of electricity" for "transmission facilities as that term is defined in 69-8-103". Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

Administrative Rules

ARM 42.22.201 Definitions.

15-72-104. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery.

Compiler's Comments

2007 Amendment: Chapter 491 in (3)(d) substituted "69-8-103(4)(b)" for "69-8-103(5)(b)". Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2001 Amendments — Composite Section: Chapter 541 in (3)(b) near middle after "United States government" inserted "or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation"; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 591 inserted (3)(c) concerning electricity from wind turbines on state land; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

Termination Date: Section 40, Ch. 556, L. 1999, provided: "[Section 4(3)(e)] [now 15-72-104(3)(f)] terminates January 1, 2003."

Administrative Rules

ARM 42.22.101 Centrally assessed companies — definitions.

ARM 42.22.201 Definitions.

ARM 42.22.1317 Unit valuation or centrally assessed property appraiser certification requirements.

Law Review Articles

Loyalties and Royalties: The Osage Nation's Energy Sovereignty Plan and Wind Farm Opposition, Carmack, 40 Pub. Land & Resources L. Rev. 145 (2019).

15-72-106. Collection of wholesale energy transaction tax — disposition of revenue.

Compiler's Comments

2007 Amendment: Chapter 475 in (3) after "must" inserted "in accordance with the provisions of 17-2-124"; and made minor changes in style. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

Administrative Rules

ARM 42.22.202 Wholesale energy transaction tax — assessment of tax.

15-72-112. Penalties and interest for violation.

Compiler's Comments

2009 Amendment: Chapter 364 in (1)(b) in first sentence after "tax" inserted "on or". Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

15-72-114. Penalty and interest on deficiency.

Compiler's Comments

2005 Amendment: Chapter 594 substituted language regarding penalty and interest for former (1) and (2) that read: "(1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 43, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-72-117. Administration — rules.

Compiler's Comments

Effective Date: Section 38(2), Ch. 556, L. 1999, provided that for the purpose of promulgating rules under this section, this section is effective on passage and approval. Approved April 30, 1999.

Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Part 6
Invasive Species Fee

15-72-601. Invasive species fee for hydroelectric facilities.

Compiler's Comments

2021 Amendment: Chapter 499 in (1) after "quarterly invasive species" substituted "fee of $397.88 per megawatt of" for "fee based on" and at end deleted former text that read: "The quarterly invasive species fee for nameplate capacity of:

(a) at least 1.5 megawatts but less than 25 megawatts is $274.95 per megawatt;

(b) at least 25 megawatts but less than 100 megawatts is $549.90 per megawatt; and

(c) 100 megawatts or more is $824.85 per megawatt." Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 499, L. 2021, provided: "[Section 1] [amending 15-72-601] applies to quarterly periods beginning July 1, 2021."

2019 Amendment: Chapter 356 in (1) after "a quarterly invasive species fee" substituted "based on" for "of $795.76 per megawatt of", inserted last sentence in introductory clause and subsections (1)(a), (1)(b), and (1)(c), setting fees based on nameplate capacity; deleted former (7) that read: "(7) For the purposes of this section, the public service commission shall determine the appropriate recovery of this fee in rates in a proceeding held pursuant to 69-3-302 for any hydroelectric facility approved pursuant to 69-8-421"; and made minor changes in style. Amendment effective July 1, 2019.

Termination Provision Removed: Section 14, Ch. 356, L. 2019, amended sec. 21, Ch. 387, L. 2017, to remove the termination of this section. Effective May 7, 2019.

Effective Date: Section 19(1), Ch. 387, L. 2017, provided that this section is effective May 15, 2017. However, Ch. 387, L. 2017, was not signed and approved until May 18, 2017.

Applicability: Section 20, Ch. 387, L. 2017, provided: "[Sections 2 and 3] [15-72-601 and 15-72-602] apply to quarterly periods beginning July 1, 2017."

Termination: Section 21(3), Ch. 387, L. 2017, provided that this section terminates June 30, 2019.

Law Review Articles

Cutting the Mussel's Threads: A Legal Perspective on Invasive Species, Frandsen, 46 Pub. Land & Resources L. Rev. 40 (2024), https://scholarworks.umt.edu/plrlr/vol46/iss1/5/.

[illegible]

Compiler's Comments

2005 Amendment: Chapter 594 substituted language regarding penalty and interest for former (1) and (2) that read: "(1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and [illegible] (2) [illegible] and if the d[illegible] penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 594, L. 2005, provided: "WHEREAS, the Fifty-Sixth Legislature enacted legislation establishing uniform provisions for the assessment of penalties for late filings of tax returns and other statements and for assessing penalty and interest for delinquent taxes and fees under Titles 15 and 16 of the Montana Code Annotated and certain other taxes and fees; and

WHEREAS, the uniform assessment provisions related to penalties and interest do not apply to every tax or fee imposed under Title 15 and administered by the Department of Revenue; and

WHEREAS, the Department of Revenue's Integrated Revenue Information System is designed to ensure that the state's tax laws are applied fairly and consistently; and

WHEREAS, it is in the best interest of the State of Montana and taxpayers to expand the application of the uniform method of assessing penalties and interest."

Applicability: Section 13, Ch. 594, L. 2005, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies on and after July 1, 2005.

(2) [Section 3] [15-1-216, version effective January 1, 2007] applies to penalties assessed against taxes or fees due for tax reporting periods beginning after December 31, 2006.

(3) [Section 3] [15-1-216, version effective January 1, 2007] applies to interest computed under 15-1-216 assessed on taxes or fees owing after December 31, 2006, regardless of the tax reporting period for which the taxes or fees are owed."

15-72-117. Administration — rules.

Compiler's Comments

Effective Date: Section 38(2), Ch. 556, L. 1999, provided that for the purpose of promulgating rules under this section, this section is effective on passage and approval. Approved April 30, 1999.

Administrative Rules

Title 42, chapter 22, ARM Centrally assessed property.

Part 6
Invasive Species Fee

15-72-601. Invasive species fee for hydroelectric facilities.

Compiler's Comments

2021 Amendment: Chapter 499 in (1) after "quarterly invasive species" substituted "fee of $397.85 per megawatt of" for "fee based on" and at end deleted former text that read: "The quarterly invasive species fee for nameplate capacity of:

(a) at least 1.5 megawatts but less than 25 megawatts is $274.09 per megawatt;

(b) at least 25 megawatts but less than 100 megawatts is $349.90 per megawatt; and

(c) 100 megawatts or more is $524.85 per megawatt." Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 499, L. 2021, provided: "[Section 1] [amending 15-72-601] applies to quarterly periods beginning July 1, 2021."

2019 Amendment: Chapter 356 in (1) after "a quarterly invasive species fee" substituted "based on" for "of $795.76 per megawatt of", inserted last sentence in introductory clause and subsections (1)(a), (1)(b), and (1)(c), setting fees based on nameplate capacity; deleted former (7) that read: "(7) For the purposes of this section, the public service commission shall determine the appropriate recovery of this fee in rates in a proceeding held pursuant to 69-3-302 for any hydroelectric facility approved pursuant to 69-8-421"; and made minor changes in style. Amendment effective July 1, 2019.

Termination Provision Removed: Section 14, Ch. 356, L. 2019, amended sec. 21, Ch. 387, L. 2017, to remove the termination of this section. Effective May 7, 2019.

Effective Date: Section 19(1), Ch. 387, L. 2017, provided that this section is effective May 16, 2017. However, Ch. 387, L. 2017, was not signed and approved until May 18, 2017.

TITLE 16
ALCOHOL, TOBACCO, AND MARIJUANA

CHAPTER 1
ADMINISTRATION AND TAXATION OF ALCOHOL

Chapter Compiler's Comments

Section Not Codified: Section 4-1-106, R.C.M. 1947, a saving clause applying to "this code", was not codified in the MCA. It is still valid law as it has not been repealed. It was enacted by sec. 39, Ch. 84, L. 1937 (sec. 4-440, R.C.M. 1947), amended, and redesignated as sec. 4-1-106, R.C.M. 1947, by sec. 105, Ch. 387, L. 1975.

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Part 1
General Provisions

16-1-101. Citation — declaration of policy — subject matters of regulation.

Compiler's Comments

2009 Amendment: Chapter 181 in (3) inserted second sentence identifying the purpose of the code under the 21st amendment to the United States Constitution. Amendment effective April 6, 2009.

Severability: Section 4, Ch. 181, L. 2009, was a severability clause.

Saving Clause: Section 5, Ch. 181, L. 2009, was a saving clause.

2005 Amendment: Chapter 130 in (1) at beginning after "through" inserted "4 and"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 543 in (2) near middle after "sale" inserted "importation"; and in (3) at end of first sentence substituted "and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state" for "and its provisions shall be construed for the accomplishment of such purposes" and inserted last sentence concerning broad construction. Amendment effective May 1, 2001.

1987 Amendment: In (2) substituted "alcoholic beverages" for "liquor".

Case Notes

Impairment of Contracts: The Montana Alcoholic Beverage Code, ch. 1 through 6 of this title, appears to be a valid exercise of the state police power and is not repugnant to the federal constitutional provisions prohibiting impairment of contracts or similar language in the Montana Constitution. Libbey II v. Jos. Schlitz Brewing Co., 34 St. Rep. 1254 (D.C. Mont. 1977) (apparently not reported in Federal Supplement).

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor because the state has reserved exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Police Regulation: The State Liquor Control Act of Montana (Ch. 105, L. 1933) and 16-1-103 are police regulations enacted pursuant to the police powers of the state. The acts prohibited are mala prohibita as distinguished from acts mala in se. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Construction: The State Liquor Control Act of Montana and the Montana Beer Act (Ch. 105 and 106, L. 1933) are in pari materia and must be construed together; and with the amendments to those acts are one homogeneous and consistent body of law. Fletcher v. Paige, 124 M 114, 220 P2d 484 (1950).

Referendums: The State Liquor Control Act of Montana (Ch. 105, L. 1933) does not relate to appropriations of public money and is therefore not exempt from referendum. Failure to state that enactment is necessary for the immediate preservation of the public health, etc., and does not alone effect referability; referability is a question for the courts, immediate necessity being an essential condition. State ex rel. Haynes v. District Court, 106 M 470, 78 P2d 937 (1938).

Act Exercise of Police Power: The State Liquor Control Act of Montana (Ch. 105, L. 1933) is an exercise of a governmental function within the police power of the state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Act Not for Raising Revenue: The State Liquor Control Act of Montana (Ch. 105, L. 1933), the main purpose of which is to regulate the manufacture and sale of intoxicating liquor, but which incidentally results in profits to the state from the operation of state liquor stores, does not violate Art. V, sec. 32, 1889 Mont. Const. (no counterpart in 1972 Mont. Const.), which provides that bills for raising revenue must originate in the House of Representatives. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

Constitutional Law: The State Liquor Control Act of Montana (Ch. 105, L. 1933) does not violate the 1889 Montana Constitution (now Art. V, sec. 11, and Art. VIII, sec. 1, 1972 Mont. Const.) requirements that the subject of an act be clearly expressed in the act's title, and that state revenue come from a mandatory property tax and a permissive license tax, two methods of taxation which are not exclusive under the requirement. Other taxes may be levied. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor under 16-4-503 but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

16-1-102. Policy as to sale of beer.

Compiler's Comments

2009 Amendment: Chapter 197 near middle of first sentence, following "code" deleted "and which contains not more than 7% of alcohol by weight", at beginning of second sentence inserted "Unless defined as beer in 16-1-106(5)(b)", near middle following "more than" substituted "8.75% alcohol by volume" for "7% of alcohol by weight"; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.13.201 Labeling and packaging requirements.

Attorney General's Opinions

Local Governments Preempted From Controlling Beer Sales: By enacting this section, the Legislature reserved to the State the entire control of the manufacture, sale, and distribution of beer. Thus, neither cities nor counties have authority to enact ordinances requiring distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

16-1-103. Policy as to retail sale of liquor.

Compiler's Comments

1995 Amendment: Chapter 530 near end of first sentence, after "ensure", substituted "that the department has complete regulatory" for "the entire" and at end substituted "this state" for "the department of revenue" and in second sentence, in three places, substituted reference to agency liquor stores for reference to state liquor stores. Amendment effective April 25, 1995.

Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 11, subchapter 4, ARM Purchasing and distribution.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Case Notes

Regulation of Nude Dancing by Municipality: Under the broad regulatory powers of the twenty-first amendment, a municipality with self-government powers may enact an ordinance that regulates nude and seminude dancing. Billings v. Laedeke, 247 M 151, 805 P2d 1348, 48 St. Rep. 133 (1991).

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor, since the state has taken exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Police Regulation: This section is a police regulation and enacted pursuant to the police powers of the state. Deeds prohibited are mala prohibita as distinguished from acts mala in se. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Purpose: The people of this state are to be protected in their "health, welfare and safety" by this section and by the rules and regulations promulgated. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause, in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

Regulation of Live Dance Performance in Licensed Liquor Establishment — Abridgment of Free Expression: The validity of a city ordinance regulating live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by Art. II, sec. 7, Mont. Const., and the first amendment to the U.S. Constitution. Therefore, a proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in licensed liquor establishments is an unconstitutional abridgment of the constitutional standards because: (1) it fails to distinguish carefully between protected and unprotected conduct; and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established. 41 A.G. Op. 75 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

16-1-104. Intent and construction of code.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1)(a) concerning purpose of establishing licensing system; in (2) at end inserted "according to subsection (1)"; deleted former last sentence that read: "The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state"; and made minor changes in style. Amendment effective May 1, 2001.

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".

Case Notes

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause, in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

16-1-105. Divisions of code.

Compiler's Comments

1995 Amendment: Chapter 530 in third sentence, after "establishment of", substituted "agency liquor" for "state". Amendment effective April 25, 1995.

1987 Amendments: Chapters 68 and 370 in sixth sentence, after "Chapter 5", inserted "now repealed" and made minor change in phraseology.

16-1-106. Definitions.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 1, Ch. 33, L. 2023, in definition of table wine at end substituted "hard cider" for "cider". Amendment effective March 2, 2023.

Section 1, Ch. 61, L. 2023, in definition of agency franchise agreement after "sell liquor" deleted "and table wine"; and in definition of table wine at end substituted "hard cider" for "cider". Amendment effective March 16, 2023.

Section 2, Ch. 138, L. 2023, inserted definition of beer wholesaler; in definition of subwarehouse substituted "combined beer wholesaler and table wine distributor" for "beer wholesaler or table wine distributor", substituted "combined beer wholesaler's and table wine distributor's" for "beer wholesaler's or table wine distributor's", after "distributor's warehouse" deleted "or principal place of business", and near end after "table wine" inserted "or sacramental wine"; in definition of table wine substituted "hard cider" for "cider"; in definition of table wine distributor at end inserted "and a person importing into or purchasing in Montana table wine for sale or resale to agency liquor stores"; in definition of warehouse substituted "licensed combined beer wholesaler and table wine distributor" for "licensed beer wholesaler or table wine distributor"; and made minor changes in style. Amendment effective July 1, 2024.

Section 2, Ch. 140, L. 2023, inserted definition of location manager; and made minor changes in style. Amendment effective April 18, 2023.

Section 1, Ch. 585, L. 2023, inserted definition of guest ranch; and made minor changes in style. Amendment effective May 18, 2023.

The amendment to this section made by sec. 1, Ch. 728, L. 2023, was rendered void by sec. 7, Ch. 728, L. 2023, a coordination section.

2021 Amendments — Composite Section: Chapter 25 in definition of hard cider substituted "8.5% of alcohol by volume" for "6.9% of alcohol by volume"; in definition of malt beverage inserted (b) concerning alcoholic beverages made by the fermentation of malt substitutes; and made minor changes in style. Amendment effective February 23, 2021.

Chapter 194 inserted definitions of curbside pickup, original package, and prepared serving; in definition of growler substituted "fillable, sealable" for "refillable, resealable"; and made minor changes in style. Amendment effective April 14, 2021.

2019 Amendment: Chapter 479 inserted definition of concessionaire; and made minor changes in style. Amendment effective May 10, 2019.

2013 Amendment: Chapter 115 in definition of posted price inserted "sold in agency liquor stores"; in definition of sacramental wine inserted "that contains more than 0.5% but not more than 24% of alcohol by volume"; and in definition of table wine distributor inserted "or sacramental wine". Amendment effective July 1, 2013.

2011 Amendment: Chapter 77 inserted definition of growler; and made minor changes in style. Amendment effective March 25, 2011.

2009 Amendments — Composite Section: Chapter 101 in definition of beer inserted (b) specifying exclusions; inserted definition of caffeinated or stimulant-enhanced malt beverage; in definition of liquor inserted second sentence relating to certain malt beverages; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 197 in definition of beer in (a)(i) substituted "8.75% alcohol by volume" for "7% of alcohol by weight" and inserted (a)(ii) concerning beverages containing not more than 14% alcohol by volume; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 414 in definition of posted price inserted second sentence concerning wholesale price of sacramental wine; inserted definition of sacramental wine; and made minor changes in style. Amendment effective April 28, 2009.

2003 Amendments — Composite Section: Chapter 110 in definition of department after "specified" inserted remainder of sentence including department of justice for certain purposes; and made minor changes in style. Amendment effective March 24, 2003.

Chapter 369 inserted definition of special event; and made minor changes in style. Amendment effective April 16, 2003.

1997 Amendments: Chapter 42 deleted definition of industrial use that read: ""Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 399 inserted definition of hard cider; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 530 inserted definitions of agency liquor store and community; in definition of posted price, after "means the", substituted "wholesale" for "retail" and after "liquor" substituted "for sale to persons who hold liquor licenses" for "and table wine"; inserted definition of retail price; substituted definition of state liquor warehouse for state liquor facility, after "means a" substituted "building" for "facility", and at end inserted "to agency liquor stores"; deleted definition of state liquor store that read: ""State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendments: Chapter 228 substituted agency franchise agreement for agency agreement as defined term; and made minor changes in style. Amendment effective March 30, 1993.

Chapter 414 in definition of Department, at end, inserted "unless otherwise specified"; in definition of rules substituted "adopted" for "published" and after "department" inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1991 Amendment: Inserted definition of table wine distributor.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

1987 Amendment: In definitions of agency agreement, posted price, and state liquor store inserted reference to table wine.

1985 Amendments: Chapter 16 in (22) changed 14% to 16%; and in first sentence of (24) inserted "or containing" after "an alcoholic beverage made from" and substituted "contains more than 0.5% but not more than 24%" for "contains not less than 7% or more than 24%".

Chapter 19 inserted (5) defining beer importer; and inserted (9) defining import.

Chapter 141 inserted (21) defining subwarehouse; and in (23) after "structure", inserted "located in Montana", after "licensed" inserted "beer", after "wholesaler" inserted "or table wine distributor", and after "distribution of beer" inserted "or table wine".

1983 Amendment: Deleted former (15), which read: "Public road or highway means the same as in 15-70-301(5).".

1981 Amendment: Added (15) defining "public road or highway".

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.11.301 Definitions.

ARM 42.13.201 Labeling and packaging requirements.

Part 2
Scope of Code and Exemptions

16-1-201. Acts not covered by code.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 33, L. 2023. Amendment effective March 2, 2023.

1997 Amendment: Chapter 42 in (2), at end, substituted "chapter 51 of the Internal Revenue Code" for "Internal Revenue Code, 26 U.S.C. 5001 through 5693, inclusive"; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendment: In (1), in two places, and near beginning of (2) substituted "alcoholic beverages" for "liquor"; and in (3)(a) and (3)(b) inserted reference to table wine.

Administrative Rules

Title 42, chapter 13, subchapter 10, ARM Manufacturing arrangements.

Case Notes

Purchase of Materials: The 1965 amendment to this section indicates that materials to be used in the manufacture of liquor are not required to be purchased through the Montana Liquor Control Board (now Department of Revenue), but may be purchased in any manner not inconsistent with the laws and regulations of the federal government. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

Scope: The 1965 amendment to this section made it clearly permissible to engage in the manufacture of liquor in Montana provided such business is also authorized by the statutes of the United States of America. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

16-1-202. Preparations not subject to code.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 33, L. 2023. Amendment effective March 2, 2023.

1997 Amendment: Chapter 42 in (2), near end, substituted "except by an agency liquor store" for "except by a state liquor store"; and made minor changes in style. Amendment effective March 12, 1997.

16-1-203. Health professions exemption.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

16-1-204. Licensed hospital or health care facility.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".

16-1-205. Local option.

Compiler's Comments

2015 Amendment: Chapter 49 near beginning substituted "7-5-131 through 7-5-135 and 7-5-137" for "7-5-131 through 7-5-137" and at end substituted "as provided in 7-5-136" for "under Title 7, chapter 5, part 1"; and made minor changes in style. Amendment effective November 4, 2015.

Code Commissioner Correction: Pursuant to sec. 40, Ch. 55, L. 2015, the code commissioner substituted "7-5-132" for "7-5-136". Section 7-5-136 was repealed by Ch. 49, L. 2015, and 7-5-132, as amended by Ch. 49, deals with the same subject matter as the repealed section.

1985 Amendment: In first sentence substituted "7-5-131 through 7-5-137" for "Title 7, chapter 5, part 22".

Part 3
Department of Revenue
Powers, Duties, and Limitations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-1-301. Administration of code.

Compiler's Comments

1995 Amendment: Chapter 530 near end, after "all", substituted "agency" for "state". Amendment effective April 25, 1995.

16-1-302. Functions, powers, and duties of department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 33, L. 2023. Amendment effective March 2, 2023.

2003 Amendment: Chapter 110 in (6) after "services" inserted language allowing department of justice to receive and process but not grant or deny applications; and inserted last sentence in (6) concerning contracted services. Amendment effective March 24, 2003.

1995 Amendment: Chapter 530 in (1), at end, deleted "and table wine"; in (3), after "where", substituted "agency" for "state"; and in (6), at beginning after "employ", substituted "the necessary" for "store managers and other". Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), at end, deleted "in the manner set forth in this code"; in (4) substituted "to administer its duties under" for "for the operation of"; in (5), after "equipment", substituted "necessary to administer its duties under" for "it may consider necessary and useful in carrying into effect the objects and purposes of"; in (6), after "managers and", deleted "also every officer, investigator, clerk, or", after "required" substituted "to administer" for "for the operation or carrying out of", after "them" deleted "fix their salaries or remuneration", and before "the services" inserted "contract with the department of justice for investigative services or to contract for"; in (10), after "things", substituted "necessary to administer" for "considered necessary or advisable by the department for the purpose of carrying into effect the provisions of" and after "rules" deleted "made under the provisions of this code"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end of (6) substituted "considered appropriate" for "deemed expedient"; inserted (9) allowing Department to place special restrictions on use of a particular license; and made minor changes in style.

Administrative Rules

Title 42, chapter 11, subchapter 1, ARM General liquor provisions.
Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.
ARM 42.11.402 Inventory policy.
ARM 42.11.405 Product availability.
ARM 42.11.406 Product listing.
ARM 42.11.409 Revised listing and overstock.
ARM 42.11.421 Bailment limits.
ARM 42.11.422 Bailment receivings.
ARM 42.11.423 Bailment depletions.
ARM 42.11.424 Bailment adjustments.
ARM 42.11.425 State liquor warehouse management.
ARM 42.11.426 Bailment disputes.
ARM 42.12.107 Educational materials.
ARM 42.13.203 Beer label approvals.

Case Notes

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Legality of Contract of Purchase: In a declaratory judgment action by the State Treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the Montana Liquor Control Board (now Department of Revenue) on funds deposited with him and raised by the Board through participation of 127 state retail dealers to cover a downpayment on 15,000 cases of liquor to meet a war emergency shortage, the state to take its markup and sell the liquor to the dealers, held that the purchase was made within the Board's power under this section, nothing herein qualifying or limiting its right or method of purchase. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

16-1-303. Department rules.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 565, L. 2023. Amendment effective May 18, 2023.

Preamble: The preamble attached to Ch. 565, L. 2023, provided: "WHEREAS, ARM 42.11.402 and 42.13.201 specifically prohibit the approval of gelatin cup alcoholic products for use in Montana and the amendment to section 16-1-303, MCA, seeks to have the department remove that prohibition."

1995 Amendment: Chapter 530 in (2)(a), (2)(c), in two places, (2)(d), (2)(f), and (2)(h), after "liquor", deleted reference to table wine; in (2)(a), after "regulating the", substituted "contractual operation of agency liquor" for "equipment and management of state"; in (2)(c), at end, substituted "agency liquor" for "state"; in (2)(d), after "to be", substituted "available for distribution from the state liquor warehouse" for "kept for sale at any state store"; in (2)(e), near beginning, inserted "minimum" and after "which" substituted "agency" for "state"; inserted (5) requiring the use of negotiated rulemaking procedures; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), near beginning after "department", inserted "and the department of justice" and after "necessary" deleted "for carrying out the provisions of"; in (2) substituted introductory clause concerning rules for former language that read: "Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following"; in (2)(b) substituted "department employees" for "employees of the liquor division"; in (2)(c), at end, deleted "established under this code"; in (2)(e), after "prescribing", deleted "subject to this code"; in (2)(h) substituted "department" for "division"; in (2)(k), at end, deleted "and providing for the inspection of such licensed premises"; in (2)(m), in two places after "time", deleted "and periods" and in two places, after "manner", deleted "methods, and means"; inserted (3) allowing the Department of Justice to adopt rules relating to its responsibilities under this title; substituted (4) concerning acts authorized by rule for former text that read: "Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 414, L. 1993, provided: "A statement of intent is required for this bill because [sections 3 and 28] [section 3 amended 16-1-303 and section 28 was codified as 16-11-105 and 53-2-505] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. The investigative functions that rulemaking may address are limited to the factfinding responsibilities of investigators and the search and seizure functions associated with illegally stored or transported alcoholic beverages or tobacco products. It is the intent of the legislature to consolidate investigative functions under the supervision of the state attorney general."

1987 Amendment: In (2)(c), in two places, inserted reference to table wine; in (2)(k) substituted "alcoholic beverage licenses" for "a liquor or beer license"; in (2)(l) and (2)(n) substituted "alcoholic beverages" for "liquor or beer"; and in (2)(m), in two places, substituted "alcoholic beverages" for "liquor".

1983 Amendment: Deleted (2)(g), which read: "prescribing an official seal which shall be attached to every package of liquor sold or sealed under this code".

Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
ARM 42.11.312 Direct product deliveries from a distillery.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.
ARM 42.13.102 Retention of records.
ARM 42.13.201 Labeling and packaging requirements.
ARM 42.13.210 Consumer promotions.
ARM 42.13.807 Distillery deliveries to agency liquor stores.
Title 42, chapter 13, subchapter 10, ARM Manufacturing arrangements.

Case Notes

Rationing System: The Montana Liquor Control Board's (now Department of Revenue) agreement with retail liquor dealers, advancing $10 a case toward enabling the Board to make an advance payment was not invalidated by the Board's rationing system, since under this section, as it read at the time, the Board could establish, amend, and alter its system either directly or by lawful transactions with exception of discrimination among holders of any class of permits. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

Scope of Rules: The Montana Liquor Control Board (now Department of Revenue) is an administrative body; it has no lawmaking power, and while it is authorized to make rules, they must be limited in their purpose and effect as an aid in the administration of the law of its creation, and any such rules calculated to widen the scope of the law and extend the Board's discretionary powers to matters beyond the purview of the act are void and of no effect. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

Rules of Substitute Board: Delegation of power to the State Board of Equalization (now Montana Tax Appeal Board) acting ex officio as beer board administering Montana Beer Act (Ch. 106, L. 1933) to make rules for the proper carrying into effect of the Act, held not objectionable as a delegation of legislative power. State ex rel. Steward v. District Court, 103 M 487, 63 P2d 141 (1936).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

16-1-304. Prohibited acts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 33, L. 2023. Amendment effective March 2, 2023.

2003 Amendment: Chapter 110 in (1) near middle after "involved with" inserted "license applications or"; and made minor changes in style. Amendment effective March 24, 2003.

1995 Amendment: Chapter 530 in (1), near beginning after "state", inserted "liquor", after "warehouse" deleted "or state liquor stores", and near middle, after "dealing in liquor", deleted "or table wine"; in (2), near beginning, inserted "a state agent, or any person having any ownership interest in an agency liquor store", after "gift" inserted "or other thing tangible or intangible of value", and after "liquor" deleted "or table wine"; in (3), near beginning after "liquor", deleted "or table wine", near middle, after "gift to any", deleted "member or", after "state" inserted "any state agent, or any person having any ownership interest in an agency liquor store", and after "behalf of" substituted "an" for "the member or"; in (4), (4)(a), and (4)(b), after "liquor", deleted "or table wine"; in (5), at beginning of first sentence after "Liquor", deleted "wine, or other alcoholic beverage", before "liquor stores" substituted "agency" for "state", after "sale" inserted "to persons who hold liquor licenses at the posted price and sale to the consumer", and after "at the" substituted "retail price established by the agent" for "prevailing state retail prices" and in second sentence, after "warehouse", deleted "or state store"; in (6), after "amounts of liquor", deleted "or wine" and after "distiller" deleted "or winery"; deleted (7) that read: "(7) The state may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1) substituted "An employee of the department involved in the operation of the state warehouse or state liquor stores" for "No officer or employee of the liquor division, including those engaged in the sale of liquor at the various state liquor or table wine stores" and after "stores" inserted "the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages"; in (2), at beginning, substituted "An employee of the state may not" for "No member or employee of the division or any employee of the state may" and near end, after "state", deleted "or division"; in (3), after "from the state", deleted "liquor division" and after "employee of the" deleted "division, to any employee of the"; throughout (4) through (7) substituted references to the state for references to the Division and the Liquor Division; in (5), in first sentence after "stores", deleted "of the Montana liquor division"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (6) prohibiting Division from requiring that a low-volume liquor company maintain minimum amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership; and inserted (7) prohibiting Division from requiring that a low-volume wine company maintain minimum amounts of table wine in the state warehouse while the company retains ownership. Amendment effective May 16, 1991.

Administrative Rules

ARM 42.11.251 Unlawful acts.
ARM 42.12.107 Educational materials.

16-1-306. Revenue to be paid to state treasurer.

Compiler's Comments

2009 Amendment: Chapter 2 near beginning after "16-1-404" deleted "16-1-405"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment: Chapter 475 near end after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

1997 Amendment: Chapter 422 substituted "16-1-406" for "16-1-408, 16-1-410". Amendment effective July 1, 1997.

1995 Amendment: Chapter 18 near end, after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

1993 Amendment: Chapter 455 after "department" substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall" and after "deposited" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1987 Amendment: Near beginning of section substituted statutory citations to 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411 for "Except as provided in 16-1-410".

16-1-307. State-allowed industry trade shows — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 4
Taxation of Alcoholic Beverages

Part Law Review Articles

Alcohol Taxes and Beverage Prices, Young & Bielinska-Kwapisz, 55 Nat'l Tax J. 57 (2002).

16-1-401. Liquor excise tax.

Compiler's Comments

2011 Amendment: Chapter 277 in (1) at beginning inserted exception clause; inserted (3) providing for tax exemption; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 259 in (1) in introductory clause after "rate" inserted remaining language in introductory clause relating to percent of retail selling price determined by new schedule, and substituted new schedule for former (1)(a) and (1)(b) that read: "(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section"; and made minor changes in style. Amendment effective April 17, 2009.

Applicability: Section 3, Ch. 259, L. 2009, provided: "[This act] applies to liquor sold and delivered after July 1, 2009."

2007 Amendment: Chapter 475 in (2) near middle after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

1995 Amendment: Chapter 18 near middle of (2), after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

1993 Amendment: Chapter 455 near middle of (2), after "shall", inserted "in accordance with the provisions of 15-1-501(6)" and after "deposit" deleted "with the state treasurer"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1985 Amendment: In (1)(a), after "sold and delivered", inserted remainder of (1)(a) and (1)(b) differentiating liquor vendors selling more and those selling less than 200,000 proof gallons nationwide.

Preamble: Chapter 690, L. 1985, which amended this section, contained the following preamble: "WHEREAS, the Montana Legislature recognizes the need to foster small business growth and development as an essential component of the Montana economy; and

WHEREAS, the Montana Legislature finds that small, emerging companies engaged in the business of manufacturing, distilling, rectifying, bottling, and processing liquor are particularly vulnerable to variables in the marketplace in comparison to larger well-established companies; and

WHEREAS, tax reductions to such smaller, emerging companies are a means of fostering their economic growth without impinging upon interstate commerce."

Administrative Rules

ARM 42.11.104 Calculation of posted price.

ARM 42.13.603 Use of flavors and nonbeverage ingredients containing alcohol in the manufacturing of beer.

ARM 42.13.806 Use of outsourced alcohol in the manufacturing of distilled spirits.

Case Notes

Items Taxed: License and excise taxes are due and collectible only upon liquor purchased by the Montana Liquor Control Board (now Department of Revenue) at the time of sale and delivery to the Board, and are not due and collectible upon materials, products, and distilled spirits containing alcohol for manufacturing purposes. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

16-1-402. Payment of excise tax by carriers.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), near end after "purchased from", substituted "an agency" for "the state"; and made minor changes in style. Amendment effective April 25, 1995.

16-1-403. Excise tax accounting methods — report forms — penalty and interest.

Compiler's Comments

1999 Amendment: Chapter 427 in (1) deleted former first sentence that read: "The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state" and in first sentence inserted reference to 16-1-402; inserted (2)(b) relating to penalty and interest provisions of 15-1-216; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

16-1-404. License tax on liquor — amount — distribution of proceeds.

Compiler's Comments

2015 Amendment: Chapter 362 in (2) at end of second sentence substituted various state markup percentages for state markup "as designated by the department". Amendment effective November 1, 2015.

2011 Amendment: Chapter 277 in (1) at beginning inserted exception clause; inserted (4) providing for tax and markup exemption; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 475 in (2) near middle of fifth sentence after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 591 in (1)(b) near middle after "sold" inserted "more than 50,000 proof gallons but"; inserted (1)(c) providing reduced tax rate on liquor sold by companies that sell not more than 50,000 proof gallons nationwide; and in (2) in first sentence after "liquor" inserted "produced in or". Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 470 in (2)(b) at end and in (3) in two places inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 substituted (2)(a) allocating 34.5% to state general fund for former (2)(a) and (2)(b) that read: "(a) Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (4).

(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes"; deleted former (3) and (4) that read: "(3) (a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405.

(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.

(4) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of

liquor in all of the cities and towns of the county"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 389 in (2) at beginning of fifth sentence substituted present language pertaining to allocation of revenue for former language that read: "The revenue is statutorily appropriated, as provided in 17-5-502, to the department and must, in accordance with the provisions of 15-1-501, be disbursed as follows"; in (3)(b) inserted second sentence concerning statutory appropriation of payments to counties; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 422 in (2), in last sentence of introductory clause, deleted "Thirty percent of" and at end inserted "disbursed as follows"; in (2)(a), at beginning, inserted "Thirty percent is"; in (2)(b), after "percent", substituted "is" for "of this revenue is statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501, be"; in (2)(c), at beginning, substituted "Sixty-five and one-half percent must" for "The remaining revenue must, in accordance with the provisions of 15-1-501" and deleted from beginning of last sentence "That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 18 in (2), in four places after "15-1-501", deleted reference to subsection (6); and made minor changes in style.

Chapter 546 in (2), in seventh sentence, and in (4), in two places, substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 455 in fifth, sixth, seventh, and ninth sentences of (2) inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendments: Chapter 690 redesignated former (1) as (1) (lead-in), (1)(a), and (2); in (1)(a) following "delivered", inserted remainder of (1)(a) and (1)(b) differentiating liquor vendors selling more and those selling less than 200,000 proof gallons nationwide; and in (2), at beginning substituted "The license" for "Said", at beginning of third sentence substituted "The" for "Said 10%", and near end of fourth sentence substituted "the" for "such 10%".

Chapter 703 in (2), near beginning of fifth sentence, after "revenues", inserted "are statutorily appropriated, as provided in 17-7-502, to the department and", near beginning of sixth sentence, after "revenues", inserted "are statutorily appropriated, as provided in 17-7-502, and", and at beginning of last sentence substituted "That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall" for "The department shall".

Preamble: Chapter 690, L. 1985, which amended this section, contained the following preamble: "WHEREAS, the Montana Legislature recognizes the need to foster small business growth and development as an essential component of the Montana economy; and

WHEREAS, the Montana Legislature finds that small, emerging companies engaged in the business of manufacturing, distilling, rectifying, bottling, and processing liquor are particularly vulnerable to variables in the marketplace in comparison to larger well-established companies; and

WHEREAS, tax reductions to such smaller, emerging companies are a means of fostering their economic growth without impinging upon interstate commerce."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 42.11.104 Calculation of posted price.

ARM 42.13.603 Use of flavors and nonbeverage ingredients containing alcohol in the manufacturing of beer.

ARM 42.13.806 Use of outsourced alcohol in the manufacturing of distilled spirits.

Case Notes

Items Taxed: License and excise taxes are due and collectible only upon liquor purchased by the Montana Liquor Control Board (now Department of Revenue) at the time of sale and delivery to the Board, and are not due and collectible upon materials, products, and distilled spirits containing alcohol for manufacturing purposes. Alpha Indus., Inc. v. Mont. Liquor Control Bd., 146 M 23, 403 P2d 606 (1965).

16-1-406. Taxes on beer.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 68, L. 2023, in (2) in first sentence in two places substituted "quarter" for "month"; and made minor changes in style. Amendment effective July 1, 2023.

Section 6, Ch. 76, L. 2023, in (1) at end of first sentence inserted "or by a licensed brewer directly to retailers, special permittees, or the public" and deleted former second sentence that read: "A barrel of beer equals 31 gallons"; in (2) in first sentence near middle inserted "on a wholesaler and an electronic beer tax return" and inserted second sentence relating to electronic beer tax returns; and made minor changes in style. Amendment effective October 1, 2023.

Applicability: Section 4, Ch. 68, L. 2023, provided: "[This act] applies to beer, sacramental wine, table wine, or hard cider sold on or after July 1, 2023."

2017 Amendment: Chapter 271 in (1)(a) and (1)(b) substituted "10,000 barrels" for "20,000 barrels"; deleted former (1)(a)(iii) that read "10,001 barrels to 20,000 barrels, $3.30"; and made minor changes in style. Amendment effective October 1, 2017.

2007 Amendment: Chapter 475 in (3) in introductory clause after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2001 Amendments — Composite Section — Coordination: Chapter 405 in (1)(a) substituted first and second sentences regarding wholesale beer tax and number of gallons in barrel for "A tax of $4.30 per barrel of 31 gallons is imposed on each barrel of beer sold in Montana by a wholesaler" and inserted third sentence regarding basis for tax, introductory clause, and (1)(a)(i) through (1)(a)(iii) specifying amount of tax per number of barrels; inserted (1)(b) regarding tax on brewer producing more than 20,000 barrels; in (3)(a) at beginning substituted "23.26%" for "$1"; in (3)(b) at beginning substituted "111.63%" for "50 cents"; in (3)(c) at beginning substituted "65.11%" for "$2.80"; and made minor changes in style. Amendment effective July 1, 2001. Pursuant to sec. 255(7), Ch. 574, L. 2001, a coordination section, the code commissioner has not codified the amendments made by Ch. 405.

Chapter 470 in (3)(a) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Section 255(7), Ch. 574, L. 2001, a coordination section, provided that if Senate Bill No. 317 and Ch. 574 were both passed and approved, then 16-1-406 was amended as provided in the coordination section. Senate Bill No. 317 was passed and approved as Ch. 405, L. 2001. Chapter 574 in (1)(a) at beginning substituted "A tax" for "A tax of $4.30" and inserted remainder of subsection specifying that a barrel of beer equals 31 gallons, imposing tax based on total barrels of beer produced in a year, and establishing schedule of tax for production of less than 20,000 barrels of beer a year; inserted (1)(b) setting tax at $4.30 for brewers producing over 20,000 barrels a year; in (2) at beginning after "tax" inserted "imposed pursuant to subsection (1)"; in (3)(a) at beginning substituted "23.26%" for "$1"; in (2)(b) at beginning substituted "the balance" for "50 cents"; deleted former (2)(c) that read: "(c) $2.80 must be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund"; deleted former (3) that read: "(3) (a) The money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

1997 Amendment: Chapter 422 in (1), near beginning, substituted "$4.30" for "$3"; inserted (2) relating to deposit of the tax; inserted (3) relating to distribution of the cities and towns beer tax account; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Near middle of first sentence, after "beer", substituted "sold in Montana" for "manufactured out of this state and sold herein"; and near beginning of second sentence, after "beer", deleted "imported and".

Administrative Rules

ARM 42.13.701 Production increments used in the calculation of taxes on beer.

ARM 42.13.702 Beer reporting requirements.

16-1-411. Tax on wine and hard cider — penalty and interest.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 68, L. 2023, throughout (2)(a), (2)(c), and (2)(d) substituted "quarterly" for "monthly" and "quarter" for "month". Amendment effective July 1, 2023.

Section 7, Ch. 76, L. 2023, in (1)(a) and (1)(b) substituted current language regarding taxes on sacramental wine, table wine, and hard cider for former (1)(a) and (1)(b) (see sec. 7, Ch. 76, L. 2023, for former text); deleted former (3) that read: "(3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects the winery or the table wine distributor to the penalties and interest provided for in 15-1-216"; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 622, L. 2023, in (2)(c) after "licensed retailers in the state" inserted "or that sells table wine to agency liquor stores for sale to consumers in the state". Amendment effective May 19, 2023.

Applicability: Section 4, Ch. 68, L. 2023, provided: "[This act] applies to beer, sacramental wine, table wine, or hard cider sold on or after July 1, 2023."

2019 Amendment: Chapter 29 in (1)(a) after "distributor" deleted "or the department" and substituted "shipped directly to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107" for "shipped directly by a winery with a direct shipment endorsement"; in (1)(b) after "distributor" deleted "or the department" and inserted "and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107"; in (2) substituted current text concerning filing of electronic tax returns and payment of taxes for former text that read: "(2) The tax imposed in subsection (1) must be paid by the winery with a direct shipment endorsement or a table wine distributor by the 15th day of the month following shipment by the winery with the direct shipment endorsement or sale of the sacramental wine, table wine, or hard cider from the table wine distributor's warehouse"; in (3) before "file" inserted "electronically" and after "winery" deleted "with the direct shipment endorsement"; in (4) near beginning after "winery" deleted "with a direct shipment endorsement"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendments — Composite Section: Chapter 115 in (1)(a) inserted "sacramental wine and"; in (2) inserted "sacramental wine"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 184 in (1) inserted "and on table wine shipped directly by a winery with a direct shipment endorsement"; in (2) in three places and (3) inserted references to winery with a direct shipment endorsement; in (2) inserted "shipment"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 475 in (3) in introductory clause after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2001 Amendments — Composite Section: Chapter 470 in (3)(b) at end inserted "and chemical dependency". Amendment effective April 30, 2001.

Chapter 574 in (3)(a) at beginning substituted "69%" for "59%"; deleted former (3)(c) and (3)(d) that read: "(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405"; in (5) deleted definition of based on population that read: ""Based on population" means:

(i) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and

(ii) for cities, the distribution described in 16-1-406"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 427 in (2) at end substituted "15-1-216" for "16-1-409". Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1997 Amendment: Chapter 399 in (1)(a) inserted "except hard cider"; inserted (1)(b) imposing tax on hard cider; in first sentence of (2), near beginning, substituted "imposed in subsection (1)" for "on table wine imported by a table wine distributor" and near middle, after "the table wine", inserted "or hard cider" and in second sentence, near beginning after "Failure to file a", deleted "table wine"; deleted (2)(b) that read: "(b) The tax on table wine imported by the department must be collected at the time of sale"; in (3), after "in accordance with subsection (2)", deleted "(a) and the tax collected by the department in accordance with subsection (2)(b)"; in (3)(a) substituted "59%" for "16 cents"; in (3)(b), at beginning, substituted "31%" for "of the remaining 11 cents: (i) 8⅓ cents"; in (3)(c) substituted "5%" for "1⅓ cents"; in (3)(d) substituted "5%" for "1⅓ cents"; in (5)(b) inserted definition of table wine; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 near end of introductory clause of (3), after "15-1-501", deleted reference to subsection (6); at beginning of (3)(b)(i) substituted "8⅓ cents" for "8.34 cents"; and made minor changes in style.

Chapter 546 in (3)(b)(i) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 60 inserted definition of based on population; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 455 in (3) substituted "must, in accordance with the provisions of 15-1-501(6)" for "shall"; and made minor changes in style. Amendment effective April 21, 1993.

A style change in (4) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 3, Ch. 60, L. 1993, provided: "[This act] applies to all beer and wine tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued."

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, in (4) inserted references to 16-1-423 (now terminated) and 16-2-301; inserted (5) concerning deposit of surtax; and made minor changes in style.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana

Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(5), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax or fee liabilities for months beginning after August 14, 1992. This section terminates upon receipt of taxes or fees for the final month of applicability.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendments: Chapter 703 in (3)(b)(ii) and (3)(b)(iii) at beginning after "1 ⅓ cents", inserted "is statutorily appropriated, as provided in 17-7-502, to the department, for allocation".

Chapter 721 in (1) increased tax from 20 cents to 27 cents per liter; and in (3)(b) near beginning and in (3)(b)(i) substituted "of the remaining 11 cents, 8.34 cents to the state special revenue fund" for "of the remaining 4 cents, one-third to the state special revenue fund", in (3)(b)(ii) substituted "1 ⅓ cents to the counties" for "one-third to the counties", and in (3)(b)(iii) substituted "1 ⅓ cents to the cities and towns" for "one-third to the cities and towns".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue account.

1981 Amendments: Chapter 219 added (2)(b) providing for collection at time of sale of tax on table wine imported by Department and redesignated former (2)(b) as (3); inserted "in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b)" and "as follows" into the introductory clause of (3); deleted former (3) relating to the disposition of tax collected on table wines imported by the department.

Chapter 241 changed the time for payment of tax on table wine imported by distributor from the 15th day of the month following receipt at the warehouse to the month following sale from the warehouse; and added the last sentence in (2)(a) providing for penalties and interest.

Administrative Rules

ARM 42.11.104 Calculation of posted price.
ARM 42.13.402 Wine distributor's monthly reports.

16-1-412. Deficiency assessment — penalty and interest — statute of limitations.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

16-1-413. Procedure to compute tax in absence of statement — estimation of tax — failure to pay — penalty and interest.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

16-1-414. Authority to collect delinquent taxes.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

16-1-415. Refunds — interest — limitations.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

16-1-416. Department rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

16-1-424. Distillery — reporting — tax payment — penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 76, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

CHAPTER 2
LIQUOR STORES

Chapter Compiler's Comments

Section Not Codified: Section 4-2-203, R.C.M. 1947, providing that "all acts and parts of acts in conflict herewith are hereby repealed", was not codified in the MCA. It is still valid law as it has not been repealed. It was enacted by sec. 2, Ch. 359, L. 1974 (sec. 4-114.2, R.C.M. 1947), and redesignated as sec. 4-2-203, R.C.M. 1947, by sec. 120, Ch. 387, L. 1975.

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Part 1
Operation of Stores

Part Administrative Rules

ARM 42.11.104 Calculation of posted price.

Part Law Review Articles

Local Regulation of Alcohol Licensees, Meyers & Stuart, 29 L.A. Law. 14 (2006).

16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 61, L. 2023. Amendment effective March 16, 2023.

2015 Amendment: Chapter 362 in (2)(b)(ii)(B) at end of first sentence deleted "and less the agency liquor store's weighted average discount ratio", deleted former second, third, and fourth sentences that read: "For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted average discount ratio must be computed on the store's first 12 months of operation", and inserted second sentence regarding commission rate as compensation from department; inserted (4)(a) regarding commission rate beginning February 1 of various years; in (4)(b) substituted "an annual commission rate based on the total posted price of liquor purchased in the previous calendar year" for "commissions payable"; inserted (4)(b)(i) through (4)(b)(x) regarding commission for stores with certain purchases; deleted former (4)(a)(i) and (4)(a)(ii) that read: "(i) (A) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6); or

(B) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for agencies in communities with 3,000 or more in population; plus

(ii) for agency liquor stores operating under a renewed franchise agreement or that have been operated for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar volume of sales in the previous fiscal year, as follows:

(A) for agency liquor stores with a volume of sales of $560,000 or more, 0.875% beginning July 1, 2009;

(B) for agency liquor stores with a volume of sales of less than $560,000, 1.5% beginning July 1, 2009; or

(C) for a city with more than one agency liquor store, in lieu of the addition to a commission increase provided in subsection (4)(a)(ii)(A) or (4)(a)(ii)(B), for each agency liquor store in the city, an addition to its commission rate equal to the increase granted the agency liquor store with the lowest commission rate"; in (4)(c) at beginning inserted "For commissions determined under subsection (4)(b)", near beginning after "shall by" substituted "February 1" for "April 1", and after "year" deleted "determine the dollar values of sales volumes in subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) by using an inflation factor based on the change in the cost of liquor to agency liquor stores during the prior calendar year. The department shall establish the method of determining the inflation factor by rule using a liquor-specific base such as the annual change in the cost per case of the 25 items with the highest sales volume for a calendar year or another appropriate method of measuring the change in liquor prices"; inserted (4)(c)(i) through (4)(c)(iii) regarding department calculations, notification of stores, and adjustment of values; inserted (4)(d) regarding new store commission; in (5)(a) substituted "renewable" for "and must be renewed at the existing commission rate"; deleted former (6) that read: "(6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases"; inserted (12) defining combined commission rate; and made minor changes in style. Amendment effective February 1, 2016.

2009 Amendment: Chapter 391 in (4)(a)(ii)(A) and (4)(a)(ii)(B) increased volume of sales amount from $500,000 to $560,000 and substituted "2009" for "2004"; inserted (4)(b) requiring the department to determine the dollar value of sales volumes by April 1 of each year; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment: Chapter 44 in (2)(b)(ii)(B) near end of first sentence after "store's" substituted "weighted" for "weighed" and in fourth sentence after "weighted" inserted "average"; in (4)(b)(i) after "more" deleted "0.125% beginning July 1, 2002, 0.5% beginning July 1, 2003, and"; in (4)(b)(ii) after "$500,000" deleted "1.25% beginning July 1, 2002, 1.25% beginning July 1, 2003, and"; in (4)(b)(iii) near middle after "each" inserted "agency liquor" and near end after "granted the" inserted "agency liquor"; in (6)(a) near middle of first sentence after "reviewed" deleted "on July 1, 1998, and" and after "every" deleted "succeeding"; and in (7) near beginning of first sentence after "3 years" deleted "after July 1, 1995". Amendment effective October 1, 2007.

2001 Amendment: Chapter 508 in (2)(b)(ii)(B) near middle of first sentence after "commission rate" deleted "in the state agency franchise agreement"; in (4)(a)(i) at end substituted "subsection (6)" for "subsection (6) or (8)"; in (4)(a)(ii) near middle substituted "subsection (6)" for "subsection (6) or (8)" and at end inserted "plus"; inserted (4)(b) increasing commission rates for state agency liquor stores based on annual sales volumes of stores; in (5)(a) substituted "and must be renewed at the existing commission rate for additional 10-year periods" for "and may be renewed every 10 years"; in (6)(a) substituted "under subsection (4)(a)" for "under an agency franchise agreement"; deleted former (8) that read: "(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate"; and made minor changes in style. Amendment effective May 1, 2001.

Applicability: Section 3, Ch. 508, L. 2001, provided: "[This act] applies to commissions beginning in calendar year 2002."

1997 Amendment: Chapter 42 in (4), in introductory clause, and (9)(c), in third sentence, substituted references to agency liquor stores for references to agency stores; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 530 deleted (1)(a) that read: "(a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules adopted under this code"; in (1), after "franchise", substituted "agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor" for "agreement or employ the necessary help to operate the stores and shall designate the duties to be performed by the agent or employees"; deleted (1)(c) that read: "(c) Once established, a store may not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature"; in (2)(a), after "fix the", inserted "posted", after "liquor" deleted "and table wine", after "sold, and" inserted "the posted", and after "all" substituted "agency liquor" for "state"; inserted (2)(b) regarding the supply of liquor by the state liquor warehouse; inserted (2)(c) allowing the sale of table wine; deleted (3)(a) that read: "(a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores"; in (3), at beginning after "Agency", inserted "liquor" and deleted second sentence that read: "This provision is applicable only to agency agreements entered into after May 11, 1987"; in (4), in introductory clause after "commissions", substituted "payable" for "based on adjusted gross sales"; in (4)(a), at end, inserted "unless adjusted pursuant to subsection (6) or (8)"; in (4)(b), after "bidding", inserted "unless adjusted pursuant to subsection (6) or (8)"; substituted (5)(c) regarding liability for invoices for former language that read: "require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value"; in (6)(a), in first sentence after "reviewed", substituted "on July 1, 1998, and every 3 years thereafter" for "every 5 years" and in second sentence, after "agreement", inserted "or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement"; inserted (6)(b) allowing a greater than average commission percentage under certain circumstances; in (7), in first sentence after "insurance", substituted "requirement" for "and performance security requirements" and after "every" substituted "3 years after July 1, 1995" for "5 years", in second sentence, after "associated with the", deleted "loss of state assets or from the", and in third sentence, after "amount of", inserted "liability"; inserted (9)(a)(i) through (9)(a)(v) setting out conditions for termination of a franchise agreement; inserted (9)(b) regarding notice and hearing requirements when termination is intended; in (9)(c), in first sentence after "case of", substituted "failure to make timely payments to the department for liquor purchased" for "suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets", after "agreement and" deleted "retrieve its assets", and after "immediately" inserted "repossess any liquor purchased and in the possession of the agent" and in second sentence, after "contest the", deleted "agency franchise agreement" and after "department's" substituted "repossession of the liquor" for "retrieval of assets"; substituted (12) disallowing an ownership interest by a person in more than one agency store for former language that read: "An agency agreement in effect on March 30, 1993, must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals"; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 228 in (1)(b), after "agency", inserted "franchise"; inserted (5) relating to required provisions in agency franchise agreements; inserted (6) relating to commission percentage; inserted (7) relating to liability insurance and performance security requirements; inserted (8) relating to renewal agreement terms and procedure; inserted (9) relating to termination of the agreement by the Department; inserted (10) relating to termination by mutual agreement; inserted (11) relating to assignment of an agreement; inserted (12) relating to conversion of agreements in effect on March 30, 1993; and made minor changes in style. Amendment effective March 30, 1993.

Continuity of Agreements Existing on Effective Date: Section 4, Ch. 228, L. 1993, provided: "An existing agency agreement that terminates after [the effective date of this act] [March 30, 1993] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first."

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1987 Amendments: Chapter 68 in (1)(a) and (2) inserted reference to table wine.

Chapter 648 inserted (1)(c) and (3) relating to closure, conversion to an agency store, or sale of a state liquor store; inserted (4) relating to required commissions; and inserted (5) relating to minimum inventory requirements.

1986 Amendment: Chapter 2, Sp. L. March 1986, inserted provision prohibiting closure of a liquor store unless store is not profitable and legislative approval is obtained. Chapter 2 was effective April 4, 1986, applied retroactively to occurrences after December 31, 1985, and terminated July 1, 1986.

Freeze on Commissions — Recovery Plan: Sections 2 and 4 of Ch. 2, Sp. L. March 1986, froze liquor store commissions until July 1, 1986, and provided for development of a Liquor Division recovery plan for presentment to the June 1986 Special Session. The sections were not codified because of their temporary nature.

Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.

Title 42, chapter 11, subchapter 3, ARM Operating state agency liquor stores.

Case Notes

Unsuccessful Attempt to Sell Agency Franchise Agreement — Department Did Not Negligently or Intentionally Interfere With Sale: The plaintiff held an agency franchise agreement (AFA) for liquor sales and unsuccessfully tried to sell the AFA after the Department of Revenue took action to terminate the AFA for alleged violations of liquor laws. The plaintiff alleged the Department negligently or intentionally interfered with the sale of the AFA. The District Court found that the Department was protected by quasi-judicial immunity. On appeal, the Supreme Court found that regardless of, and aside from, quasi-judicial immunity, a settlement agreement between the plaintiff and the Department extinguished the plaintiff's claims. The Supreme Court also explained that the appellants had not established that the Department had a duty to approve the AFA sale, and without any such duty, the appellants cannot demonstrate that the Department acted negligently or in a manner supporting an intentional interference claim. B.Y.O.B., Inc. v. St., 2021 MT 191, 405 Mont. 88, 493 P.3d 318.

Alcohol Sale Commissions Changed to Reflect Enacted Law — Existing Contract Altered — Contracts Clause: The plaintiffs, owners of an agency liquor store and 2 years into a 10-year contract with the Department of Revenue relating to the sale of alcohol, alleged breach of contract and a state and federal contracts clause violation when the Department changed the commission structure of their contract. The Department changed the commission structure in order to implement changes made by SB 193 (Ch. 362, L. 2015). The state court lawsuit was eventually removed to federal District Court to consider the contracts clause issue. The federal District Court ruled in favor of the Department, finding that a provision in the contract expressly allowed for modifications based on changes to Montana law. On appeal, the Ninth Circuit Court affirmed, holding that the state did not impair its contractual obligation to the plaintiffs within the meaning of the contracts clause because the plaintiffs retained a cause of action to allege breach of contract with the state. LL Liquor, Inc. v. Montana, 912 F.3d 533 (9th Cir. 2018).

Vested Interest Not Gained by Mere Submission of Beer and Wine Application — Retroactive Application of General Rule on Denial of Building Permit: Town Pump, Inc. (Town Pump), was required to obtain subdivision approval in order to complete a property conveyance for the building of a convenience store, gas station, and casino wherein beer and wine would be sold. After Town Pump had submitted an application for a beer and wine license, the property was rezoned as a commercial highway, and the city subsequently adopted a development code requiring a conditional use permit for the property in order for beer and wine to be sold on premises. Town Pump's application was denied based on the provisions of the new development code. Applying the rationale in Femling v. Mont. St. Univ., 220 M 133, 713 P2d 996 (1986), and Wallace v. Dept. of Fish, Wildlife, and Parks, 269 M 364, 889 P2d 817 (1995), the Supreme Court held that Town Pump did not gain a vested interest in the beer and wine application merely because the application was submitted before the adoption of the development plan. The general rule is that the denial of an application for a building permit may be based on a zoning regulation enacted or becoming effective after the application was made; therefore, a zoning regulation may be retroactively applied to deny an application for a building permit, even though the permit could have been lawfully issued at the time of application. The court concluded that the development code was neither arbitrary nor unreasonable in its effects, that it did not impair or burden any vested interest or passed transaction held by Town Pump, and that retroactive application of the development code did not deny Town Pump's constitutional right to due process. Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

16-2-103. Duplicate invoices of sales required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 61, L. 2023. Amendment effective March 16, 2023.

1997 Amendment: Chapter 42 in (1) and (3) substituted references to an agency liquor store for references to the state liquor store; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendment: In (1), in two places, and in (2) inserted reference to table wine.

16-2-104. Hours.

Compiler's Comments

2023 Amendments — Amendment Not Codified: Section 4, Ch. 61, L. 2023, in former (1) in second sentence near middle after "Saturday" deleted "afternoon". Amendment effective March 16, 2023. The Code Commissioner did not codify this amendment because sec. 1, Ch. 635, L. 2023, deleted the sentence containing the amendment May 19, 2023.

Section 1, Ch. 635, L. 2023, substituted second sentence relating to local ordinances for former sentence that read: "The stores must be closed for the transaction of business on legal holidays and between the close of normal business Saturday afternoon up to the opening of normal business Tuesday morning"; deleted former (2) (see sec. 1, Ch. 635, L. 2023, for former text); and made minor changes in style. Amendment effective May 19, 2023.

1995 Amendment: Chapter 530 in (1), at beginning of first sentence, substituted "Agency" for "State", after "stores" substituted "may" for "shall be and", and after "during" substituted "the period between 8 a.m. and 2 a.m." for "such period of the day as the department shall deem advisable" and at end of second sentence deleted "as set by department rule"; substituted (2) regarding limited opening on Mondays for former language that read: "(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor or table wine:

(a) on any holiday recognized by state law;
(b) during such other period and on such other days as the department may direct"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: In (2), in two places in introductory clause, inserted reference to table wine.

16-2-105. Place and time of selling liquor.

Compiler's Comments

1995 Amendment: Chapter 530 in two places substituted reference to agent for reference to manager, substituted reference to employee for reference to clerk or servant, and at end inserted "implementing this code"; and made minor changes in style. Amendment effective April 25, 1995.

Administrative Rules

ARM 42.11.251 Unlawful acts.

Case Notes

Alcohol Sale Commissions Changed to Reflect Enacted Law — Existing Contract Altered — Contracts Clause: The plaintiffs, owners of an agency liquor store and 2 years into a 10-year contract with the Department of Revenue relating to the sale of alcohol, alleged breach of contract and a state and federal contracts clause violation when the Department changed the commission structure of their contract. The Department changed the commission structure in order to implement changes made by SB 193 (Ch. 362, L. 2015). The state court lawsuit was eventually removed to federal District Court to consider the contracts clause issue. The federal District Court ruled in favor of the Department, finding that a provision in the contract expressly allowed for modifications based on changes to Montana law. On appeal, the Ninth Circuit Court affirmed, holding that the state did not impair its contractual obligation to the plaintiffs within the meaning of the contracts clause because the plaintiffs retained a cause of action to allege breach of contract with the state. LL Liquor, Inc. v. Montana, 912 F.3d 533 (9th Cir. 2018).

16-2-106. Sales by agent.

Compiler's Comments

2021 Amendment: Chapter 194 inserted last sentence regarding sale through curbside pickup. Amendment effective April 14, 2021.

1995 Amendment: Chapter 530 at beginning of first sentence substituted "liquor store agent" for "store manager" and at end substituted "implementing this code" for "made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price" and inserted second sentence allowing delivery of liquor and table wine; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Near beginning inserted reference to table wine.

Case Notes

Partial Payment Before and Final Payment on Delivery Not Prohibited: In a declaratory judgment action by the State Treasurer to determine his duties with regard to a $150,000 draft drawn upon him by the Montana Liquor Control Board (now Department of Revenue) on funds deposited with him and raised by the Board through participation of state retail dealers to cover a downpayment on cases of liquor to meet a war emergency shortage, the state to take its markup and sell the liquor to the dealers, held that this section was not violated by dealers making partial payment prior to, and final payment upon, delivery. Carey v. McFatridge, 115 M 278, 142 P2d 229 (1943).

16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of agency store.

Compiler's Comments

1995 Amendment: Chapter 530 at beginning substituted "An agent and the agent's employees in an agency store may not" for "No officer, clerk, or agent of the department employed in a state store shall" and in two places, after "premises of", substituted "an agency liquor store" for "a state store"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Throughout section substituted references to alcoholic beverage for references to liquor.

1983 Amendment: Substituted "agent" for "servant"; inserted "allow any liquor container to be opened on the premises of a state store or" after "a state store shall"; inserted "open a liquor container or" before "consume any liquor".

16-2-108. Disposition of money received.

Compiler's Comments

2001 Amendment: Chapter 448 in (1) near middle of second sentence after "expenses" inserted "associated with the sale of liquor", in fourth sentence near end after "taxes" deleted "and license and permit fees", and in fifth sentence near beginning after "Taxes" deleted "license and permit fees"; inserted (2) requiring liquor license and permit fees to be deposited in department's liquor enterprise fund; inserted (3) requiring department to pay certain expenses from its account in the liquor enterprise fund; inserted (4) requiring net proceeds of the liquor enterprise fund to be transferred to the general fund; and made minor changes in style. Amendment effective April 30, 2001.

Applicability: Section 6, Ch. 448, L. 2001, provided: "[Sections 1 and 2] [15-1-501, now repealed, and 16-2-108] apply to fees collected after June 30, 2001."

1995 Amendment: Chapter 530 deleted former first sentence that read: "All money received from the sale of liquor and table wine at the state liquor stores must be deposited in the enterprise fund in the state treasury to the credit of the department", in first sentence, after "liquor", deleted "and table wine", at end of third sentence substituted "sales" for "stores", in fourth sentence, after "receipts from", inserted "the sale of liquor and", and in fifth sentence, after "liquor", substituted "sales" for "stores"; and made minor changes in style. Amendment effective April 25, 1995.

1989 Amendment: Near beginning of second sentence substituted "may" for "is hereby authorized to"; in fourth sentence, after "department", substituted "may be" for "may ever be or become"; in fifth sentence substituted "enterprise fund" for "general fund" and substituted "license and permit fees" for "licenses"; in last sentence, at beginning, inserted "Taxes, license and permit fees" and at end inserted "must be transferred to the general fund"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In first and second sentences inserted reference to table wine.

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

16-2-109. Number and location of agency liquor stores.

Compiler's Comments

2001 Amendment: Chapter 7 in (1)(a) at end of third sentence substituted "16-4-201" for "16-4-501". Amendment effective October 1, 2001.

Effective Date: Section 43(1), Ch. 530, L. 1995, provided that this part is effective on passage and approval. Approved April 25, 1995.

Administrative Rules

ARM 42.11.305 Opening a new state agency liquor store.

16-2-110. State lien on liquor in agency liquor stores.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 635, L. 2023. Amendment effective May 19, 2023.

Effective Date: Section 43(1), Ch. 530, L. 1995, provided that this part is effective on passage and approval. Approved April 25, 1995.

16-2-111. Seven-day credit limitation.

Compiler's Comments

Effective Date: Section 7, Ch. 635, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 19, 2023.

Part 2
Price of Liquor

Part Administrative Rules

ARM 42.11.104 Calculation of posted price.

16-2-201. Reduction for quantity sales of liquor.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 622, L. 2023. Amendment effective May 19, 2023.

2013 Amendment: Chapter 12 in first sentence after "must be made" deleted "by the department" and in second sentence substituted "reduction below the posted price may be made for sales" for "reduction may be made to any other person by the department for quantity sales"; deleted former (2) that read: "(2) This section does not prevent an agent from providing purchase discounts or selling liquor to any other person at a price less than the agent's established retail price. However, an agent is prohibited from selling liquor to any person at a price less than the department's posted price"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 530 in (1), in first sentence, changed reduction from 5% of retail price of liquor sold at the state liquor store to any person to 8% of the posted price at the agency liquor store to any licensee and in second sentence, after "made", inserted "to any other person"; inserted (2) allowing purchase discounts but disallowing sales at less than the posted price; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 42.11.405 Product availability.

Attorney General's Opinions

Case Lot Liquor Discount Applicable to Retail Price Rather Than Posted Price — Taxes Based on Discounted Retail Price: The terms of this section, authorizing the Department of Revenue to apply a 5% discount to the price of liquor sold in unbroken case lots, require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included. (See 1995 amendment.) 43 A.G. Op. 52 (1990).

16-2-203. Sales to licensees.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 5, Ch. 61, L. 2023, in first sentence near end after "kinds of liquor" deleted "and table wine"; and in second sentence at end substituted "paid for at the time of sale" for "made on a cash basis". Amendment effective May 19, 2023.

Section 6, Ch. 635, L. 2023, in second sentence at end substituted "paid for at the time of sale or made as provided in 16-2-111" for "made on a cash basis". Amendment effective October 1, 2023.

The amendment to this section made by sec. 4, Ch. 635, L. 2023, was replaced by sec. 6, Ch. 635, L. 2023, a coordination section.

2011 Amendments — Composite Section: Chapter 19 in first sentence at beginning substituted "Agency liquor stores may sell" for "The department may sell through its stores" and at end after "price" deleted "thereof in the store in which the liquor and table wine are sold"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 28 in first sentence substituted "Agency liquor stores may sell" for "The department may sell through its stores" and after "price" deleted "thereof in the store in which the liquor and table wine are sold"; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 2, Ch. 28, L. 2011, provided: "[This act] applies to sales made by agency liquor stores under [section 1] [16-2-203] after September 30, 2011."

1987 Amendment: In first sentence substituted "and table wine" for "wine containing more than 14% alcohol by volume, and cordials kept in stock" and near end substituted "and table wine are" for "is".

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

16-2-211. State liquor markup reduction — Montana-produced ingredients.

Compiler's Comments

Effective Date: Section 4, Ch. 345, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Nonseverability: Section 3, Ch. 345, L. 2011, was a nonseverability clause.

Administrative Rules

ARM 42.11.106 Reduction in state mark-up for distilleries at or below 25,000 proof gallons.

Part 3
Sale of Table Wine

16-2-301. Retail selling price on table wine.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 76, L. 2023. Amendment effective October 1, 2023.

1997 Amendment: Chapter 399 inserted (3) excluding hard cider from definition of table wine. Amendment effective July 1, 1997.

1995 Amendment: Chapter 530 deleted former (1) that read: "(1) The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department"; in (1), after "sold", substituted "at an agency liquor store" for "by a commission agent appointed by the department after May 1, 1987"; and adjusted subsection references. Amendment effective April 25, 1995.

1987 Amendment: In (1), after "sold", inserted "either" and after first "department" inserted language relating to state employee-operated store, commission agent, and renewals; inserted (2) relating to retail price of table wine sold by a commission agent; inserted (3) imposing a 1 cent per liter tax; and made minor change in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 629, L. 1987, read: "A statement of intent is required for HB 586 [Ch. 629, L. 1987] because it contemplates a modification of the department of revenue's existing rule establishing a markup on table wine. This bill is intended to equalize the status of agency liquor stores established in the future between stores which hold wine retailing licenses (e.g., pharmacies) and agency stores which do not hold wine licenses. The latter class of agents may purchase table wine from local wine distributors with their own funds, should they choose to do so, as the agents with wine licenses will be doing."

Administrative Rules

ARM 42.11.104 Calculation of posted price.

CHAPTER 3
CONTROL OF LIQUOR, BEER, AND WINE

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Chapter Law Review Articles

Local Regulation of Alcohol Licensees, Meyers & Stuart, 29 L.A. Law. 14 (2006).

Part 1
Official Controls

Part Administrative Rules

ARM 42.13.201 Labeling and packaging requirements.
ARM 42.13.202 Draught beer and wine taps.
ARM 42.13.221 Adoption of certain federal regulations.

16-3-101. Alcoholic beverage transactions — only in accordance with code.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 591, L. 2023. Amendment effective May 18, 2023.

2001 Amendment: Chapter 543 in (1) at beginning substituted "A person who manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell" for "No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give", after "person" inserted "within the state", and at end substituted "provisions of this code" for "rules made under this code"; inserted (2) concerning restrictions on shipping, transportation, and consignment; inserted (3) concerning requirement of distribution by licensed wholesaler or retailer; and made minor changes in style. Amendment effective May 1, 2001.

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor".

1985 Amendment: Inserted "beer importer".

Administrative Rules

Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.
ARM 42.12.107 Educational materials.
ARM 42.12.132 Location manager.

16-3-103. Unlawful sales solicitation or advertising — exceptions.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 591, L. 2023, in (1)(b) near middle after "sale of any beer" deleted "or malt liquor"; deleted former (2)(b) that read: "(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of employment as the agent, operator, or employee"; and made minor changes in style. Amendment effective May 18, 2023.

Section 1, Ch. 645, L. 2023, in (2)(b) near beginning after "serving of beer" inserted "and table wine". Amendment effective October 1, 2023.

2021 Amendment: Chapter 395 inserted (2)(d) regarding the sale of alcohol at a sporting event conducted at a Montana university; and made minor changes in style. Amendment effective April 29, 2021.

1995 Amendment: Chapter 530 in (2)(a) substituted reference to agency liquor store for reference to state liquor store; and made minor changes in style. Amendment effective April 25, 1995.

1993 Amendment: Chapter 599 at end of (2)(c) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.

1987 Amendment: Inserted (2)(c) relating to sale of beer at county fairground or public sports arena.

1985 Amendment: In (1)(b) after "beer licensees", deleted "or club licensees".

Administrative Rules

ARM 42.11.211 Registration of representatives.
ARM 42.11.213 Application for vendor permit.
ARM 42.11.243 Samples.
ARM 42.11.244 Records related to samples — department examinations.
ARM 42.11.245 Advertising specialities.
ARM 42.11.251 Unlawful acts.
ARM 42.11.252 Revocation or suspension of permits or registrations.
ARM 42.12.128 Catering endorsement — catered events — event barriers.
ARM 42.12.323 Permissible and prohibited special permit activities.
ARM 42.13.211 Permissible advertising.
ARM 42.13.221 Adoption of certain federal regulations.

Case Notes

Advertising of Liquor or Beer: Prohibition of liquor or beer advertising as a reasonable regulation has been uniformly sustained. Fletcher v. Paige, 124 M 114, 220 P2d 484 (1950).

16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 591, L. 2023. Amendment effective May 18, 2023.

1985 Amendment: Inserted "beer importer".

16-3-105. Restrictions on alcoholic beverages in hotels.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In introductory clause substituted "alcoholic beverages" for "liquor or beer"; and in (1) and (2) substituted "alcoholic beverage(s)" for "liquor".

16-3-106. Conveyance of alcoholic beverages — opening alcoholic beverages during transit forbidden.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 591, L. 2023. Amendment effective May 18, 2023.

1995 Amendment: Chapter 530 in (1), near beginning after "any", substituted "agency liquor" for "state", after "from" substituted "the state liquor" for "any", after "warehouse or" inserted "any", and near middle, after "vendor from", substituted "an agency liquor" for "a state"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: In (1), in two places, inserted "or table wine"; and in (2), in two places, substituted reference to alcoholic beverage for "liquor".

Administrative Rules

Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

16-3-107. Resident representatives required.

Compiler's Comments

2015 Amendment: Chapter 264 in (1) substituted "an individual" for "a person"; in (2) and (3) substituted current text for former text that read: "(2) A vendor who desires to promote the sale of the vendor's product in the state shall employ one representative and may employ two additional representatives to promote the sale of the vendor's product. A representative must be a resident of the state or become a resident after employment.

(3) If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs"; and made minor changes in style. Amendment effective April 23, 2015.

2003 Amendment: Chapter 372 in (2) in first sentence substituted "two additional representatives" for "an additional representative"; in (3) substituted "the one required position" for "a representative position"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 42.11.211 Registration of representatives.

Part 2
Regulation of Brewers, Beer Importers, and Beer Wholesalers

16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful — personal brewing.

Compiler's Comments

1997 Amendment: Chapter 546 inserted (2) providing that Montana law does not prohibit brewing beer for personal use that meets the exemptions provided by federal law; and made minor changes in style.

1985 Amendment: After "unlawful to manufacture" inserted "import".

16-3-211. Monthly report of brewer, beer importer, or retailer — inspection of books and premises.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 749, L. 2023. Amendment effective July 1, 2024.

2007 Amendment: Chapter 516 inserted (2) concerning retailer's exact return on beer purchased; and made minor changes in style. Amendment effective October 1, 2007.

1985 Amendment: Inserted "and every beer importer", "or beer importer's", and, in two places, "or imported".

Administrative Rules

ARM 42.13.103 Department examinations.

16-3-212. Brewers' or beer importers' sales to wholesalers lawful.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 749, L. 2023. Amendment effective July 1, 2024.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In first sentence substituted "licensed brewer" for "brewer" and substituted "deliver" for "dispose of"; and inserted second sentence relating to sale by importer to wholesaler.

16-3-213. Brewers or beer importers not to retail beer — small brewery exceptions — brewer collaboration.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 443, L. 2023, in (2)(b) at end of first sentence inserted "subject to subsection (4)"; inserted (4) relating to brewer collaboration; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 601, L. 2023, in (1) in first sentence inserted "and except as provided in 16-4-401(9)"; in (2)(b) in last sentence substituted "on-premises sample room consumption" for "on-premises consumption"; inserted (5) relating to colocated licenses; and made minor changes in style. Amendment effective July 1, 2023.

Section 3, Ch. 622, L. 2023, in (2)(a) substituted "production of not less than 200 gallons" for "production of not less than 100 barrels". Amendment effective May 19, 2023.

Transition: Section 2, Ch. 661, L. 2023, and sec. 6, Ch. 728, L. 2023, provided: "The department shall revise its administrative rules implementing 16-3-213 and 16-4-312 or any other applicable statute to include sample room hours of operations that are identical for Montana distilleries and breweries. The intent of this act is to make the hours of operation for service to and consumption and possession of alcohol by consumers at breweries and distilleries equal."

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendment: Chapter 194 in (2)(b) at end of third sentence inserted "for consumption on the premises or in prepared servings through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's sales as provided in 16-3-214(1)(a)(iii)". Amendment effective April 14, 2021.

2017 Amendment: Chapter 271 in (2)(a) substituted "60,000 barrels, including" for "10,000 barrels" and inserted (2)(a)(i) and (2)(a)(ii) pertaining to affiliated manufacturers and beer purchased from other producer to be sold by the brewery; in (2)(b) near beginning after "each brewery license" inserted "and at no more than three locations including affiliated manufacturers" and inserted third sentence limiting on-premises consumption to 2,000 barrels annually; inserted (3) defining affiliated manufacturer; and made minor changes in style. Amendment effective October 1, 2017.

1999 Amendment: Chapter 116 in (1) at beginning of first sentence inserted exception clause and at end of third sentence after "retail" deleted "or from providing, without charge, their products for consumption on their licensed premises"; inserted (2) defining small brewery and allowing sale or providing of beer samples in certain amounts and at certain times; and made minor changes in style. Amendment effective March 19, 1999.

1985 Amendments: Chapter 19 inserted "beer importer(s)" in two places.

Chapter 149 at end of section added provision allowing on-premises consumption without charge.

Administrative Rules

ARM 42.12.313 Wine or beer tastings.

ARM 42.13.601 Brewery — conditions for operating.

16-3-214. Beer sales by brewers — sample room exception.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 443, L. 2023, in (1)(b) near end after "its own products" inserted "or collaboration products". Amendment effective October 1, 2023.

Section 2, Ch. 601, L. 2023, inserted (6) relating to complete ownership of a retail license. Amendment effective July 1, 2023.

Section 3, Ch. 749, L. 2023, in (5) near middle after "licensed" inserted "or registered". Amendment effective July 1, 2024.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendment: Chapter 194 in (1)(a)(iii) at end inserted "including curbside pickup between 8 a.m. and 2 a.m. in original packaging or growlers". Amendment effective April 14, 2021.

2011 Amendment: Chapter 277 inserted (3) authorizing breweries to import nonbeverage ingredients; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 516 in (1)(a) near end after "brewery" deleted "located in Montana"; substituted (1)(a)(ii) concerning licensed retailers under certain circumstances for former text that read: "any retail licensees who are entitled to purchase beer from a brewer under this code"; in (2) at end inserted "or to licensed retailers"; in (4) near middle substituted "licensed brewer" for "brewer located outside of Montana"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 543 at end of (1)(c) inserted "as provided in this code"; inserted (2) concerning prohibition on using common carrier; and made minor changes in style. Amendment effective May 1, 2001.

1999 Amendment: Chapter 116 in (1)(b) at beginning after "provide" deleted "without charge" and at end inserted "without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213"; and in (2) after "providing" deleted "without charge". Amendment effective March 19, 1999.

1993 Amendment: Chapter 122 near beginning of (1), after "brewer", deleted "duly licensed as such by the United States of America"; and made minor changes in style. Amendment effective March 18, 1993.

1991 Amendment: In (1), after "manufactures", substituted "less than 60,000 barrels of beer a year" for "beer in the state of Montana"; in (1)(a), at end, inserted "from its storage depot or brewery located in Montana"; in (1)(a)(i) substituted "wholesaler" for "vendor"; in (1)(a)(ii), before "licensees", inserted "retail"; and inserted (3) allowing direct sales and shipment to a wholesaler.

1985 Amendment: Inserted (1)(b) and (2) relating to brewery providing its own products for consumption on its premises.

Administrative Rules

ARM 42.13.601 Brewery — conditions for operating.

16-3-218. "Distribute" defined.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 138, L. 2023. Amendment effective July 1, 2024.

2021 Amendment: Chapter 568 in (1) at end inserted "as well as an alternate alcoholic beverage storage facility as allowed in 16-4-213(8)". Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

2013 Amendment: Chapter 115 inserted "or sacramental wine"; and made minor changes in style. Amendment effective July 1, 2013.

16-3-219. Dock sales restricted — exceptions.

Compiler's Comments

2021 Amendment: Chapter 194 substituted current text for former section text (see 2021 Session Law for former text). Amendment effective April 14, 2021.

2007 Amendment: Chapter 501 in first sentence at beginning substituted "Beer or wine may not be delivered" for "A beer wholesaler or a table wine distributor may not deliver beer or wine"; and made minor changes in style. Amendment effective October 1, 2007.

16-3-220. Wholesalers' service obligations — applicability.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence, substituted "16-3-222" for "16-3-221(3)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 139 in (1) inserted second sentence allowing wholesaler to offer brands produced in limited quantities to as many retailers as is reasonably possible; in (2), in first sentence before "brand of beer", inserted "generally available"; inserted (3) describing products that are not generally available; and made minor changes in style.

16-3-221. Illegal acts by brewers or beer importers.

Compiler's Comments

2009 Amendment: Chapter 181 in (1)(e) in first sentence, after "terminate" inserted "discontinue, or fail to renew" and after "just cause" substituted "and" for "or", at beginning of fourth sentence deleted "After July 1, 1974" and inserted last sentence prohibiting a wholesaler from waiving the protections or agreeing to provisions contrary to 16-3-221 through 16-3-226; inserted (2) regarding just cause and successor; and made minor changes in style. Amendment effective April 6, 2009.

Severability: Section 4, Ch. 181, L. 2009, was a severability clause.

Saving Clause: Section 5, Ch. 181, L. 2009, was a saving clause.

1997 Amendment: Chapter 130 near end of (4)(b) substituted "the increase in the resale price" for "the resale price"; inserted (4)(c) prohibiting the linking or tying of a brewer's or beer importer's participation in promotional discounts to the wholesaler's compliance with any recommended resale price; and made minor changes in style. Amendment effective March 24, 1997.

1995 Amendment: Chapter 409 inserted (4) making it unlawful for a brewer or beer importer or its officer, agent, or representative to fix or maintain the price at which a wholesale distributor resells and specifically making it a violation for a brewer or importer, after the distributor has exceeded a resale price increase recommended by the brewer or importer, to raise the price charged the distributor within 60 days or to raise the price charged the distributor in an amount proportionately larger than the amount that it raised the distributor's prices initially when compared to the resale price that it recommended to the distributor; and made minor changes in style.

1985 Amendment: Inserted "or beer importer" in 11 places with minor variations in phraseology.

Case Notes

Notice and Cause: Brewer's distributorship contract with wholesaler could not be reconciled with the provisions of 16-3-221 and 16-3-222 providing for termination only for just cause and on 60 days' notice where the contract provided for termination on 30 days' notice without cause. That provision of the contract was therefore invalid. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Termination for Dishonesty: Distributorship contract's provision allowing for immediate termination by brewer for certain serious acts by wholesaler, including a felony and "dishonesty", clearly contemplated extremely serious dishonesty. It did not cover wholesaler's out-of-state sales, failure to explain increased sales to supermarket participating in out-of-state sales, and refusal to retrieve beer involved in out-of-state sales. At most, wholesaler breached other provisions of the contract. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Impairment of Contracts: The Montana Alcoholic Beverage Code, ch. 1 through 6 of this title, appears to be a valid exercise of the state police power and is not repugnant to the federal constitutional provisions prohibiting impairment of contracts or similar language in the Montana Constitution. Libbey II v. Jos. Schlitz Brewing Co., 34 St. Rep. 1254 (D.C. Mont. 1977) (apparently not reported in Federal Supplement).

16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises.

Compiler's Comments

2009 Amendment: Chapter 181 in (4) near beginning after "wholesaler deficiencies" inserted "asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221"; and in (6) at end inserted language providing that the laws must be liberally construed. Amendment effective April 6, 2009.

Severability: Section 4, Ch. 181, L. 2009, was a severability clause.

Saving Clause: Section 5, Ch. 181, L. 2009, was a saving clause.

1999 Amendment: Chapter 194 inserted (6) requiring contracts, agreements, or franchises to contain provision that agreements are interpreted and governed by Montana law; inserted (7) requiring that litigation resulting from a dispute occur in Montana unless unreasonable burden created; inserted (8) requiring that agreements must recognize constitutional right to jury trial; and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: Inserted several references to "beer importer" and to "wholesaler and beer importer" after "brewer" and "wholesaler and brewer".

Case Notes

Notice and Cause: Brewer's distributorship contract with wholesaler could not be reconciled with the provisions of 16-3-221 and 16-3-222 providing for termination only for just cause and on 60 days' notice where the contract provided for termination on 30 days' notice without cause. That provision of the contract was therefore invalid. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

Waiver of Notice: Wholesaler's failure to seek an injunction against brewer's termination of distributorship contract was not a waiver of his right under this section to 60 days' notice of termination. Notice offered after termination was no notice at all and without practical value or effect. Brewer breached the contract and was liable for damages. Maykuth v. Adolph Coors Co., 690 F2d 689 (9th Cir. 1982).

16-3-223. Transfer of wholesaler's interest in business.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Inserted "or beer importer" in two places.

16-3-224. Contractual or franchise relationship — existence by actions.

Compiler's Comments

1985 Amendment: Inserted "or beer importer" in three places.

16-3-225. Injunction to prevent franchise cancellation.

Compiler's Comments

1985 Amendment: In first sentence inserted "or between a wholesaler and a beer importer"; and in second sentence inserted "or beer importer".

16-3-226. Brewer-wholesaler or beer importer-wholesaler agreements filed with department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 118, L. 2023. Amendment effective April 18, 2023.

1985 Amendment: In first sentence inserted "or beer importer".

16-3-230. Beer required to be shipped to wholesaler.

Compiler's Comments

2023 Amendments — Composite Section: Section 5, Ch. 591, L. 2023, in both versions in first sentence near beginning inserted "and 16-4-901" and near end after "wholesaler's warehouse" deleted "in Montana", and in second sentence near beginning after "A brewer or beer importer" deleted "may sell only to wholesalers from a storage depot in Montana and"; and in temporary version in first sentence after "manufactured outside of or within the state" deleted "of Montana". Amendment effective May 18, 2023.

Section 4, Ch. 749, L. 2023, substituted current first sentence for former first sentence (see sec. 4, Ch. 749, L. 2023, for former text); in second sentence near beginning after "A brewer or beer importer" deleted "may sell only to wholesalers from a storage depot in Montana and"; and in fourth sentence near middle substituted "wholesaler's licensed premises" for "wholesaler's principal place of business". Amendment effective July 1, 2024.

1999 Amendment: Chapter 192 at beginning of first sentence inserted exception clause, after "beer" inserted "that is to be distributed in Montana, whether", after "outside of" inserted "or within", and after "state of Montana" deleted "and shipped into Montana"; and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: In second sentence inserted "or beer importer".

1983 Amendment: In first sentence, inserted requirement that beer be consigned and shipped "either directly or via a licensed storage depot"; and inserted second sentence requiring brewer to sell only from a storage depot in Montana and to keep records.

Similar Provision Not Codified: Subsection (1)(c) of section 4-4-401, R.C.M. 1947, was not codified in the MCA, as it stated that this code may not be construed to repeal or change any provision of this code requiring what, in effect, this section requires and is thus unnecessary. The subsection was enacted by sec. 1, Ch. 122, L. 1963 (sec. 4-341, R.C.M. 1947). Section 4-341 was amended and redesignated 4-4-401 by sec. 68, Ch. 387, L. 1975. The provision has not been repealed and is still valid law.

16-3-231. Monthly report of wholesaler.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-3-232. Beer sales by wholesaler.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-3-233. Sales to public by wholesaler unlawful.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 591, L. 2023. Amendment effective May 18, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-3-235. Carriers' reports of beer transported.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "state shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 601, L. 2023. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2005 Amendment: Chapter 247 in (1)(a) after "equipment" deleted "signs", after "interior" deleted "or exterior", and after "painting" deleted "or decorating"; in (1)(b) after "trays" inserted language regarding tap handles, menus, apparel, or other advertising matter not exceeding $300 in value in any calendar year to one retail establishment for display use within interior of establishment; deleted former (1)(b) and (1)(c) that read: "(b) advertising matter or novelties, of a value of not to exceed $50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;

(c) not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display"; inserted (1)(b)(ii) and (1)(b)(iii) providing that it is lawful for brewer, beer importer, or wholesaler to furnish, give, or loan retail licensee up to six illuminated or electrical signs, lamps, or lighted clocks for each beer brand in any 1 year for display within interior of retail business and to furnish, give, or loan licensee permanent or temporary decorative advertising matter, excluding signs and clocks for each beer brand, but including nonelectric clocks, mirrors, banners, flags, and pennants; in (2) before "beer" deleted "draft"; inserted (2)(b) authorizing wholesaler to furnish portable equipment used for dispensing of beer to special permittee or retailer for use up to three times a year on retailer's regular premises for period not to exceed 72 hours; and made minor changes in style. Amendment effective October 1, 2005.

1985 Amendments: Chapter 19 inserted "beer importer" in three places.

Chapter 229 inserted (2) allowing wholesaler to furnish portable equipment for temporary cooling, handling, and dispensing of draft beer under certain circumstances.

1981 Amendment: Increased the value of advertising matter or novelties that a brewer or wholesaler is allowed to furnish from $15 per year to $50 per brewery per year in (2).

Administrative Rules

ARM 42.12.323 Permissible and prohibited special permit activities.

16-3-242. Financial interest in retailers prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 601, L. 2023. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Inserted "beer importer" in five places.

Case Notes

Indirect Financial Interest of Liquor Distributor in Retail Liquor Businesses Prohibited: Williamson owned controlling interests in a wholesale beer and wine distribution company and also in an electronic gaming machine business that periodically made loans to alcohol retailers. Williamson was found to be in violation of the alcoholic beverage code because the distribution company had a prohibited indirect financial interest in a liquor retailer to which the gaming machine business had made a loan. Williamson contended on appeal that the provisions of 16-3-242 were construed too broadly and should apply only to an ownership interest and not to a financial interest. The Supreme Court disagreed. Williamson's common business interest and control over the two companies constituted just the type of circuitous indirect financial interest that is prohibited by 16-3-242 and 16-3-406 and gave the distribution company an impermissible indirect financial interest in the alcohol retailers. The District Court was affirmed. Shelby Distrib., LLC v. Dept. of Revenue, 2009 MT 80, 349 M 489, 206 P3d 899 (2009).

Sanction for Unlawful Control of Retail Liquor License and Wholesale Distributor License Not Violative of Due Process: Williamson owned controlling interests in a wholesale beer and wine distribution company and also in an electronic gaming machine business that periodically made loans to alcohol retailers, for which Williamson had approval from the Department of Justice. Following an investigation by the Department of Revenue, Williamson was found to be in violation of the alcoholic beverage code because the distribution company had a prohibited indirect financial interest in a liquor retailer to which the gaming machine business had made a loan. The Department of Revenue ordered the distribution company to pay a $1,500 fine, and ordered Williamson either to divest himself of common ownership of the two companies or to cease making loans to alcohol retailers. The distribution company appealed the decision to District Court on grounds that its due process rights had been violated and that the Department of Revenue had misinterpreted the law, but the court affirmed the Department order. On appeal, plaintiff contended that due process was violated when one department sanctioned the loan activity that had been previously approved by another department. The Supreme Court disagreed. Each department controlled separate functions and each required separate licenses. The Department of Justice approval of loans did not unfairly mislead Williamson into believing that the distribution company was free from the constraints of state liquor control laws. Further, the sanction in this case, the major part of which was simply an order that the prohibited conduct must cease, did not constitute treatment that was so fundamentally unfair that it violated plaintiff's due process rights. The District Court was affirmed. Shelby Distrib., LLC v. Dept. of Revenue, 2009 MT 80, 349 M 489, 206 P3d 899 (2009), distinguishing Seaman v. Dept. of Revenue, 2002 MT 34, 308 M 307, 42 P3d 790 (2002).

16-3-243. Seven-day credit limitation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 591, L. 2023. Amendment effective May 18, 2023.

1985 Amendment: Inserted "beer importer(s)" in two places.

Administrative Rules

ARM 42.13.109 Seven-day credit limitation.

16-3-244. Beer advertising limitations.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 34, L. 2023, in (1) near middle of first sentence after "contained in 16-3-241" deleted "of this code" and in second sentence after "retailer's place of business" deleted "or on the exterior portion or surface of any building of which the place of business is a part or on any premises adjacent to the place of business". Amendment effective October 1, 2023.

Section 5, Ch. 601, L. 2023, in (1) at beginning inserted exception clause; inserted (2) relating to complete ownership of a retail license; and made minor changes in style. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2009 Amendment: Chapter 197 near beginning of first sentence following "advertise beer" deleted "containing not more than 7% of alcohol by weight"; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendments: Chapter 19 in first sentence inserted "and beer importers"; and in last sentence inserted "beer importer".

Chapter 223 at end inserted exception clause relating to temporary advertisements.

Administrative Rules

ARM 42.13.201 Labeling and packaging requirements.

ARM 42.13.202 Draught beer and wine taps.
ARM 42.13.211 Permissible advertising.
ARM 42.13.221 Adoption of certain federal regulations.

Part 3
Retail Sales Restrictions

Part Administrative Rules

ARM 42.13.111 Definitions (regulation of licensees).

Part Attorney General's Opinions

Regulation of Live Dance Performance in Licensed Liquor Establishment — Abridgment of Free Expression: The validity of a city ordinance regulating live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by Art. II, sec. 7, Mont. Const., and the first amendment to the U.S. Constitution. Therefore, a proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in licensed liquor establishments is an unconstitutional abridgment of the constitutional standards because: (1) it fails to distinguish carefully between protected and unprotected conduct; and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established. 41 A.G. Op. 75 (1986).

16-3-301. Unlawful purchases, transfers, sales, or deliveries — presumption of legal age.

Compiler's Comments

2023 Amendments — Composite Section: Section 8, Ch. 591, L. 2023, substituted current (1) for former (1), (2), and (3) (see sec. 8, Ch. 591, L. 2023, for former text); in (2) near beginning substituted "licensed distributor or wholesaler to purchase beer, table wine, or wine" for "licensed wholesaler to purchase beer or wine"; inserted (3) relating to liquor store agents and wine purchases; and made minor changes in style. Amendment effective May 18, 2023.

Section 2, Ch. 728, L. 2023, inserted (8) relating to purchases and transportation of beer and table wine by licensed retailers. Amendment effective May 22, 2023.

2021 Amendment: Chapter 568 in (1) and (2) at end inserted "except as allowed in 16-4-213(8)"; inserted (3) regarding purchase or acquisition of liquor by a licensed retailer; and made minor changes in style. Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

2007 Amendments — Composite Section: Chapter 501 in (1) near middle after "beer" inserted "or wine" and after "brewery" inserted "winery"; in (2) near middle after "beer" inserted "or wine"; inserted (3) providing that it is unlawful for a wholesaler to purchase beer or wine from other than a licensed or registered brewery, wholesaler, or winery; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 516 in (1) near middle after "beer" inserted "or wine" and after "brewery" inserted "winery"; in (2) near middle after "beer" inserted "or wine"; inserted (3) concerning restriction on wholesaler purchase; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 498 in (3)(b) at beginning deleted "any intoxicated person or"; and made minor changes in style. Amendment effective October 1, 2001.

1987 Amendments: Chapter 61 throughout section substituted "is" for "shall be"; inserted (2) making it unlawful for a licensed retailer to transport beer from one licensed premises to another owned by the licensee; and made minor changes in phraseology.

Chapter 217 throughout section changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

Liability for Alcohol-Related Injuries — Statute Not Retroactively Applied: After consuming alcohol at a bar for 3 hours, a truck driver died from injuries received in an accident. His widow sued the bar, claiming that its action in allowing the driver to drink and then drive was the proximate cause of his death. The District Court granted the bar's motion for a judgment on the pleadings for a failure to state a claim for relief, ruling that Montana did not recognize common-law dram shop liability against the bar owner. Upon appeal, the Supreme Court held that the 1986 law (27-1-710) defining civil liability for injuries involving alcohol consumption cannot be applied retroactively. The court also ruled that the District Court erred in granting the motion for judgment on the pleadings as the widow's complaint alleging negligence by the bar properly stated a claim for relief. Jevning v. Skyline Bar, 223 M 422, 726 P2d 326, 43 St. Rep. 1845 (1986).

Guilt of Minor Misrepresenting His Age: While this part holds that a minor is "equally guilty" with a licensee selling to him, it does not mean that he is held as a matter of law to be an accomplice of the person charged with selling intoxicating liquor to an underage person. The minor's crime would be the misdemeanor of knowingly misrepresenting his qualifications for the purpose of obtaining liquor. St. v. Paskvan, 131 M 316, 309 P2d 1019 (1957).

Entrapment: Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. St. v. Parr, 129 M 175, 283 P2d 1086 (1955), distinguished in Henderson v. U.S., 237 F2d 169 (5th Cir. 1956). (Dissenting opinion, 129 M 183, 283 P2d 1086 (1955).)

Ostensible Agency: A conviction of the owner of a tavern for a violation of this section was upheld where a barmaid at the tavern sold beer to minors, although the barmaid was not on the defendant's payroll. There was ample evidence tending to show, at the very least, an ostensible agency. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

CASE NOTES UNDER FORMER LAW (SEE 27-1-710, MCA)

Bar Selling to Intoxicated Minor — Liability to Minor: A bar or tavern operator who serves an intoxicated minor may be liable in damages for injuries subsequently sustained by the minor. The imbiber's acts of drinking alcoholic beverages served by the bar or tavern operator and then becoming involved in an injury-producing accident may be reasonably foreseeable events which may no longer protect a defendant from liability for negligence. Under the state's system of comparative negligence, it is for the jury to determine the degree of negligence attributable to the plaintiff and defendant. Neither a plaintiff's nor a defendant's acts have to be the sole proximate cause of the injuries. To the extent that Swartzenberger v. Billings Labor Temple Ass'n, 179 M 145, 586 P2d 712, 35 St. Rep. 1625 (1978), and Folda v. Bozeman, 177 M 537, 582 P2d 767, 35 St. Rep. 1019 (1978), imply that the imbiber's act of drinking is the sole proximate cause of a resulting injury, they are overruled. Folda was also overruled, as to the standard that a property owner is absolved of liability because a dangerous condition upon the premises is open and obvious, in Richardson v. Corvallis Pub. School District No. 1, 286 M 309, 950 P2d 748, 54 St. Rep. 1422 (1997). Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Violation of Alcoholic Beverage Control Statutes — Evidence of Negligence: Although not negligence per se, violation of the alcoholic beverage control statutes is judicially recognized as evidence of negligence with regard to a tavern operator's liability for off-premises injuries to a third party injured by a patron of the tavern. As for causation, consumption of the alcoholic beverages served, subsequent driving, and the likelihood of an injury-producing accident are foreseeable intervening acts that do not relieve the tavern operator of liability for negligence. Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986), followed in Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Violation of Alcoholic Beverage Control Statutes Not Negligence as Matter of Law: With regard to a tavern operator's liability for off-premises injuries to a third party injured by a patron of the tavern, the Supreme Court held that a violation of the alcoholic beverage control statutes was not negligence as a matter of law. It is not negligence per se because the two statutes in question were enacted to regulate the business of selling liquor and beer in order to protect the people of the state generally and the interests of the state rather than to protect against any particular kind of injury or provide a civil remedy. Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986), followed in Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Bar Selling to Intoxicated Adult — Liability to Injured Third Person: Air Force NCO Club personnel's giving of alcoholic beverage to intoxicated adult after the legal closing time for a retail liquor establishment in violation of this section and 16-3-305 was negligence per se and a proximate cause of injury to passenger in intoxicated person's auto, which went off the road and hit a tree. Intoxicated person was also negligent and his intoxication was also a proximate cause of the injury, and passenger assumed the risk of injuries when he rode with person he thought was intoxicated and an unsafe driver. Defendant U.S. was liable to passenger to the degree of defendant's negligence. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Nature of Purveyor of Alcohol: Whether alcoholic beverages were commercially served or socially served will be taken into consideration in considering liability of server to a third party injured in an auto accident involving servee. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979).

Section's Application to Social Purveyors of Alcohol: This section's provision that no licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any alcoholic beverage to . . . any person under the age of 18 (changed to 19 by 1979 amendment and changed to 21 by 1987 amendment) does not apply to a social purveyor of alcoholic beverages. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979).

Serving Minor at Private Party — Liability to Injured Third Person: Minor drank beer furnished by host of private party and had an auto accident while driving from host's home. Plaintiff passenger in minor's auto was injured. Minor's drinking, not host's serving of beer to him, was the proximate cause of the accident, and host was not liable to passenger under common-law negligence principles. Runge v. Watts, 180 M 91, 589 P2d 145, 36 St. Rep. 85 (1979), overruled, as to statement that the drinking, not the serving, was the proximate cause of the injury, by Nehring v. LaCounte, 219 M 462, 712 P2d 1329, 43 St. Rep. 93 (1986).

Bars Selling to Intoxicated Adult — Liability to Survivors: Adult drank excessively at two bars from late morning into the evening, fell down the stairs at one of them, and died of injuries sustained. His wife sued on behalf of herself and her two children. The bars may have been negligent per se, but the bartenders knew decedent was an experienced heavy drinker, and could not reasonably know he would fall and die as a result of the drinking. Decedent's contributory negligence intervened between any negligence of the bartenders and his death, and was the proximate cause of his death. His contributory negligence was a complete bar to recovery. Swartzenberger v. Billings Labor Temple Ass'n, 179 M 145, 586 P2d 712, 35 St. Rep. 1625 (1978). To the extent that Swartzenberger implies that the imbiber's act of drinking is the sole proximate cause of any resulting injury to the imbiber, the case is overruled by Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986).

Bar Selling to Intoxicated Minor — Liability to Estate: Minor was served liquor and beer by V.F.W. Club, in violation of former law, when she was obviously extremely intoxicated. She was unable to leave the club on her own, had to be helped out, and drowned in a stream near the club after apparently having entered the stream of her own accord. Evidence supported the conclusion that she became voluntarily intoxicated and disregarded her duty to use due care for her own safety, and this was the proximate cause of her death. The rule that contributory negligence precludes any recovery against a defendant was in effect at the time of the death, and the club was not liable to the estate of a decedent minor. Folda v. Bozeman, 177 M 537, 582 P2d 767, 35 St. Rep. 1019 (1978). To the extent that Folda implies that the imbiber's act of drinking is the sole proximate cause of any resulting injury to the imbiber, the case is overruled by Bissett v. DMI, Inc., 220 M 153, 717 P2d 545, 43 St. Rep. 252 (1986). Folda was also overruled, as to the standard that a property owner is absolved of liability because a dangerous condition upon the premises is open and obvious, in Richardson v. Corvallis Pub. School District No. 1, 286 M 309, 950 P2d 748, 54 St. Rep. 1422 (1997).

Bar Selling to Intoxicated Minor — Liability to Injured Third Party: Air Force NCO Club personnel served minor airman liquor in violation of this section. They knew he was drinking excessively, and knew that airmen at the club would be driving their dates home. Minor left the club while intoxicated and had an accident in which plaintiff passenger was injured. The serving of liquor to the minor was a proximate cause of the plaintiff's injuries. The plaintiff was not guilty of contributory negligence where she was 17, had been drinking, and relied on airman for a ride home. The United States was liable to plaintiff. Deeds v. U.S., 306 F. Supp. 348 (D.C. Mont. 1969).

Bar Selling to Patron — Liability to Injured Third Party: Bar patron was shoved by girl on stool next to his when he attempted to kiss her. He fell off the stool and knocked nearby plaintiff to the floor, injuring her. There was no proof that bar had served patron, that he was ill-behaved, or that bar violated statute prohibiting a person from giving liquor to any person apparently under the influence of liquor. Plaintiff could not recover from bar as she proved no duty created by the facts and violated by the bar; her injury was proximately caused by the patron, not the bar. Nevin v. Carlasco, 139 M 512, 365 P2d 637 (1961). However, see Harrington v. The Crystal Bar, Inc., 2013 MT 209, 371 Mont. 165, 306 P.3d 342 (reversing grant of summary judgment to a bar when pleadings indicated the bar operator had some knowledge of a potential conflict).

Law Review Articles

Underage Drinking: Does Current Policy Make Sense?, McMullen, 10 Lewis & Clark L. Rev. 333 (2006).

Alcohol Regulation and Auto Fatalities, Young & Likens, 20 Int'l Rev. L. & Econ. 107 (2000).

16-3-302. Sale by retailer for consumption on premises.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 4, Ch. 622, L. 2023, in (1) near middle substituted "draft" for "draught"; inserted (2)(b) relating to an additional building or other structure; in (2)(c) at end after "place to place" deleted "whether inside or outside of a building or other structure"; and made minor changes in style. Amendment effective May 19, 2023.

Section 8, Ch. 728, L. 2023, inserted (4) relating to locations where sales of alcohol may be made with resort area licenses; inserted (5) relating to guest ranch sales of alcohol; and made minor changes in style. Amendment effective May 22, 2023.

The amendments to this section made by sec. 3, Ch. 728, L. 2023, and sec. 5, Ch. 749, L. 2023, were replaced by sec. 8, Ch. 728, L. 2023, a coordination section.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1987 Amendment: Inserted (2) and (3) relating to sale of alcoholic beverages on the facilities of a golf course; and made minor changes in phraseology.

Administrative Rules

ARM 42.13.106 Alteration of premises.

ARM 42.13.111 Definitions.

16-3-303. Sale of beer by retailer for consumption off premises.

Compiler's Comments

2021 Amendment: Chapter 194 near middle after "its original package" inserted "in prepared servings"; and made minor changes in style. Amendment effective April 14, 2021.

2011 Amendment: Chapter 77 in first sentence near beginning inserted "on-premises" and inserted "in its original package or in growlers"; inserted second sentence regarding filling of growlers; and made minor changes in style. Amendment effective March 25, 2011.

16-3-304. Closing hours for licensed retail establishments.

Compiler's Comments

1985 Amendment: Inserted exception clause at beginning, and in last sentence substituted "alcoholic beverage licensee and employees of such licensed establishment shall be excluded from the licensed premises" for "owner and employees of such licensed establishments shall be excluded therefrom except as provided in 16-3-305".

Administrative Rules

ARM 42.13.110 Closing hours due to change to or from daylight savings time.

Case Notes

Negligence Per Se: Violation of this section, enacted for the health, welfare, and safety of the people of Montana, is negligence per se. Plaintiff was injured in accident involving vehicle driven by person defendant allegedly served in violation of this section. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Exclusive Jurisdiction: When there was alleged violation of city ordinance restricting hours of sale but same was not violation of former state law, police court (now City Court) in city had exclusive jurisdiction over matter. State ex rel. Goodwin v. District Court, 167 M 179, 536 P2d 766 (1975).

"Closed" Defined: The word "closed" means absolutely closed, to close off the front, sides, and rear of that part of a room which is used for the purpose of selling liquor. It makes no difference whether any liquor is sold or not; the offense consists in its being open. St. v. Perez, 126 M 15, 243 P2d 309 (1952).

Complaint — Sufficiency: A complaint that alleges "on or about" a certain day of a certain month is sufficient since the precise day is not of the essence of the offense; and it is sufficient if the evidence discloses the unlawful sale of liquor on a day other than the date disclosed in the complaint. State ex rel. Borberg v. District Court, 125 M 481, 240 P2d 854 (1952).

Attorney General's Opinions

Band Members as Bar Employees — Restriction From Premises After Closing Not Required: Members of a band hired to perform at a bar are considered employees within the meaning of this section and may remain on the premises after closing time. 44 A.G. Op. 2 (1991).

Closure of Poker Room After Hours Not Required — Alcoholic Beverages Prohibited: Absent local regulations to the contrary, a licensee may operate a poker game on premises licensed for sale of alcoholic beverages during hours of closure enumerated in 16-3-304; however, persons on the licensed premises, including the poker room, may not consume alcoholic beverages during the hours of closure even if the beverages were purchased prior to closing time. 42 A.G. Op. 10 (1987).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

16-3-305. Sale of alcoholic beverages during closed hours unlawful — lawful business need not be closed.

Compiler's Comments

1985 Amendment: Substituted entire text (see 1985 Session Law) for "During the hours when the licensed establishments where alcoholic beverages are sold at retail are required by this code to be closed, it shall be unlawful to sell, offer for sale, or give away any such alcoholic beverages, and during such hours all persons, save employees of such licensed establishments, shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Case Notes

Negligence Per Se: Violation of this section, enacted for the health, welfare, and safety of the people of Montana, is negligence per se. Plaintiff was injured in accident involving vehicle driven by person defendant allegedly served in violation of this section. Johnson v. U.S., 496 F. Supp. 597, 37 St. Rep. 1581 (D.C. Mont. 1980).

Restaurant Business: When the dining room is entirely separate from the barroom with a connecting door, this section is violated by keeping the barroom open after hours and allowing people to remain therein. The restaurant business may be conducted without using the barroom. St. v. Perez, 126 M 15, 243 P2d 309 (1952).

Attorney General's Opinions

When Nonemployees Allowed on Bar Premises After Closing — Consumption of Alcohol Not Allowed: Under this section, nonemployees may remain on the premises of a bar after closing time as long as the owner of the licensed premises is engaged in a lawful business; however, nonemployees may not consume alcoholic beverages on the premises after closing time, even if the beverages were purchased prior to closing. 44 A.G. Op. 2 (1991).

Closure of Poker Room After Hours Not Required — Alcoholic Beverages Prohibited: Absent local regulations to the contrary, a licensee may operate a poker game on premises licensed for sale of alcoholic beverages during hours of closure enumerated in 16-3-304; however, persons on the licensed premises, including the poker room, may not consume alcoholic beverages during the hours of closure even if the beverages were purchased prior to closing time. 42 A.G. Op. 10 (1987).

16-3-306. Proximity to churches and schools restricted.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 591, L. 2023. Amendment effective May 18, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (1) substituted reference to subsections (2) through (4) for reference to subsections (2) and (3); and inserted (4) relating to nonapplication of subsection (1) when supplanted as provided in 16-3-309.

1981 Amendment: Substituted "(1) Except as provided in subsections (2) and (3), no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet" for "A retail licensee may not extend or relocate his premises within 600 feet" at the beginning of the section; inserted the subsection (2) designations; inserted "the licensee does not relocate his entrances any closer than the existing entrances and if' in the introductory phrase of (2); added (3) relating to nonapplication of subsection (1) in case of off-premises consumption; and made minor changes in phraseology.

Administrative Rules

ARM 42.12.129 Determination of proximity to place of worship or school.

Case Notes

Showing of Constitutionally Protected Property Interest Required — Federal and State Claims: Plaintiff brought property interest claims against a city and city council members on several state and federal grounds after a state liquor license was denied. The city had enacted ordinances disallowing the sale of alcohol in the city without a conditional use permit and then denied plaintiff's application for a permit. The District Court held that plaintiff's property interest claims were invalid, and plaintiff appealed. The Supreme Court noted that to establish a viable claim under 42 U.S.C. 1983, a plaintiff must first establish that it possesses a protected liberty or property interest and has a legitimate claim of entitlement to that interest. Under state due process and takings law, a plaintiff must also establish a property interest, and a property interest exists only when the Legislature has so narrowly circumscribed the issuing agency's discretion that approval of the interest is virtually assured. Receipt of a liquor license is a privilege and not a right. Plaintiff had yet to obtain a state liquor license at the time that the ordinances were passed and thus had no property interest in operating a bar, nor could plaintiff assert ultimate entitlement to a liquor license. Therefore, plaintiff's inability to demonstrate a protected property interest in operating property as a bar precluded the establishment of federal or state property claims against the city and City Council members, nor did the city deprive plaintiff of a protected property interest by enacting the ordinances or denying a conditional use permit. The District Court was affirmed. Germann v. Stephens, 2006 MT 130, 332 M 303, 137 P3d 545 (2006), following ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), and Kiely Constr. v. Red Lodge, 2002 MT 241, 312 M 52, 57 P3d 836 (2002).

Administrative Rule Void When Contrary to Longstanding Administrative Interpretation: The Department of Revenue's longstanding administrative interpretation of the meaning of "on the same street" as used in 16-3-306 has the force and effect of law due to the repeated reenactment of that section by the Legislature without change in the operative language that no license be issued to a business "on the same street" and within 600 feet of a church or school. Thus, the interpretation could not be changed, and an administrative rule making a change is invalid. Hovey v. Dept. of Revenue, 203 M 27, 659 P2d 280, 40 St. Rep. 272 (1983).

Entrances "On the Same Street": When the phrase "on the same street", as used in this section, is read in conjunction with the section's requirement that the distance between the premises of the business and a church or school be measured in a straight line from entrance to entrance, it is evident that the Legislature intended the provision to apply only when the entrance to the business and the entrance to the church or school are on the same street. Hovey v. Dept. of Revenue, 203 M 27, 659 P2d 280, 40 St. Rep. 272 (1983).

16-3-307. Sale of liquor at less than posted price unlawful.

Compiler's Comments

2013 Amendment: Chapter 12 at beginning inserted exception clause, in middle after "agency liquor store" deleted "or the state of Montana", and at end after "department" deleted "and paid by the licensee"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 530 near middle, after "from", substituted "an agency" for "a state" and after "established by the" substituted "department" for "store"; and made minor changes in style. Amendment effective April 25, 1995.

16-3-308. Refilling of liquor bottles prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 591, L. 2023. Amendment effective May 18, 2023.

16-3-309. Sales prohibited by ordinance.

Compiler's Comments

1983 Amendment: Substituted entire text (see 1983 Session Law) for "(1) The cities and incorporated towns may enact ordinances defining certain areas in the cities and towns where alcoholic beverages may or may not be sold.

(2) No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue."

Case Notes

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor; the state has exclusive authority in that matter. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Power of City Council to Limit Number of Beer Parlors: A city council could (prior to 1947 amendment of the Montana Beer Act taking this power away from cities) properly limit the number of places in the city where beer and liquor at retail might be sold and then refuse to issue a license to the assignee of a Montana Liquor Control Board (now Department of Revenue) license, and in doing so was not depriving him of property without due process of law. State ex rel. McIntire v. Libby, 107 M 216, 82 P2d 587 (1938), explained in Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1938).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor under 16-4-503 but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

16-3-310. Lapse of license for nonuse — approved nonuse.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 35, L. 2023. Amendment effective March 2, 2023.

1987 Amendment: In middle of first sentence, after "beer", inserted "and table wine".

Administrative Rules

ARM 42.13.107 Nonuse status.

ARM 42.13.108 Lapse of license for nonuse.

Case Notes

Commencement of Nonuse Period: Plaintiffs ignored reality by contending that the 90-day period of nonuse commenced upon conditional approval, and that the right to transfer vested on that date, subject to divestment only upon failure to meet health requirements and inspection. The fair and logical answer is that the license continues in the old place of business (as long as it is actively being used) until the ultimate transfer is approved by the licensing authority. State ex rel. Corette v. Dept. of Revenue, 176 M 276, 577 P2d 1214 (1978).

Limitation of Actions: Licensee, whose license was revoked for nonuse, was barred from relief by his failure to take action within 15 days after receipt of notice from the Montana Liquor Control Board (now Department of Revenue). State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

Short, Temporary Opening to Avoid Statute: Licenses lapse automatically if not used for 90 days, and the statutory nonuse period could not be avoided by opening bar to the public for a few hours of 1 day. State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

16-3-311. Suitable premises for licensed retail establishments.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 1, Ch. 21, L. 2023, in (1)(a) in third sentence amended exception clause to include subsection (11); and inserted (11) relating to airport terminal alcoholic beverage consumption. Amendment effective February 28, 2023.

Section 6, Ch. 601, L. 2023, in (1)(a) in third sentence amended exception clause to include subsection (10); and inserted (10) relating to colocated license and physical separation. Amendment effective July 1, 2023.

Section 12, Ch. 749, L. 2023, in (1)(a) at end of first sentence inserted "except as otherwise allowed in 16-3-302(4)" and inserted fourth sentence relating to leases of kitchen spaces without a concession agreement; in (1)(b) near middle after "all-beverages licensee" inserted "or an on-premises consumption beer and wine licensee" and near end substituted "also utilize up to three alternate alcoholic beverage storage facilities" for "also utilize an alternate alcoholic beverage storage facility"; in (2) inserted last sentence relating to inspections by local government agencies; in (6) inserted last sentence relating to keg storage and beer lines in noncontiguous storage; and made minor changes in style. Amendment effective May 22, 2023.

The amendments to this section made by sec. 4, Ch. 728, L. 2023, and sec. 6, Ch. 749, L. 2023, were replaced by sec. 12, Ch. 749, L. 2023, a coordination section.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendments — Composite Section: Chapter 161 in (1) at beginning of third sentence inserted exception clause; inserted (8) concerning the location of an on-premises consumption retailer with respect to an adjacent brewery or winery; inserted (9) providing definition of adequate physical separation; and made minor changes in style. Amendment effective April 8, 2021.

Chapter 568 in (1)(a) inserted second sentence requiring adequate control over all alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are actually or apparently intoxicated, in third sentence near middle substituted "access to the rest of the building at all times" for "access during lawful hours of operation to the rest of the building", and at end inserted "If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access"; inserted (1)(b) regarding use of an alternate alcoholic beverage storage facility; in (2) substituted current text for former text that read: "A licensee whose premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section"; inserted (3) regarding adequate control over the interior portion of licensed premises; inserted (4) regarding inclusion of exterior patios or decks; inserted (5) excluding a minimum number of seats from premises suitability; inserted (6) regarding application to the department for a noncontiguous storage area; inserted (7) regarding delivery of alcoholic beverages within a hotel or similar short-term lodging facility; and made minor changes in style. Amendment effective May 14, 2021, except that subsections (6) and (7) became effective July 1, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

Administrative Rules

ARM 42.13.1102 All-beverages license — conditions for operating.

ARM 42.13.1103 Restaurant beer and wine license — conditions for operating.

ARM 42.13.1104 On-premises consumption beer license — conditions for operating.

16-3-312. Curbside pickup.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 103, L. 2023, in (2) near middle of first sentence inserted "or in person, including but not limited to ordering through a drive-through window"; and made minor changes in style. Amendment effective April 18, 2023.

Section 1, Ch. 359, L. 2023, in (3) after "16-4-201" deleted "16-4-208"; and made minor changes in style. Amendment effective October 1, 2023.

Effective Date: Section 20, Ch. 194, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 14, 2021.

16-3-313. Periodic government or tribal-issued identification data destruction.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

16-3-316. Fundraising events for nonprofit and tax-exempt organizations.

Compiler's Comments

2023 Amendments — Composite Section: Section 11, Ch. 591, L. 2023, in (2) in second sentence near end substituted "16-3-301(1)(a)" for "16-3-301(1)"; in (4) substituted current text for former text that read: "(4) An alcoholic beverage for raffle or auction must be:

(a) acquired, whether by purchase or donation, by the organization from a retailer licensed under the provisions of this code, excluding a restaurant beer and wine licensee;

(b) purchased by the organization from an agency liquor store at not less than the posted price; or

(c) received by the organization as a donation at no cost to the organization from any other person except one licensed as a wholesaler or distributor under this code." Amendment effective May 18, 2023.

Section 5, Ch. 622, L. 2023, in (4) substituted current text for former text (see Ch. 591 note for former text). Amendment effective May 19, 2023.

Effective Date: Section 5, Ch. 86, L. 2011, provided that this section is effective on passage and approval. Approved March 30, 2011.

Saving Clause: Section 4, Ch. 86, L. 2011, was a saving clause.

16-3-321. Keg identification tag.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

16-3-322. Recordkeeping.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 deleted former (1)(d) that read: "[(d) the keg identification number required under 16-3-321]"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 180 in (1) near end inserted "tribal identification card". Amendment effective October 1, 2007.

2005 Code Commissioner Correction: Subsection (1)(d) is bracketed and is erroneous because the requirement for a keg identification number was deleted from 16-3-321 during the course of enactment.

Effective Date: This section is effective October 1, 2005.

16-3-323. Enforcement.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

16-3-324. Violations.

Compiler's Comments

2007 Amendment: Chapter 44 in (2) in second sentence after "defacing" inserted "or damaging"; and made minor changes in style. Amendment effective October 1, 2007.

Effective Date: This section is effective October 1, 2005.

Part 4
Sale of Table Wine

Part Administrative Rules

ARM 42.12.313 Wine or beer tastings.

ARM 42.13.211 Permissible advertising.

ARM 42.13.221 Adoption of certain federal regulations.

16-3-401. Short title — public policy — purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 591, L. 2023. Amendment effective May 18, 2023.

2007 Amendment: Chapter 501 in (2) at end after "wine" deleted "by licensed table wine distributors"; and in (3) substituted "This part governs wineries, table wine distributors, and wine retailers" for former language that read: "This part governs relationships between suppliers and table wine distributors, and because the legislature recognizes the public interest and the interests of suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:

(a) protect the table wine distributor's independence in managing the distributor's business, including the establishment of selling prices; and

(b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute." Amendment effective October 1, 2007.

1995 Amendment: Chapter 530 in (2), near middle after "system", substituted "to" for "for the importation and sale of table wine by the state through state liquor facilities and"; and made minor changes in style. Amendment effective April 25, 1995.

1991 Amendment: Inserted (1) providing a citation for the part; and inserted (3) stating the intention of the part to govern relationships between suppliers and table wine distributors.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

1987 Amendment: Before "wine by the state" and before "wine distributors" inserted "table" and near end, before "by licensed", deleted "containing not more than 14% alcohol by volume".

Alcohol Percentage Changed: Chapter 16, L. 1985, amended the definition of table wine in 16-1-106 by increasing the maximum alcohol percentage from 14% to 16%. Evidently this section was inadvertently not amended.

Commissioner Correction: The Code Commissioner, 1979, deleted the sentence: "When the words 'table wine' are used in this act in either the singular or plural they refer only to wine containing not more than 14% alcohol by volume." as redundant with the definition of "table wine" given in 16-1-106.

Construction: Section 13, Initiative 81, provided in part: "This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require beer and table wine manufactured outside of Montana to be consigned to and shipped to a licensed beer wholesaler or licensed table wine distributor and by him unloaded into his warehouse or subwarehouse in Montana."

16-3-402. Importation of wine — records.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 115 in (1) inserted "16-4-313"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 184 in (1) near beginning substituted "and Title 16, chapter 4, part 11" for "and 16-4-901". Amendment effective October 1, 2013.

2007 Amendment: Chapter 501 in (1) at beginning inserted exception clause; in (3) near beginning after "Montana" substituted "in violation of this code" for "and that has not been shipped to and distributed from a warehouse of a licensed table wine distributor"; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 530 in (1), at beginning, deleted "With the exception of table wine purchased by the department and shipped to its warehouse"; in (2), in second sentence after "inspected by", deleted "any member or representative of" and after "department" deleted "of revenue"; in (3), near middle after "distributor", deleted "or the department"; and made minor changes in style. Amendment effective April 25, 1995.

16-3-403. To whom table wine distributor may sell.

Compiler's Comments

1995 Amendment: Chapter 530 in (1)(b) substituted "an agency liquor store" for "the department"; deleted (1)(c) that read: "(c) a commission agent of the department"; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: Inserted (1)(c) authorizing sale of table wine by a distributor to a commission agent of the Department; and made minor changes in style.

16-3-404. Monthly report of table wine distributor and retailer.

Compiler's Comments

2007 Amendment: Chapter 501 inserted (2) requiring wine retailers to report monthly to the department the amount of wine purchased from out-of-state wineries; and made minor changes in style. Amendment effective October 1, 2007.

Administrative Rules

ARM 42.13.222 Beer wholesaler and table wine distributor recordkeeping requirements.
ARM 42.13.402 Wine distributor's monthly reports.

16-3-405. Carriers' reports of table wine transported.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "state shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

16-3-406. Financial interest in retailers prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.13.222 Beer wholesaler and table wine distributor recordkeeping requirements.

Case Notes

Indirect Financial Interest of Liquor Distributor in Retail Liquor Businesses Prohibited: Williamson owned controlling interests in a wholesale beer and wine distribution company and also in an electronic gaming machine business that periodically made loans to alcohol retailers. Williamson was found to be in violation of the alcoholic beverage code because the distribution company had a prohibited indirect financial interest in a liquor retailer to which the gaming machine business had made a loan. Williamson contended on appeal that the provisions of 16-3-242 were construed too broadly and should apply only to an ownership interest and not to a financial interest. The Supreme Court disagreed. Williamson's common business interest and control over the two companies constituted just the type of circuitous indirect financial interest that is prohibited by 16-3-242 and 16-3-406 and gave the distribution company an impermissible indirect financial interest in the alcohol retailers. The District Court was affirmed. Shelby Distrib., LLC v. Dept. of Revenue, 2009 MT 80, 349 M 489, 206 P3d 899 (2009).

Sanction for Unlawful Control of Retail Liquor License and Wholesale Distributor License Not Violative of Due Process: Williamson owned controlling interests in a wholesale beer and wine distribution company and also in an electronic gaming machine business that periodically made loans to alcohol retailers, for which Williamson had approval from the Department of Justice. Following an investigation by the Department of Revenue, Williamson was found to be in violation of the alcoholic beverage code because the distribution company had a prohibited indirect financial interest in a liquor retailer to which the gaming machine business had made a loan. The Department of Revenue ordered the distribution company to pay a $1,500 fine, and ordered Williamson either to divest himself of common ownership of the two companies or to cease making loans to alcohol retailers. The distribution company appealed the decision to District Court on grounds that its due process rights had been violated and that the Department of Revenue had misinterpreted the law, but the court affirmed the Department order. On appeal, plaintiff contended that due process was violated when one department sanctioned the loan activity that had been previously approved by another department. The Supreme Court disagreed. Each department controlled separate functions and each required separate licenses. The Department of Justice approval of loans did not unfairly mislead Williamson into believing that the distribution company was free from the constraints of state liquor control laws. Further, the sanction in this case, the major part of which was simply an order that the prohibited conduct must cease, did not constitute treatment that was so fundamentally unfair that it violated plaintiff's due process rights. The District Court was affirmed. Shelby Distrib., LLC v. Dept. of Revenue, 2009 MT 80, 349 M 489, 206 P3d 899 (2009), distinguishing Seaman v. Dept. of Revenue, 2002 MT 34, 308 M 307, 42 P3d 790 (2002).

16-3-411. Winery.

Compiler's Comments

2023 Amendments — Composite Section: Chapter 55 in (2)(a)(i) and (2)(a)(iii)(C) after "not exceed 4,500" inserted "9-liter"; in (2)(b)(ii) after "licensed retailer" deleted "who is in good standing"; and inserted (3) allowing wineries to maintain and pay an annual fee for storage depots. Amendment effective October 1, 2023.

Section 13, Ch. 591, L. 2023, in (1)(b) in two places substituted "table wine" for "wine"; in (1)(f) substituted "no more than 12 special event permits" for "a special event permit"; in (2)(a)(i) and (2)(a)(iii)(C) after "not exceed 4,500" inserted "9-liter"; in (2)(b)(ii) after "licensed retailer" deleted "who is in good standing"; and made minor changes in style. Amendment effective May 18, 2023.

Section 7, Ch. 601, L. 2023, in (2)(a) at beginning inserted exception clause. Amendment effective July 1, 2023.

Section 6, Ch. 622, L. 2023, in (1)(b) in two places substituted "table wine" for "wine"; in (2)(a)(i) and (2)(a)(iii)(C) after "4,500" inserted "9-liter"; in (2)(b)(ii) after "licensed retailer" deleted "who is in good standing"; throughout section inserted references to liquor store agents; and made minor changes in style. Amendment effective May 19, 2023.

Applicability: Section 5, Ch. 55, L. 2023, provided: "[This act] applies to new licenses for storage depots issued on or after October 1, 2023, and to renewal of licenses for storage depots that existed before October 1, 2023."

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendment: Chapter 194 inserted (1)(j) regarding offering wine through curbside pickup; and made minor changes in style. Amendment effective April 14, 2021.

2019 Amendment: Chapter 29 deleted former (2)(b) that read: "(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411"; in (2)(c) in second sentence substituted current text for former text that read: "The winery shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 184 inserted (1)(i) concerning direct shipment of table wine; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 501 inserted (1)(h) providing that a winery may sell wine at the winery to a licensed retailer; in (2)(a) substituted language establishing shipping requirements for a winery selling and delivering its wine directly to a licensed retailer for "A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine under this code"; in (2)(c) in introductory clause at beginning substituted "If a winery uses" for "The winery may use", before "wine" inserted "table", and at end after "retailers" substituted "the shipment must be" for "A shipment by common carrier is subject to the provisions of 16-3-106 and must be"; in (2)(c)(i) after "From" substituted "Montana-Licensed Winery" for "Montana Licensee"; in (2)(c)(ii) at beginning substituted "delivered" for "made" and after "of a" substituted "licensed table" for "Montana-licensed"; in (2)(d) in second sentence near beginning after "shall" substituted "on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine" for "furnish monthly and other reports concerning quantities and prices of table wine", after "the state" inserted "during the preceding month", and after "consignees" inserted "or retailers"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 163 in (1) in introductory clause substituted "licensed" for "registered"; inserted (1)(g) allowing a winery to perform operations and cellar treatments permitted for bonded winery premises under applicable regulations of the U.S. treasury department; inserted (2) allowing a licensed Montana winery with an annual production of 25,000 gallons or less of wine to sell wine to retail licensees, providing that a winery doing so is considered a table wine distributor for purposes of table wine tax collecting, allowing the winery to use a common carrier to ship wine to a licensed wine distributor or retailer, providing that the shipment is subject to 16-3-106 and must be in boxes marked with certain words, made to the premises of a Montana-licensed wine distributor or retailer, and signed for by the distributor or retailer, and requiring certain recordkeeping and reporting; and made minor changes in style. Amendment effective March 28, 2001.

1995 Amendment: Chapter 530 in (2), after "wholesale", deleted "to the department or". Amendment effective April 25, 1995.

Source: This section is derived from Oregon Revised Statutes, 471.223.

Administrative Rules

ARM 42.12.313 Wine or beer tastings.

16-3-415. Definitions.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-416. Table wine distributor provisions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 118, L. 2023. Amendment effective April 18, 2023.

1999 Amendment: Chapter 194 inserted (7) requiring that litigation resulting from a dispute occur in Montana unless unreasonable burden created; inserted (8) requiring that agreements between supplier and distributor must recognize constitutional right to jury trial; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 226 inserted (6) concerning interpretation of distributorship agreements; inserted (7) concerning void provisions; and made minor changes in style.

Applicability: Section 3, Ch. 226, L. 1995, provided that this section applies to all contracts entered into or renewed after October 1, 1995.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-417. Supplier provisions.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-418. Dual appointments — equal support — alternate supplier — dock sales.

Compiler's Comments

2007 Amendment: Chapter 501 in (2)(b) near middle after "obtain from" substituted "a winery, as provided in 16-3-411(1)(h)" for "any winery described in 16-3-411(2)(a)". Amendment effective October 1, 2007.

2001 Amendment: Chapter 163 inserted (2)(b) allowing an on-premises consumption licensee under 16-4-401(2) to buy table wine from a winery described in 16-3-411(2)(a); and made minor changes in style. Amendment effective March 28, 2001.

1997 Amendment: Chapter 399 inserted (1)(b) prohibiting supplier from appointing more than one table wine distributor to distribute hard cider; inserted (1)(c) providing that table wine has the meaning provided in 16-1-106 but excluding hard cider; and made minor changes in style. Amendment effective July 1, 1997.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-419. Suppliers' prohibitions.

Compiler's Comments

1995 Amendment: Chapter 226 inserted (3) concerning price for resale of table wine.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-420. Applicability.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 118, L. 2023. Amendment effective April 18, 2023.

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

16-3-421. Injunction.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 314, L. 1991, provided: "Because the department of revenue has rulemaking authority under 16-1-303(2)(m), a statement of intent may be necessary for [this act] [16-1-106, 16-3-401, and 16-3-415 through 16-3-421]. The department shall consider the rules and interpretations of the Washington Wholesaler/Supplier Equity Agreement Act, RCW 19.126.010, et seq., upon which many of the provisions of this bill are based. It is not intended that the department adopt any rule interpreting or implementing [section 3(3)] [16-3-416(3)], regarding the designation of sales territories for wine distributors by a winery."

CHAPTER 4
LICENSE ADMINISTRATION

Chapter Administrative Rules

Title 42, chapter 11, ARM General provisions and vendors.
Title 42, chapter 12, ARM Licenses and permits.
Title 42, chapter 13, ARM Regulation of licensees.

Part 1
Beer and Wine Licenses

Part Administrative Rules

ARM 42.12.313 Wine or beer tastings.

ARM 42.13.201 Labeling and packaging requirements.
ARM 42.13.202 Draught beer and wine taps.
ARM 42.13.211 Permissible advertising.
ARM 42.13.221 Adoption of certain federal regulations.

16-4-101. Applications for sale, import, or manufacture of beer — qualifications of applicant.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 97, L. 2023, in (1) in first sentence near beginning after "manufacture" inserted "distribute" and in second sentence at end substituted "applicant is suitable for carrying on the operations of a licensee" for "applicant is of good moral character and a law-abiding person"; in (2) at end substituted "displayed at the licensed premises" for "displayed in the place of business of such applicant"; and made minor changes in style. Amendment effective October 1, 2023.

Section 7, Ch. 749, L. 2023, in (1) at beginning of first sentence inserted exception clause and at end of first sentence substituted "pay with the application fee prescribed" for "pay with such application the license fee prescribed"; in (2) at end substituted "displayed at the licensed premises" for "displayed in the place of business of such applicant"; inserted (4) relating to breweries not located in the state; inserted (5) prohibiting the shipment of beer until registration is granted; and made minor changes in style. Amendment effective July 1, 2024.

Transition: Section 11, Ch. 749, L. 2023, provided: "The department shall reclassify existing licenses to a registrant pursuant to [section 7] [amendments to 16-4-101] after June 30, 2024, and during the existing licensee's renewal."

1985 Amendment: In first sentence of (1) substituted "license" for "permit".

Administrative Rules

Title 42, chapter 11, subchapter 2, ARM Vendors selling liquor to Department of Revenue.

16-4-102. Right of breweries to maintain and operate storage depots — annual licenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 55, L. 2023.

Applicability: Section 5, Ch. 55, L. 2023, provided: "[This act] applies to new licenses for storage depots issued on or after October 1, 2023, and to renewal of licenses for storage depots that existed before October 1, 2023."

1983 Amendment: After "to manufacture beer" deleted "in the state of Montana".

16-4-104. Beer retailer's license — application and issuance — check of alcoholic content by department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 97, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 42.12.101 Application for license.
ARM 42.13.106 Alteration of premises.

Case Notes

Issuance of License — Off-the-Record Site Visit Improper: After an administrative hearing, the Director of the Department of Revenue awarded a beer and wine license to one of two parties after unannounced site visits to the premises of each party. On appeal, the District Court overruled the Director's decision and reinstated the order of the hearing examiner, which proposed award of the license to the other party. The Supreme Court affirmed the District Court's order vacating the Director's order because it was founded on an unlawful procedure that violated the appellant's due process interests. Whether the conduct prejudiced both contenders' rights equally is irrelevant. Lack of prior notice, coupled with lack of any documentation, is fatal to an ordinarily permissible inspection. This type of conduct under a Montana Administrative Procedure Act proceeding violates certain other safeguards built in by statute: the right to respond and present evidence and argument on all relevant issues and the right to conduct a cross-examination sufficient for full and true disclosure of facts. However, the trial judge erred in ordering the adoption of the hearing examiner's proposal. This was not an alternative authorized by statute. The case was remanded to the Department for final determination. Frascell, Inc. v. St., 235 M 152, 766 P2d 850, 45 St. Rep. 2267 (1988).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Qualifications for License: Montana Liquor Control Board (now Department of Revenue) was not empowered by the terms of the Montana Beer Act (Ch. 106, L. 1933) to establish the policy that grocery stores are the only "fit and proper person, firm or corporation to sell beer". Skaggs Drug Centers v. Mont. Liquor Control Bd., 146 M 115, 404 P2d 511 (1965).

16-4-105. Limit on retail beer and wine licenses — limitation on use of license — exceptions — competitive bidding — rulemaking.

Compiler's Comments

2023 Amendments — Composite Section: Chapter 56 in temporary version in (6)(a) at beginning of third sentence and in version effective July 1, 2024, in (6)(a) at beginning of first sentence deleted "Except for beer and wine licenses issued pursuant to 16-4-420"; and made minor changes in style. Amendment effective March 16, 2023.

Section 1, Ch. 60, L. 2023, throughout section substituted references to retail beer and wine licenses for references to retail beer licenses; in (1) near middle after "license to sell" deleted "beer at retail or"; in (3) near middle after "annexation" deleted "after April 15, 2005"; in (6)(a) substituted "A person holding a retail beer and wine license may sell beer and wine for consumption on or off the premises" for former text (see sec. 1, Ch. 60, L. 2023, for former text); in (6)(b) near beginning substituted "holding a retail beer and wine license" for "licensed under this subsection (6)"; and made minor changes in style. Amendment effective July 1, 2024.

Section 1, Ch. 93, L. 2023, deleted former (2)(b) and (2)(c) (see sec. 1, Ch. 93, L. 2023, for former text); in (5) at beginning substituted "When more than one new beer license is subject to the competitive bidding process in the same quota area" for "Except as provided in subsection (2)(b), when more than one new beer license becomes available at the same time in the same quota area"; in (9) near middle substituted "pay a new license fee equal to the annual fee as provided in 16-4-501" for "pay a $25,000 new license fee"; and made minor changes in style. Amendment effective April 18, 2023.

Section 8, Ch. 601, L. 2023, in (1)(e) near middle substituted "has been in continuous existence" for "has been in existence" and at end inserted "and is applying for a license at the same location that it has occupied for the last 5 years. A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the 5-year same location requirement"; inserted (6)(c) relating to the use of liquor in the preparation of food; and made minor changes in style. Amendment effective July 1, 2023.

Transition: Section 9, Ch. 60, L. 2023, provided: "The department of revenue shall reclassify existing retail beer licenses to retail beer and wine licenses pursuant to [section 1] [16-4-105] after June 30, 2024, during the existing license's renewal." Effective July 1, 2024.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendments — Composite Section: Chapter 194 inserted (7) regarding offering curbside pickup; and made minor changes in style. Amendment effective April 14, 2021.

Chapter 451 inserted (6)(b) authorizing delivery of beer and wine in original packaging to be included with food delivery and limiting the amount of beer and wine that can be delivered; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: Chapter 342 in (1)(b) inserted last sentence concerning the location of a license that is restricted by quota limitations; inserted (1)(c)(ii) concerning quota areas if there are more than two overlapping quota areas and providing exceptions; in (2)(a) in middle after "existing licenses" inserted "or licenses that resulted from applications in process"; inserted (2)(c) concerning publication of the availability of new retail beer licenses allowed by license transfers; in (4) in middle after "process" inserted "as provided in 16-4-430" and deleted former (4)(a) through (4)(d), (5) through (10), and (13) (see 2019 Session Law for former text); inserted (5) requiring the department to conduct a separate competitive bidding process at separate times for beer licenses available at the same time in the same quota area; inserted (8) concerning the license fee and renewal fee for a license issued through a competitive bidding process; and made minor changes in style. Amendment effective May 7, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 2 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 inserted (4) through (9) relating to competitive bidding process for existing licenses; inserted (10) relating to license forfeiture; deleted former (5)(a) and (5)(b) that read: "(5) (a) When the department determines that a quota area is eligible for an additional retail beer license as provided in this section, the department shall advertise the availability of the license in the quota area for which the license is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time processing fee set by the department by rule. An applicant's ranking may not be sold or transferred to another person or business entity. An applicant's ranking applies only to the intended license advertised by the department or to the number of licenses determined to be available for the lottery when there are more applicants than licenses available. The department shall determine an applicant's qualifications for a retail beer license awarded by lottery prior to the award of a license by lottery"; deleted former (5)(d) that read: "(d) (i) The successful lottery applicant is subject to forfeiture of the license and the original license fee if the successful lottery applicant:

(A) enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first 5 years;

(B) transfers a license awarded by lottery within 5 years of receiving the license; or

(C) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for reasons outside the applicant's control.

(ii) In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in the lottery"; in (13) following "successful" deleted "lottery"; and made minor changes in style. Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 in (6)(d)(i)(A) substituted "proposes a location for the license that had the same license type within the previous 12 months" for "enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first 5 years"; and made minor changes in style.

(Both versions) Chapter 5 in (1) near end of introductory language substituted "person or business entity that is approved by the department, subject to the following exceptions" for "person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, subject to the provisions in subsections (1)(a) through (1)(e)"; in (1)(b) deleted former second sentence that read: "If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section"; inserted (1)(c) relating to boundary overlap; in (1)(f) in last sentence before "town" inserted "incorporated"; inserted (2) relating to transfer of existing licenses between quota areas that were part of a combined quota area; inserted (3) relating to licenses located within 5 miles of incorporated city or town because of annexation; deleted former (3)(b) that read: "(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997"; deleted former (4) that read: "(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area for 5 years from the date of the annexation"; and made minor changes in style.

2017 Amendment: Chapter 263 in (1) substituted "Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title" for "Except as otherwise provided by law" and at end substituted "subject to the provisions in subsections (1)(a) through (1)(e)" for "except that"; inserted (5) providing quota system and lottery for applicants to obtain new retail beer license; inserted (6) providing rulemaking authority; and made minor changes in style. Amendment effective May 3, 2017.

2005 Amendment: Chapter 267 inserted (4) concerning license becoming located within 5 miles of an incorporated city or town because of annexation. Amendment effective April 15, 2005.

2001 Amendment: Chapter 7 in (2) at beginning of second sentence substituted "department" for "division". Amendment effective October 1, 2001.

1997 Amendments: Chapter 465 in (1)(e) inserted second and third sentences concerning subsection (3) and offering of gambling; in (2), at beginning of third sentence, inserted exception clause; and inserted (3) concerning licenses issued for applications received before October 1, 1997.

Chapter 528 in (1), in introductory clause after "department as a", deleted "fit and proper" and after "corporation" inserted "qualified"; in (1)(a)(i), at end, deleted "which may not be used in conjunction with a retail all-beverages license"; in (1)(a)(ii) and (1)(a)(iii), at end, deleted "which may not be used in conjunction with retail all-beverages licenses"; and in (1)(e), at end of first sentence, inserted "pursuant to 16-4-203". Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 228 deleted (3) that read: "(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause"; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 530 in (1)(e), after "unincorporated", substituted "area" for "town"; and made minor changes in style. Amendment effective April 25, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1985 Amendments — Effective Date and Applicability: In (1)(c) after "March 7, 1947", inserted "and retail beer licenses issued under 16-4-110"; and in (1)(d) after "retail beer license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendments: Chapter 50, in (1)(a)(ii), inserted "retail" before "beer license"; in (1)(a)(iii), inserted "four retail beer licenses for the first 2,000 inhabitants" after "corporate limits of such cities" and substituted "next" for "first" before "2,000 inhabitants or major fraction thereof".

Chapter 595, in (1)(b), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1)(a).

Chapter 86 substituted "on or off the premises" for "on the premises" near the end of (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (1)(b) from a straight line to the shortest public road or highway.

Revenue Oversight Committee Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee. See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.12.101 Application for license.
ARM 42.12.104 Action taken with census update.
ARM 42.12.124 Rejection of application because of number of existing licenses.
ARM 42.12.131 Applications for available license(s) in quota area.
ARM 42.12.313 Wine or beer tastings.
Title 42, chapter 12, subchapter 5, ARM Competitive bidding process.
ARM 42.13.203 Beer label approvals.

Case Notes

Issuance of License — Off-the-Record Site Visit Improper: After an administrative hearing, the Director of the Department of Revenue awarded a beer and wine license to one of two parties after unannounced site visits to the premises of each party. On appeal, the District Court overruled the Director's decision and reinstated the order of the hearing examiner, which proposed award of the license to the other party. The Supreme Court affirmed the District Court's order vacating the Director's order because it was founded on an unlawful procedure that violated the appellant's due process interests. Whether the conduct prejudiced both contenders' rights equally is irrelevant. Lack of prior notice, coupled with lack of any documentation, is fatal to an ordinarily permissible inspection. This type of conduct under a Montana Administrative Procedure Act proceeding violates certain other safeguards built in by statute: the right to respond and present evidence and argument on all relevant issues and the right to conduct a cross-examination sufficient for full and true disclosure of facts. However, the trial judge erred in ordering the adoption of the hearing examiner's proposal. This was not an alternative authorized by statute. The case was remanded to the Department for final determination. Frascell, Inc. v. St., 235 M 152, 766 P2d 850, 45 St. Rep. 2267 (1988).

Statute Clear on Face: Petitioner applied for a beer license in Miles City and was denied. The State Tax Appeal Board (now Montana Tax Appeal Board) and the District Court affirmed the decision. At the time of petitioner's application, Miles City had eight beer licenses and a population of 9,602 people. Under this section, a city must reach a population of 10,000 before a ninth license can be issued. Petitioner was therefore properly denied a license. Colvin v. Dept. of Revenue, 203 M 360, 661 P2d 462, 40 St. Rep. 504 (1983).

16-4-106. Beer and table wine license transfers.

Compiler's Comments

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Case Notes

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Law Review Articles

Montana Liquor Licenses: Should They Be Leasable?, Sumner, 39 Mont. L. Rev. 331 (1978).

16-4-107. Winery license — winery and importer registration.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 749, L. 2023. Amendment effective May 22, 2023.

2013 Amendment: Chapter 184 in (1)(a) in first sentence after "only by a licensed winery" inserted language concerning direct shipment of table wine to individuals in Montana; inserted

(3) concerning direct shipment of table wine by wineries that are not located in Montana; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 501 in (1)(a) in first sentence near middle after "manufactured" inserted "or directly distributed to retailers" and at end before "winery" deleted "domestic", in second sentence near beginning before "winery" deleted "domestic", at beginning of third sentence substituted "Winery licensees located in Montana" for "Domestic winery licensees", and inserted fourth sentence providing that out-of-state wineries must have required permits and licenses and must provide department with required information; in (1)(b) at beginning substituted "A winery located in Montana" for "A domestic winery"; in (2) in first sentence near middle after "United States" inserted "department of the treasury" and after "this state" inserted "through licensed table wine distributors only"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 163 inserted (1) allowing manufacture of wine in the state only by a licensed domestic winery, other than wine for personal consumption under federal exemptions, setting the initial and annual license fees, requiring the winery to hold the permit required by the U.S. treasury department, requiring quarterly reports to the department of revenue, and allowing the department of revenue to examine the winery's books at any time; in (2) near beginning of first sentence inserted "that is not located in the state"; and made minor changes in style. Amendment effective March 28, 2001.

1981 Amendment: In the third sentence, inserted "that" before "importation" and substituted "this title" for "[this act]".

Administrative Rules

ARM 42.12.110 Service of notices.
ARM 42.13.204 Wine label approvals.
ARM 42.13.401 Importation of wine.

16-4-109. Golf course beer and wine license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 60, L. 2023. Amendment effective July 1, 2024.

2003 Amendment: Chapter 605 in (1)(a)(i) substituted "9 holes and 2,500 lineal yards" for "18 holes and 6,000 lineal yards"; in (1)(a)(ii) substituted "5 miles" for "1 mile"; inserted (1)(a)(iv) establishing initial application fee; inserted (1)(b) providing alternative requirements for golf course beer and wine license; and made minor changes in style. Amendment effective May 9, 2003.

Applicability: Section 3, Ch. 605, L. 2003, provided: "[This act] applies to license applications filed on or after [the effective date of this act]." Effective May 9, 2003.

2001 Amendment: Chapter 458 in (1) near middle of first sentence before "golf course" deleted "publicly owned" and at end after "golf course" deleted "owned by the state, a unit of the university system, or a local government" and inserted second sentence and (1)(a) through (1)(c) establishing license qualifications for privately owned golf course; in (2) in first sentence near middle substituted "person or entity" for "state agency, unit of the university system, or local government" and at end before "golf course" deleted "public" and substituted second sentence concerning department approval of owner for former sentence that read: "The owner may lease the license for use at the golf course to an individual or entity approved by the department"; at beginning of (3)(a) substituted exception clause for "A publicly owned"; inserted (3)(b) concerning restrictions at privately owned golf course; inserted (3)(c) concerning lease of publicly owned golf course beer and wine license; in (4) in first sentence near beginning before "golf course" deleted "publicly owned"; and made minor changes in style. Amendment effective April 30, 2001.

1985 Amendment: At end of (1) substituted "golf course owned by the state, a unit of the university system, or a local government" for "publicly owned golf course"; and in (2) in first sentence, substituted "state agency, unit of the university system, or local government that owns and operates" for "local government owning and operating" and at beginning of second sentence, substituted "owner" for "local government".

Administrative Rules

ARM 42.12.206 Prohibition and exception regarding leasing of license.

16-4-110. Beer and wine license for tribal alcoholic beverages licensee or enlisted personnel, noncommissioned officers', or officers' club.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 60, L. 2023. Amendment effective July 1, 2024.

2021 Amendment: Chapter 194 inserted (5) regarding offering curbside pickup. Amendment effective April 14, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble to Ch. 731, L. 1985, provided: "WHEREAS, on July 1, 1983, the United States Supreme Court rendered its opinion in the case entitled Rice, Director, Department of Alcoholic Beverage Control of California v. Rehner, and held that Congress had delegated authority to the states, as well as to Indian tribes, to regulate the use and distribution of alcoholic beverages in Indian country; and

WHEREAS, the Montana Alcoholic Beverage Code limits the number of all-beverages licenses available in corporate city and county quota areas and the number of on-premises consumption retail beer licenses available in corporate city quota areas; and

WHEREAS, the enforcement of Montana's alcoholic beverages license quota creates a hardship on tribal alcoholic beverages licensees in quota areas where no state licenses are available; and

WHEREAS, the enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations in Montana have operated for many years as federal enclaves beyond the jurisdiction of state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, effective December 1, 1984, Air National Guard Regulation 215-2 requires enlisted men's, noncommissioned officers', and officers' clubs to comply with state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, the enforcement of Montana's alcoholic beverage license quota creates a hardship for enlisted men's, noncommissioned officers', and officers' clubs, which have historically operated as social clubs without profit motive and which do not have the economic capacity to compete for licenses.

THEREFORE, the Legislature of the State of Montana determines it appropriate to make available retail alcoholic beverages licenses in excess of state quota limitations to be issued to persons holding tribal alcoholic beverages licenses and doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations."

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-111. Catering endorsement for beer and wine licensees.

Compiler's Comments

2023 Amendments — Composite Section: Section 4, Ch. 60, L. 2023, throughout section substituted "beer and wine" for "beer or beer and wine"; and made minor changes in style. Amendment effective July 1, 2024.

Section 2, Ch. 585, L. 2023, in (1)(a) after "A person who is" deleted "engaged primarily in the business of providing meals with table service and who is"; inserted (1)(c) relating to guest ranch catering endorsements; in (2) at beginning substituted "An application" for "A written application"; in (3) substituted current text for former text that read: "(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business"; inserted (4) relating to storage of alcohol prior to a catered event; in (5) substituted current text for former (4) that read: "(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice"; deleted former (7) (see sec. 2, Ch. 585, L. 2023, for former text); inserted (8) relating to serving beer and wine in grandstands or bleacher areas; and made minor changes in style. Amendment effective May 18, 2023.

2021 Amendment: Chapter 395 inserted (7)(b) regarding a catering endorsement issued for a sporting event on the premises of a Montana university; in (8) near middle inserted "a Montana university as provided in 16-4-112"; and made minor changes in style. Amendment effective April 29, 2021.

2003 Amendment: Chapter 369 inserted (8) prohibiting licensee from sharing revenue from alcoholic beverage sale with catered event sponsor unless sponsor is state, political subdivision, or qualified federal 501(c) entity. Amendment effective April 16, 2003.

2001 Amendment: Chapter 7 in (1)(a) near middle of first sentence and in (1)(b) near middle of first sentence after "approval of the" substituted "department" for "liquor division". Amendment effective October 1, 2001.

1999 Amendment: Chapter 324 in (1)(b) near end of first sentence decreased from 75% to 65% the amount of total gross revenue attributable to sales of food required when granted a catering endorsement. Amendment effective April 16, 1999.

Applicability: Section 4, Ch. 324, L. 1999, provided: "[This act] applies only to new applications received after [the effective date of this act]." Effective April 16, 1999.

1997 Amendment: Chapter 465 inserted (1)(b) concerning license issued under 16-1-420; and made minor changes in style.

Effective Date: Section 6, Ch. 599, L. 1993, provided: "[This act] is effective on passage and approval." Approved May 4, 1993.

Administrative Rules

ARM 42.12.128 Catering endorsement — catered events — event barriers.

16-4-112. Catering endorsement — university or college sporting events — revenue sharing.

Compiler's Comments

Effective Date: Section 6, Ch. 395, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 29, 2021.

16-4-113. Combined beer wholesaler and table wine distributor license.

Compiler's Comments

Effective Date: Section 8, Ch. 138, L. 2023, provided: "[This act] is effective July 1, 2024."

Transition: Section 6, Ch. 138, L. 2023, provided: "The department shall reclassify existing licenses to combined licenses pursuant to [section 1] [16-4-113] after June 30, 2024, and during the existing license's renewal."

16-4-115. Beer and wine licenses for off-premises consumption.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 97, L. 2023. Amendment effective October 1, 2023.

2021 Amendments — Composite Section: Chapter 64 deleted former (5) that read: "(5) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business." Amendment effective March 23, 2021.

Chapter 194 inserted (5) regarding offering curbside pickup. Amendment effective April 14, 2021.

2013 Amendment: Chapter 375 in (1) in first sentence at end deleted "and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy" and inserted second sentence regarding premises operated in conjunction with another business; in (5) at end deleted "as a bona fide grocery store or a drugstore licensed as a pharmacy"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 54 in (2) substituted "background investigation" for "thorough investigation". Amendment effective March 15, 1999.

1997 Amendment: Chapter 528 in (1), in first sentence after "department as a", deleted "fit and proper" and after "corporation" inserted "qualified"; in (3), in introductory clause after "investigation", inserted "or in exercising its sound discretion as provided in subsection (1)"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

Effective Date: Section 5, Ch. 228, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 24, 1995.

Administrative Rules

ARM 42.13.1105 Off-premises consumption beer and table wine license — conditions for operating.

Part 2
All-Beverages Licenses

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Part Law Review Articles

Treasure State: Gambling Law, Lobbying, and the Case for the Expansion of Legal Gambling in Montana, Funseth, 84 Mont. L. Rev. 283 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/5/.

16-4-201. All-beverages license quota.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 93, L. 2023, in (5) substituted current text for former text (see sec. 2, Ch. 93, L. 2023, for former text); in (6) substituted current text for former text that read: "(6) Except as provided in subsection (5)(a), when more than one new all-beverages license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license"; and made minor changes in style. Amendment effective April 18, 2023.

Section 9, Ch. 601, L. 2023, in (8)(c) near middle substituted "has been in continuous existence" for "has been in existence" and at end after "January 1, 1949" inserted "and is applying for a license at the same location that it has occupied for the last 5 years. A post of a nationally chartered veteran's organization or a lodge of a recognized national fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the 5-year same-location requirement"; and made minor changes in style. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendments — Composite Section: Chapter 194 inserted (11) regarding offering curbside pickup; and made minor changes in style. Amendment effective April 14, 2021.

Chapter 451 inserted (12) authorizing delivery of beer and wine in original packaging if delivery includes food prepared by the licensee and limiting the amount of beer and wine that can be delivered; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendments — Composite Section: Chapter 342 in (2) inserted last sentence concerning the location of a license that is restricted by quota limitations; inserted (3)(b) concerning quota areas if there are more than two overlapping quota areas and providing exceptions; in (4) in middle after "existing licenses" inserted "or licenses that resulted from applications in process"; in (5)(a) inserted last sentence requiring the use of a competitive bidding process to determine the party allowed to apply for a new license; inserted (5)(b) concerning publishing the availability of more than one new license a year until the quota has been reached in certain circumstances; inserted (6) requiring the department to conduct a separate competitive bidding process at separate times for all-beverages licenses available at the same time in the same quota area; and made minor changes in style. Amendment effective May 7, 2019.

Chapter 473 inserted (8)(c) concerning continuing care retirement communities; and made minor changes in style. Amendment effective July 1, 2019.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: Chapter 5 in (2) in first sentence substituted "inhabitants in each incorporated city or incorporated town" for "inhabitants in cities and towns" and deleted former second sentence that read: "If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of the municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection"; inserted (3), (4), and (5) relating to measurement of overlapping quota areas, transfer of licenses in two quota areas, and creation of new licenses from separating combined quota areas; inserted (10) granting rulemaking authority; and made minor changes in style. Amendment effective November 24, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 267 inserted (6) concerning all-beverages license becoming located within 5 miles of an incorporated city or town because of annexation; and made minor changes in style. Amendment effective April 15, 2005.

1987 Amendment: In (1), near beginning before "wine", inserted "table".

1985 Amendments — Effective Date and Applicability: In (3) after "March 7, 1947", inserted "and all-beverages licenses issued under 16-4-209"; and in (4) after "retail license to", inserted "an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to".

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendment: Near end of (2), after "shall be measured" substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 25 substituted "prescribed in 16-4-502" for "as shown by the most recent official United States census authorized by congress" in (1); deleted language concerning including population within 5 miles of city when that population exceeded city population in (2).

Chapter 519 changed the method of measuring the 5-mile limitation in the last sentence of (2) from a straight line to the shortest public road or highway.

Revenue Oversight Committee Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee. See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

Administrative Rules

ARM 42.12.101 Application for license.
ARM 42.12.104 Action taken with census update.
ARM 42.12.114 License fees.
ARM 42.12.124 Rejection of application because of number of existing licenses.
ARM 42.12.130 Determination of license quota areas.
ARM 42.12.131 Applications for available license(s) in quota area.
Title 42, chapter 12, subchapter 5, ARM Competitive bidding process.
ARM 42.13.405 Winery — conditions for operating.

Case Notes

County Liquor License Improperly Issued for Bar Within Five Miles of City Limits: Owens received a county liquor license for her bar, which she attested was more than 5 miles from the city limits of Kalispell, based on a survey by a private licensed surveyor who used an engineer's ruler to measure on a map the distance from the city limit to the boundary of Owens' property nearest to the city limit. After receiving three contacts alleging problems with Owens' license, including a charge that the bar was not located beyond the 5-mile requirement, the Department of Justice had a land-based survey conducted, and the radial distance from the bar's nearest entrance measured 4.911 miles from the nearest boundary of Kalispell—470 feet short of 5 miles. The Department of Revenue (Department) then notified Owens that it was revoking the license based on incorrect information in the application and for noncompliance with the distance requirement. Owens contested the revocation, but a hearings examiner recommended that the revocation be affirmed, the Department Director agreed, and the District Court affirmed the revocation. On appeal, the Supreme Court also affirmed. Substantial evidence supported the Director's findings, and nothing in the record indicated that the Director misapprehended the effect of the findings. Statutory and administrative guidelines allowed for revocation of the license under these circumstances, and the District Court correctly affirmed the Director's decision to revoke the license. Owens v. Dept. of Revenue, 2007 MT 298, 340 M 48, 172 P3d 1227 (2007).

Lapsed Pre-1947 All-Beverages License Not Reinstated: The Billings VFW ceased operations in 1974 and allowed its pre-1947 liquor license to lapse based on the belief that the license was nontransferable. In 1979, the VFW reopened and was issued a new nontransferable all-beverages license. In 1991, the Supreme Court held that pre-1947 liquor licenses held by fraternal and veterans' organizations were not subject to quota restrictions passed in 1949 and therefore were freely transferable. (See Helena Aerie No. 16 v. Dept. of Revenue, 251 M 77, 822 P2d 1057 (1991).) After the 1991 court decision, the VFW received an offer to purchase its pre-1947 license for $165,000. The Department of Revenue refused to reissue the lapsed license or to declare that the current license held by the VFW was freely transferable. The VFW sought a declaratory judgment that its license be characterized as freely transferable on the basis that the Department was estopped from arguing that the license was nontransferable because the VFW had let the pre-1947 license expire based on the Department's misrepresentation that under the 1949 law, the license was nontransferable. The Supreme Court held that the doctrine of equitable estoppel did not apply because the misrepresentation had to be of fact and not a misrepresentation of law. Billings Post No. 1634 v. Dept. of Revenue, 284 M 84, 943 P2d 517, 54 St. Rep. 786 (1997).

Fraternal Organization's License to Remain Transferable and Assignable: The Eagles Club, holder of a liquor license since 1934, appealed a District Court ruling that the Department of Revenue had properly classified its license as nontransferable and nonassignable. The Supreme Court reversed, holding that there had been no evidence that the license held by the Eagles Club, renewed under the 1947 quota law, had lost its original characteristics of being transferable and assignable. Helena Aerie No. 16, F.O.E. v. Dept. of Revenue, 251 M 77, 822 P2d 1057, 48 St. Rep. 1050 (1991).

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Lease Expiring After Enactment of Quota System: Where hotel and bar were leased for a period of 5 years at time when there was no quota on liquor licenses, and contract provided for return of the property to lessor upon expiration of lease but made no mention of transfer of liquor license, lease could not be reformed in equity to include provision for transfer of liquor license where quota law had been enacted prior to expiration of lease. Sullivan v. Marsh, 124 M 415, 225 P2d 868 (1950), distinguished in Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

Power of Council to Limit Number of Places: A City Council could properly limit the number of places in the city where beer and liquor at retail might be sold and then refuse to issue a license to the assignee of a Montana Liquor Control Board (now Department of Revenue) license, and in doing so was not depriving him of property without due process of law. State ex rel. McIntire v. Libby, 107 M 216, 82 P2d 587 (1938), explained in Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1938).

16-4-203. Determination of public convenience and necessity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 645, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 336 in (1) near beginning substituted "16-4-213" for "16-4-202"; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

1997 Amendment: Chapter 528 in (1), near beginning after "16-4-202", inserted "or 16-4-208", after "location of" substituted "an on-premises retail" for "a", and after "approved" substituted "if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing of public convenience and necessity and no further determination of public convenience and necessity is allowed" for "only if the department has determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public convenience and necessity. If there is no opposition to the application for issuance or transfer of the license, a hearing is not required"; inserted (2) through (4) regarding criteria for approval of an application and defining applicable terms; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1991 Amendment: Near beginning of first sentence inserted reference to 16-4-104, near middle, after "16-4-202", substituted "or the transfer of location of a license may be approved" for "subsequent to April 30, 1974, shall be issued", near end, after "issuance", inserted "or transfer", and inserted second sentence providing that no hearing is required absent opposition to an application; and made minor changes in style.

Case Notes

Local Development Code Regulating Sale of Alcoholic Beverages Not Preempted by State: Montana's statutory framework for the regulation of alcohol clearly contemplates that cities will impose local zoning that regulates the sale of alcohol. The development code of the city of Red Lodge, a self-governing city, being consistent with and stricter than the state's regulations, was not preempted by state law. Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998), overruling State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966).

Criteria Applicable in Determination of Public Convenience and Necessity — Lack of Protest: Guidelines used by the Department of Revenue in determining whether issuance of an all-beverages license is warranted by public convenience include: (1) whether issuance of the license will materially promote the public's ability to engage in the licensed activity; and (2) evaluation of a variety of criteria including, inter alia: (a) the business abilities and character of the applicant; (b) the demand for services in the area to be served; (c) the impact on existing purveyors; and (d) any adverse impact on the area to be served. In order to make this determination, the Department must independently weigh the evidence submitted by the applicants. The lack of public protest does not extinguish this duty. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Denial of License — Lack of Public Convenience and Necessity — Adjudicative Process Warranted: Appellants contended that the Department of Revenue's denial of the issuance of all-beverages licenses based on a lack of evidence of public convenience and necessity was improper. In affirming the denial, the Supreme Court noted that the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Therefore, the Department's use of the adjudicatory process to determine whether the licenses were warranted was not an invalid exercise of rulemaking authority. Because the determination of public convenience and necessity involves a fact-intensive inquiry, it is not necessary that the Department adopt rigid rules defining the term. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989), followed in Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

16-4-204. Transfer — catering endorsement for all-beverages licensees — competitive bidding — rulemaking.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 299, L. 2023, in (5)(a) in second sentence at beginning inserted "Except as provided in subsection (5)(k) of this section"; inserted (5)(k) relating to sales of liquor by distillers at catered events; and made minor changes in style. Amendment effective October 1, 2023.

Section 3, Ch. 585, L. 2023, in (5)(b) at beginning substituted "An application" for "A written application"; inserted (5)(c) relating to guest ranches; in (5)(d) substituted current text for former (5)(c) that read: "(c) An all-beverages licensee who holds an endorsement granted under this subsection (5) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business"; inserted (5)(e) relating to storage of alcoholic beverages before catered events; substituted (5)(f) for former (5)(d) that read: "(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice"; deleted former (5)(g) and (5)(h) (see sec. 3, Ch. 585, L. 2023, for former text); inserted (5)(i) relating to catered events held on the premises of a county fairground, public sports arena, or Montana university; and made minor changes in style. Amendment effective May 18, 2023.

2021 Amendment: Chapter 395 inserted (5)(h) regarding a catering endorsement issued for a sporting event on the premises of a Montana university; in (5)(i) near middle inserted "a Montana university as provided in 16-4-112"; and made minor changes in style. Amendment effective April 29, 2021.

2019 Amendment: Chapter 342 in (2) in middle substituted "subsection (1)" for "16-4-201(1) or (4)", after "process" inserted "as provided in 16-4-430", and deleted former last sentence (see 2019 Session Law for former text); deleted former (3) through (8) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 7, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 5 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 deleted former (1)(a)(iv) that read: "(iv) an applicant for the new ownership to be awarded on a lottery basis by the department has met the following criteria:

(A) the applicant had not made another application under this subsection (1)(a) for a lottery-awarded license within the previous 12 months;

(B) the applicant has provided with the application an irrevocable letter of credit from a financial institution that guarantees the applicant's ability to pay $100,000; and

(C) the applicant or, if the applicant is not an individual, a person with an ownership interest in the applicant does not have an ownership interest in an all-beverages license"; in (1)(b) substituted "competitive bidding process" for "lottery"; deleted former (1)(c) that read: "(c) A successful lottery applicant shall commence business within 1 year of the lottery unless the department grants an extension because a delay was caused by circumstances beyond the control of the applicant"; inserted (2) through (8) relating to competitive bidding processes; in (9) near beginning after "transferred to a new" substituted "owner" for "ownership" and near middle substituted "total number of all-beverages licenses in the current quota area" for "quota of the all-beverages licenses in the original quota area"; inserted (12) granting rulemaking authority; and made minor changes in style. Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 in (2) near beginning after "transferred to a new" substituted "owner" for "ownership" and near middle substituted "total number of all-beverages licenses in the current quota area" for "quota of the all-beverages licenses in the original quota area"; inserted (5) granting rulemaking authority; and made minor changes in style.

(Both versions) Chapter 5 in (1)(a) after "transferred to a new" substituted "owner and to a location outside the quota area where the license is currently located" for "ownership and to a location outside the quota area for which it was originally issued"; in (1)(a)(i) substituted "current quota area" for "original quota area"; deleted former (1)(e) and (1)(f) that read: "(e) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(f) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area"; and made minor changes in style.

2007 Amendment: Chapter 277 inserted (1)(a)(iv) allowing award of new ownership by lottery if applicant has not applied within previous 12 months, if applicant has provided irrevocable letter of credit guaranteeing $100,000 payment, and if applicant or person with ownership interest does not have ownership interest in all-beverages license; inserted (1)(b) providing that license transferred under lottery is not eligible to offer gambling; inserted (1)(c) requiring successful lottery applicant to commence business within 1 year of lottery unless extension granted by department for delay beyond control of applicant; in (1)(e) at beginning increased time from 3 years to 5 years; and made minor changes in style. Amendment effective July 1, 2007.

2003 Amendment: Chapter 369 inserted (2)(h) prohibiting licensee from sharing revenue from alcoholic beverage sale with catered event sponsor unless sponsor is state, political subdivision, or qualified federal 501(c) entity. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 7 in (2)(a) near beginning of first sentence after "discretion of the" substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 85 at beginning of (1)(c) substituted "3 years" for "5 years"; and made minor changes in style. Amendment effective March 19, 2001.

1993 Amendment: Chapter 599 in (2)(a), at end of first sentence, inserted "for on-premise consumption"; deleted former first sentence of (2)(c) that read: "A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held" and deleted fourth sentence that read: "If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection"; at beginning of (2)(d), after "The licensee shall", substituted "notify" for "file with each application for an event to be catered a written statement of approval of the premises where the event is to be held, issued by", before "event" inserted "catered", and inserted second sentence requiring a $35 fee; and made minor changes in style. Amendment effective May 4, 1993.

1987 Amendments: Chapter 34 in (2)(d) deleted requirement that Department of Health and Environmental Sciences approve premises for catered event.

Chapter 180 inserted (2)(g) relating to the authority of a holder of a catering endorsement to sell beer at a county fairground or public sports arena.

1985 Amendments — Effective Date and Applicability: In (1)(a)(ii) and (1)(b) inserted "exclusive of those issued under 16-4-209(1)(a) and (1)(b)"; and inserted (1)(e) prohibiting transfer of a license issued under 16-4-209(1)(a) to area outside quota area or reservation boundary.

Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

1983 Amendments: Chapter 29 deleted former (9) that read: "All licenses shall expire at midnight of June 30 of each year."

Chapter 37, in (2)(c), reduced the fee from $40 to $35 and reduced the time for filing the application from 10 days to 3 days prior to the event; at end of (2)(d) inserted the requirement of approval by the local law enforcement agency.

Chapter 59, in (1)(c), deleted last two sentences, which read: "A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license."

Chapter 636, in (1)(a)(ii), deleted "by more than 33%" after "that area's quota" and inserted (A) and (B) establishing two percentage limitations rather than one.

1983 Code Commissioner Change: Former (1) through (5) and (8) were redesignated 16-4-404(2) through (7).

1981 Amendments — Composite: Chapter 25 added "prescribed in 16-4-502" at the end of (1)(a)(i) and (1)(a)(ii).

Chapter 59 inserted (1)(b) relating to when a license within an incorporated quota area may be transferred to a new ownership and a new unincorporated location in the same county and inserted "Except as provided in subsection (1)(b)" at the beginning of (1)(a).

Chapter 512 changed 25% to 33% in (1)(a)(ii); changed the provisions of (1)(c), relating to mortgage, pledge, or retransfer of a license, to apply only for the 5 years following the transfer; and added (1)(d) prohibiting retransfer of license to different quota area.

In preparing the composite of the Ch. 59 and Ch. 512 amendments, the code commissioner did not include the language "Except as provided in subsection (b) above," added to (1)(c) by Ch. 59 in order to avoid apparently redundant language indicating the subsection to which (1)(c) applies.

Revenue Oversight Committee Bill: House Bill 21 (Ch. 25, L. 1981) was introduced at the request of the Revenue Oversight Committee. See committee report, "Montana's Liquor License Quota System", Legislative Council (1980).

Administrative Rules

ARM 42.12.128 Catering endorsement — catered events — event barriers.

ARM 42.12.144 Transfers between quota areas — procedures and documentation.

Title 42, chapter 12, subchapter 2, ARM License transfer, suspension, and revocation.
Title 42, chapter 12, subchapter 5, ARM Competitive bidding process.
ARM 42.13.106 Alteration of premises.

Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Transfer at End of Lease: When plaintiffs rented premises and allowed defendant to use their liquor license under a homemade lease, liquor license was not transferred to defendant at the expiration of the lease. Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

License Transferred With Lease: A court decree adjudged that the liquor licenses be transferred to the defendants. Because they were unable under Montana law to hold such licenses, an arrangement was made between the plaintiff and the defendants to transfer the licenses to the plaintiff along with a lease of the premises. Such lease and transfer were upheld as there was consideration. Sears v. Barker, 126 M 101, 244 P2d 516 (1952).

Transfer of Location:

Montana Liquor Control Board (now Department of Revenue) conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location. State ex rel. Boulds v. Paige, 124 M 353, 224 P2d 141 (1950).

Purchaser of a license from a licensee cannot compel Montana Liquor Control Board (now Department of Revenue) to consent to transfer of license when he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P2d 441 (1949).

Assignment of License: An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, are not authorized. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Evidence: Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses. Plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualified Person Interested in Premises: License issued in name of one person who failed to state in application that two others who were ineligible for license had an interest in the premises was invalid and subject to cancellation. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Attachment of License: A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Transfer After Sheriff's Sale: A retail liquor dealer's license could be purchased by a qualified person at a Sheriff's sale, and such purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Attorney General's Opinions

Computation of All-Beverages License Quota: This section requires that all "floater" all-beverages licenses transferred between quota areas be counted in the all-alcoholic beverages license quota 5 years after the date of transfer. (See 1983 amendment.) 39 A.G. Op. 66 (1982).

Law Review Articles

Montana Liquor Licenses: Should They Be Leasable?, Sumner, 39 Mont. L. Rev. 331 (1978).

16-4-205. Limitation on number of licenses — business in name of licensee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 371, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 336 inserted (1)(a) excluding resort retail all-beverages licenses from the limit; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

2013 Amendment: Chapter 211 in (1) inserted "Subject to the provisions of 16-4-401" and substituted "three all-beverages licenses" for "one all-beverages license in any year"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 251 inserted (2) exempting licenses held by heritage preservation and development commission from provisions of section; and made minor changes in style. Amendment effective April 5, 1999.

1985 Amendment: In first sentence, after "shall be", changed "granted" to "issued", and at end of sentence inserted exception clause; and inserted second sentence providing that a secured party shall transfer ownership of any additional all-beverages license within 180 days of issuance.

Administrative Rules

ARM 42.12.143 Restrictions on interest in other licenses.

16-4-207. Notice of application — investigation — publication — protest.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 645, L. 2023. Amendment effective October 1, 2023.

2019 Amendments — Composite Section: Chapter 342 in (4)(c) near end of first sentence substituted "16-4-201(1), (2), and (9)" for "16-4-201(1), (2), and (8)". Amendment effective May 7, 2019.

Chapter 479 inserted (1)(b)(i) regarding the sample form for notice of application for retail all-beverages license for an applicant without a premises; inserted (1)(b)(ii) regarding the sample form for a notice of application for retail all-beverages license for a premises only; in (1)(b)(iii) inserted "for an applicant and premises applied for at the same time or if the location of the license will be floated out of the quota area it was initially noticed in"; in (2) at end inserted sentence regarding possibility of two charges; in (4)(d) in first sentence substituted "an alcoholic beverage license" for "a liquor license"; and made minor changes in style. Amendment effective October 1, 2019.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: Chapter 5 in (4)(c) substituted "16-4-201(1), (2), and (8)" for "16-4-201(1), (2), and (5)". Amendment effective November 24, 2017.

2011 Amendment: Chapter 86 in (1) in fifth sentence substituted "application by residents of the county from which the application comes, residents of adjoining Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met" for "application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties", in sixth sentence substituted "must be mailed to the department" for "may be mailed to a named administrator in the department", and in form in second sentence at beginning deleted "A person who has extended credit to the transferor and" and in signature block of form deleted "ADMINISTRATOR"; in (3)(a) near beginning substituted “department” for “administrator”; inserted (4)(d) relating to out-of-state protest; and made minor changes in style. Amendment effective March 30, 2011.

Saving Clause: Section 4, Ch. 86, L. 2011, was a saving clause.

2003 Amendment: Chapter 110 in (1) deleted fourth, fifth, and sixth sentences that read: “If the applicant does not provide the additional application information within 30 days of the department’s request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application” and in fourth sentence after “department” deleted “shall request that the department” and after “justice” inserted “shall”; and made minor changes in style. Amendment effective March 24, 2003.

2001 Amendment: Chapter 448 in (1) in fourth sentence near middle after “information within” decreased time for applicant to provide additional application information from 60 to 30 days and at beginning of eighth sentence substituted “When the department determines that an application for a license under this code is complete” for “If the department does not discover a basis to deny the application within 30 days after the department requests the investigation by the department of justice”. Amendment effective April 30, 2001.

1999 Amendment: Chapter 51 in (1) near beginning of petition form and near end of petition form after “day of ....” substituted “20...” for “19...”; and made minor changes in style. Amendment effective January 1, 2000.

1997 Amendment: Chapter 528 in (1), in first sentence after “transfer”, inserted “the location of” and after “completeness and” substituted “based upon review of the application and any other information supplied to the department” for “to”, inserted second through sixth sentences regarding additional information and terminated applications, at beginning of seventh sentence inserted “When the application is complete”, at beginning of eighth sentence, after “If”, deleted “after the investigation”, after “application” inserted “within 30 days after the department requests the investigation by the department of justice”, after “shall” deleted “promptly”, after “retail” inserted “on-premises”, after “license” inserted “or a transfer of location”, and after “protests” substituted “may be made against the approval of the application” for “against the issuance of a license to the applicant”, at beginning of ninth sentence inserted “Protests”, near middle of eleventh sentence, after “transfer”, inserted “of ownership or location”, and in notice form, at end of second sentence, substituted “approval of the application” for “issuance of the license”, and inserted third through fifth sentences regarding protest petitions; in (3)(a), after “may”, substituted “approve the application” for “issue or transfer the license”; inserted (3)(b) regarding response to a notice of opportunity to protest; substituted (3)(c) concerning protests against application approval for former language that read: “If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing”; inserted (4) regarding Department actions when protests are filed; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: “[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act].” Effective July 1, 1997.

1993 Amendment: Chapter 414 in (1), at end of first sentence, inserted provision for review of the application and for a determination whether licensing criteria are met and at beginning of second sentence substituted provision that the Department of Revenue request a Department of Justice investigation for a provision that the Department of Revenue investigate; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near end of first sentence after “retail license”, inserted “the department shall investigate the application as provided in 16-4-402” and at beginning of second sentence inserted “If after the investigation the department does not discover a basis to deny the application”; at end of (3) deleted “at its office in Helena”; and made minor changes in style.

1989 Amendment: In (1), near middle of first sentence, in notice form, and in (3), near beginning of second sentence, inserted language providing protests may be made only by creditors and residents of county of application or adjoining counties; and made minor changes in phraseology. Amendment effective July 1, 1989.

1983 Amendment: In (3), after “receives no” inserted “written”; near beginning of second sentence of (3) after “If” deleted “, however, any” and inserted “written”; after “against the” substituted “issuance” for “issue”; and after “hold a” inserted “public”.

Administrative Rules

Title 42, chapter 12, subchapter 1, ARM License applications.

Case Notes

Administrative Rule Clarifying Whether Sufficient Need Exists for Hearing on Transfer Application Not Violative of Protesters' Rights: Protesters to the transfer of a beer and wine license contended that ARM 42.12.109, which requires that the protest letter state the reasons for protesting the transfer of a license, violated the protesters' rights under this section. The Supreme Court disagreed. A regulation that limits the scope of arguments and oral testimony at a hearing to protest the transfer of a license to the issues presented in the initial protest letter serves an administrative function reasonably tailored to the Department of Revenue's broad discretion to efficiently administer the liquor code and does not conflict with this section. The Rule clarifies whether a sufficient need exists for a hearing on a particular transfer application and does not violate protesters' rights. Forsythe v. Great Falls Holdings, LLC, 2008 MT 384, 347 M 67, 196 P3d 1233 (2008).

Department Properly Allowed to Participate in Judicial Review of Liquor License Transfer: Protesters to the transfer of a liquor license asserted that the District Court improperly allowed the Department of Revenue to participate in judicial review of the Department's decision regarding the license transfer on grounds that the Department was not a necessary party to the action. The Supreme Court noted that a person who is not a party to an action cannot be a party to the judgment of that action and that it is only against a party to an action that judgment can be taken. The District Court could not properly order the Department to take specific action concerning the license transfer unless the Department was a party to the action. Therefore, the District Court properly allowed the Department to participate in judicial review of the Department's decision. Forsythe v. Great Falls Holdings, LLC, 2008 MT 384, 347 M 67, 196 P3d 1233 (2008), distinguishing Young v. Great Falls, 194 M 513, 632 P2d 1111 (1981), and Hilands Golf Club v. Ashmore, 277 M 324, 922 P2d 469 (1996).

Transfer of Liquor License Properly Approved Given Compliance With License Transfer Laws and Lack of Evidence Requiring Denial of Transfer: A group of 83 citizens protested the transfer of a liquor license to a proposed truck stop casino on grounds that gambling can be addictive and lead to criminal behavior for some persons, that gambling should not be legal, and that gambling should be restricted to certain areas of town other than near the residential area where many of the protesters lived. Following the required hearing on transfer of the license, the Department of Revenue approved the transfer and the citizens appealed. The Supreme Court noted that the citizens' arguments were very broad policy-type concerns that would more appropriately be raised with the Legislature rather than in the context of a license transfer and found that the Department properly considered each component of public convenience and necessity and correctly concluded that there was no substantial evidence that required denial of the license. The applicant and the Department complied with all laws regarding license transfer, and the court declined to interfere with the approval of the transfer. In re Protests to Application for Transfer of Liquor License, 2007 MT 192, 338 M 363, 168 P3d 68 (2007).

16-4-208. Airport all-beverages license.

Compiler's Comments

2023 Amendments — Composite Section: Section 5, Ch. 97, L. 2023, in (1) and (5) substituted "The department" for "The department of revenue"; and made minor changes in style. Amendment effective October 1, 2023.

Section 2, Ch. 359, L. 2023, in (1) decreased the minimum number of passengers from 20,000 to 5,000; in (2) near end increased amount that may be approved by the department to up to three individuals or entities; inserted (3) relating to purchase of alcohol by a lessee; in (4) at end inserted "except for the provisions for curbside pickup as allowed under 16-3-312"; deleted former (5) that read: "(5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers"; and made minor changes in style. Amendment effective October 1, 2023.

2021 Amendment: Chapter 194 in (3) after "retail alcoholic beverage sales" substituted "under it are" for "thereunder shall be"; inserted (5) regarding offering curbside pickup; and made minor changes in style. Amendment effective April 14, 2021.

1987 Amendment: In (3) substituted "alcoholic beverage" for "liquor".

16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted personnel, noncommissioned officers', or officers' club.

Compiler's Comments

2021 Amendment: Chapter 194 inserted (5) regarding offering curbside pickup. Amendment effective April 14, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble to Ch. 731, L. 1985, provided: "WHEREAS, on July 1, 1983, the United States Supreme Court rendered its opinion in the case entitled Rice, Director, Department of Alcoholic Beverage Control of California v. Rehner, and held that Congress had delegated authority to the states, as well as to Indian tribes, to regulate the use and distribution of alcoholic beverages in Indian country; and

WHEREAS, the Montana Alcoholic Beverage Code limits the number of all-beverages licenses available in corporate city and county quota areas and the number of on-premises consumption retail beer licenses available in corporate city quota areas; and

WHEREAS, the enforcement of Montana's alcoholic beverages license quota creates a hardship on tribal alcoholic beverages licensees in quota areas where no state licenses are available; and

WHEREAS, the enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations in Montana have operated for many years as federal enclaves beyond the jurisdiction of state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, effective December 1, 1984, Air National Guard Regulation 215-2 requires enlisted men's, noncommissioned officers', and officers' clubs to comply with state laws relating to licensing and regulation of alcoholic beverages; and

WHEREAS, the enforcement of Montana's alcoholic beverage license quota creates a hardship for enlisted men's, noncommissioned officers', and officers' clubs, which have historically operated as social clubs without profit motive and which do not have the economic capacity to compete for licenses.

THEREFORE, the Legislature of the State of Montana determines it appropriate to make available retail alcoholic beverages licenses in excess of state quota limitations to be issued to persons holding tribal alcoholic beverages licenses and doing business on Montana Indian reservations and to enlisted men's, noncommissioned officers', and officers' clubs located on state or federal military reservations."

Effective Date — Applicability: Section 8, Ch. 731, L. 1985, provided: "This act is effective on passage and approval [approved May 13, 1985] and applies only to tribal licensees who hold tribal licenses issued prior to January 1, 1985, and to enlisted men's, noncommissioned officers', and officers' clubs located on state and federal military reservations in Montana on May 13, 1985."

16-4-210. Resort license — tour boat endorsement.

Compiler's Comments

2019 Amendment: Chapter 336 in (1) substituted "16-4-213" for "16-4-202". Amendment effective May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

Effective Date: Section 4, Ch. 149, L. 1989, provided that this section is effective March 18, 1989.

16-4-211. Resort area — purpose — policy.

Compiler's Comments

Effective Date: Section 14, Ch. 336, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

16-4-212. Resort area determination.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 645, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 14, Ch. 336, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

Administrative Rules

ARM 42.12.307 Resort area determination application process.

Case Notes

No Error in Denial of Liquor License Transfer to Excluded Inholding Within Exterior Boundary of Resort: The District Court affirmed the findings and conclusions of a Department of Revenue hearings examiner that a liquor license could not be transferred to a site that was within the exterior boundaries of Big Mountain Ski Resort but that was excluded from the resort area itself as an excluded inholding. The license applicant appealed, but the Supreme Court affirmed. The hearings examiner properly interpreted 16-4-202 (now repealed) to allow the corporate entity that owned the resort to selectively exclude properties within the designated resort boundary from being in the resort area itself. Pursuant to the statute, properties not owned by a resort developer can be brought into the resort area if brought under the developer's control by contract, lease, option, or permit. The site in question was in fact located within the resort boundaries but was never owned or controlled by the resort developer and was excepted from the resort area by virtue of the legal description on the plats. Therefore, denial of the liquor license transfer to an excepted inholding that was not part of the resort area was proper. In re Application for Transfer of Location for All-Alcoholic Beverages Resort License, 2008 MT 165, 343 M 331, 184 P3d 324 (2008).

16-4-213. Resort retail all-beverages licenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 645, L. 2023. Amendment effective October 1, 2023.

2021 Amendments — Composite Section — Coordination: Chapter 194 inserted (9) regarding offering curbside pickup; and made minor changes in style. Amendment effective April 14, 2021.

Chapter 568 in (2)(d)(i)(d) near beginning after "similar living space" deleted "for occupants making up a single household"; inserted (2)(d)(ii) requiring accommodation units to be located outside the boundaries of a quota area; in (4)(a) at end inserted "except"; inserted (4)(a)(i) regarding use of a part of the building as a licensed premises for the consumption of alcoholic beverages with certain conditions; inserted (4)(a)(ii) requiring the interior portion of the licensed premises to be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control; inserted (4)(a)(iii) regarding inclusion of one or more exterior patios or decks as long as sufficient physical safeguards are in place; in (5) substituted current text for former text that read: "For licenses issued under this section, the delivery of alcohol is allowed to the accommodation units on the designated resort area property as long as the purchaser is present, the purchaser's age is verified, and the purchaser is not intoxicated"; inserted (7) authorizing a maximum of one concession agreement per resort retail all-beverages license; inserted (8) regarding application to use a resort alternate alcoholic beverage storage facility for a resort area with two or more resort retail all-beverages licenses; and made minor changes in style. Amendment effective May 14, 2021, except that subsections (5) and (8) became effective July 1, 2021.

Section 11, Ch. 568, L. 2021, a coordination section, in (7) at beginning of last sentence inserted exception clause. Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

Effective Date: Section 14, Ch. 336, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

Part 3
Special Licenses

Part Administrative Rules

ARM 42.12.313 Wine or beer tastings.

16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 2, Ch. 733, L. 2023. Amendment effective October 1, 2023.

The amendments to this section made by sec. 6, Ch. 645, L. 2023, and sec. 1, Ch. 733, L. 2023, were replaced by sec. 2, Ch. 733, L. 2023, a coordination section.

2003 Amendment: Chapter 369 at beginning of first sentence of (1)(a) substituted reference to tax-exempt federal 501(c)(3) organization or institution raising funds for needy person or accredited Montana postsecondary school for "Any association or corporation", in middle substituted "that conducts a special event may receive a special permit" for "conducting a picnic, convention, fair, civic or community enterprise, or sporting event is, in the discretion of the department, entitled to a special permit", before "event" inserted "special", and at end after "event" deleted "and except as provided in subsection (1)(c), the beer and wine must be consumed within the enclosure in which the event is held" and inserted second sentence allowing organization to receive up to three special permits a year; inserted (1)(b) through (1)(d) regarding special permits; inserted (1)(e) requiring beer and wine sold to be consumed at time when and in place where special event or contest is held; in (1)(f) in first sentence substituted "An application for a special permit" for "The application of the association or corporation" and at end after "advance" inserted "but the department may, for good cause, waive the 3-day requirement", in second sentence in three places and in fourth sentence substituted "special event, activity, or sporting contest" for "event", inserted third sentence requiring application for permit for professional sporting contests or junior hockey to provide inclusive dates of season of play, and at end of fourth sentence after "premises" deleted "where the event is to be held"; deleted former (1)(c) that read: "(c) The permit issued to the association or corporation is a special permit but does not authorize the sale of beer and table wine except starting 1 day before the regular period when events are being held upon the grounds, during the period described in the application, and for 1 day after the period described in the application"; in (1)(g) substituted "special event, activity, or sporting contest" for "event"; in (1)(h) near middle substituted "an organization that may receive" for "an association entitled to" and after "three" inserted "special"; in (2)(a) near middle after "code" substituted "may receive" for "is, in the discretion of the department" and after "16-4-207" deleted "entitled to"; and made minor changes in style. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 7 near middle of (1)(a) substituted "department" for "liquor division"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 89 in (1)(a) near end after "event" inserted "and except as provided in subsection (1)(c), the beer and wine must" and after "held" deleted "except as provided in subsection (1)(d)"; inserted (1)(e) authorizing special permits under certain circumstances to be issued to certain organizations to sell beer and wine at three events a year; and made minor changes in style. Amendment effective March 20, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1987 Amendments: Chapter 34 in second sentence of (1)(b), referring to issuance of statement of approval, deleted reference to Department of Health and Environmental Sciences.

Chapter 180 at end of (1)(a) inserted "except as provided in subsection (1)(d)"; and inserted (1)(d) relating to the sale of beer at a county fairground or public sports arena.

1983 Amendment: In (1)(b), reduced the time for filing the application from 10 days to 3 days prior to the event; and added the approval requirement at the end of (1)(b).

1981 Amendment: Changed "or wine" to "and table wine" after "beer" throughout the section.

Administrative Rules

ARM 42.12.323 Permissible and prohibited special permit activities.
ARM 42.12.324 Special permits.

16-4-302. Passenger carrier licenses.

Compiler's Comments

1987 Amendment: After "may serve" substituted "alcoholic beverages" for "beer and liquor" and after "issuance of a retail" substituted "all-beverages" for "beer and liquor".

Part of Section Not Codified: The last sentence of section 4-4-109, R.C.M. 1947, was not codified in the MCA, as part of it provided for a license fee already set out in 16-4-501 and is thus redundant, and part of it was a temporary provision setting out the fee for 1968. The sentence has not been repealed and is still valid law. It was enacted by sec. 114, Ch. 387, L. 1975.

16-4-304. Beer and wine license for Yellowstone airport.

Compiler's Comments

2005 Amendment: Chapter 293 in (3) at end deleted "from June 1 to October 1 of each year"; substituted (4) concerning annual license fee for former text that read: "There is no annual fee for the license"; and made minor changes in style. Amendment effective April 20, 2005.

Effective Date: Section 3, Ch. 529, L. 1993, provided that this section is effective May 31, 1993.

16-4-305. Montana heritage retail alcoholic beverage licenses — use — quota.

Compiler's Comments

2023 Amendments — Composite Section: Section 5, Ch. 60, L. 2023, in two places substituted "retail alcoholic beverage licenses" for "retail liquor licenses"; deleted former (1)(b) that read: "(b) The department may issue a wine amendment pursuant to 16-4-105(6) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section"; in (4) near middle after "all-beverages" deleted "liquor" and after "on-premises beer" inserted "and wine"; and made minor changes in style. Amendment effective July 1, 2024.

Section 6, Ch. 97, L. 2023, in two places substituted "retail alcoholic beverage licenses" for "retail liquor licenses". Amendment effective October 1, 2023.

2019 Amendment: Chapter 342 in (1)(b) substituted "16-4-105(6)" for "16-4-105(11)". Amendment effective May 7, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 8 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 in (1)(b) substituted "16-4-105(11)" for "16-4-105(2)". Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 in (1)(b) substituted "16-4-105(4)" for "16-4-105(2)".

License Transfer: Section 2, Ch. 251, L. 1999, provided: "**Transfer of certain liquor licenses to Montana heritage preservation and development commission.** Notwithstanding the provisions of Title 16, chapter 4, the department shall transfer the ownership of the following alcoholic beverage licenses to the Montana heritage preservation and development commission:(1) the all-beverages licenses owned by the Montana historical society foundation and by the Daly mansion trust; and

(2) the retail beer license for on-premises consumption owned by the Montana historical society foundation."

Effective Date: Section 5, Ch. 251, L. 1999, provided that this section is effective April 5, 1999.

16-4-306. Transfer of existing license to political subdivision of state — rulemaking.

Compiler's Comments

2023 Amendments — Composite Section: Section 6, Ch. 60, L. 2023, in (1) near middle and in (2)(f) near end substituted "retail beer and wine" for "retail beer or beer and wine"; deleted former (2)(e) that read: "(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(5)"; and made minor changes in style. Amendment effective July 1, 2024.

Section 7, Ch. 97, L. 2023, deleted former (2)(e) that read: "(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(5)"; in (2)(f) near end substituted "retail beer and wine" for "retail beer or beer and wine"; and made minor changes in style. Amendment effective October 1, 2023.

2019 Amendment: Chapter 342 in (2)(e) substituted "16-4-204(5)" for "16-4-204(11)". Amendment effective May 7, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 10 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 in (2)(e) substituted "16-4-204(11)" for "16-4-204(2)". Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 in (2)(e) substituted "16-4-204(4)" for "16-4-204(2)".

Effective Date: Section 3, Ch. 169, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 6, 2009.

Administrative Rules

ARM 42.12.206 Prohibition and exception regarding leasing of license.

16-4-310. Definitions.

Compiler's Comments

2019 Amendment: Chapter 160 in definition of microdistillery substituted "200,000 proof gallons" for "25,000 gallons". Amendment effective October 1, 2019.

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

Administrative Rules

Title 42, chapter 13, subchapter 8, ARM Distilleries.

16-4-311. Distillery license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 601, L. 2023. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2015 Amendment: Chapter 375 inserted (3) allowing a distillery to sell its product directly to an agency liquor store. Except for subsection (3)(c)(i), amendment effective January 1, 2016. Subsection (3)(c)(i) effective July 1, 2018.

2011 Amendment: Chapter 277 in (1) in second sentence substituted "0.5% alcohol by volume" for "17% alcohol by weight". Amendment effective October 1, 2011.

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

Administrative Rules

ARM 42.11.312 Direct product deliveries from a distillery.

ARM 42.13.802 Distilleries.

ARM 42.13.807 Distillery deliveries to agency liquor stores.

16-4-312. Domestic distillery.

Compiler's Comments

2023 Amendments — Composite Section — Code Commissioner Correction: Section 3, Ch. 55, L. 2023, inserted (3) allowing a distillery to maintain and pay an annual fee for storage depots; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 209, L. 2023 inserted (1)(d) regarding a premises that includes more than one building for manufacturing purposes and is operated under a federal basic permit; inserted (5) concerning samples not being permitted at more than one manufacturing premises for each license; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 661, L. 2023, in (4)(a)(ii) substituted "for on-premises consumption during the hours of operation that are identical to those allowed for a brewery license provided for in 16-3-213(2)(b) and corresponding administrative rules relating to the service, consumption, and possession of alcoholic beverages on the premises" for "consumption on the premises between 10 a.m. and 8 p.m."; in (4)(b)(i) increased liters from 1.75 to 4.5; and made minor changes in style. Amendment effective October 1, 2023.

Section 5, Ch. 728, L. 2023, in (4)(a)(ii) substituted "for on-premises consumption during the hours of operation that are identical to those allowed for a brewery license provided for in 16-3-213(2)(b) and corresponding administrative rules relating to the service, consumption, and possession of alcoholic beverages on the premises" for "consumption on the premises between 10 a.m. and 8 p.m."; in (4)(b)(i) increased liters from 1.75 to 4.5; and made minor changes in style. Amendment effective May 22, 2023.

Chapter 209 originally inserted the language in new subsection (5) as part of subsection (4)(a). However, the Code Commissioner codified the language as a new subsection due to amendments made to subsection (4)(a) by Ch. 661 and Ch. 728.

Applicability: Section 5, Ch. 55, L. 2023, provided: "[This act] applies to new licenses for storage depots issued on or after October 1, 2023, and to renewal of licenses for storage depots that existed before October 1, 2023."

Transition: Section 2, Ch. 661, L. 2023, provided: "The department shall revise its administrative rules implementing 16-3-213 and 16-4-312 or any other applicable statute to include sample room hours of operations that are identical for Montana distilleries and breweries. The intent of this act is to make the hours of operation for service to and consumption and possession of alcohol by consumers at breweries and distilleries equal."

Section 6, Ch. 728, L. 2023, provided: "The department shall revise its administrative rules implementing 16-3-213 and 16-4-312 or any other applicable statute to include sample room hours of operations that are identical for Montana distilleries and breweries. The intent of this act is to make the hours of operation for service to and consumption and possession of alcohol by consumers at breweries and distilleries equal."

2021 Amendment: Chapter 194 in (3)(a) after "to consumers for" substituted "prepared servings through curbside pickup between 10 a.m. and 8 p.m. or consumption on the premises between 10 a.m. and 8 p.m." for "consumption on the premises" and deleted last sentence that read: "A microdistillery may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a business day"; in (3)(b) in introductory clause substituted current text for "sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if:"; and made minor changes in style. Amendment effective April 14, 2021.

2011 Amendment: Chapter 81 in (3)(b)(i) substituted "1.75 liters" for "1 liter". Amendment effective October 1, 2011.

Effective Date: Section 9, Ch. 591, L. 2005, provided that this section is effective July 1, 2005.

Administrative Rules

ARM 42.13.803 Distilleries — product pricing.

ARM 42.13.804 Microdistillery — monthly tax return.

16-4-313. Sacramental wine license.

Compiler's Comments

2013 Amendment: Chapter 115 in (1) substituted "an establishment whether located in or outside Montana that sells church supplies, including sacramental wine" for "an establishment located in Montana that sells sacramental wine", after "exclusively for" deleted "their off-premises", and inserted last sentence concerning prohibited sacramental wine sales; in (2) substituted "$100" for "$200" and substituted "$50" for "$100"; in (3) after "onsite" deleted "at the premises of the licensed retailer" and substituted "may sell and deliver" for "shall deliver"; inserted (3)(b) and (3)(c) concerning contracting with licensed table wine distributors and common carriers; in (4) inserted second sentence concerning required address and signatory records; inserted (5) concerning out-of-state licensees; in (6) after "department" deleted "may request that the department of justice make a background investigation of all matters relating to the application. Based on the results of the investigation or"; in (6)(a) inserted "under this section"; in (7) inserted "16-3-402"; deleted former (8) that read: "(8) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide establishment for selling sacramental wine"; inserted (8) concerning transport of sacramental wine; inserted (9) concerning 16-4-1005; and made minor changes in style. Amendment effective July 1, 2013.

Effective Date: Section 4, Ch. 414, L. 2009, provided that this section is effective April 28, 2009.

Administrative Rules

ARM 42.12.315 Sacramental wine license.

16-4-314. Academic brewer license under small brewer exception — conditions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 53, L. 2023, in four places substituted references to "a postsecondary institution" for "Flathead valley community college or Montana state university-Billings"; deleted former (1)(e) that read: "(e) is not subject to quotas under 16-4-105 or to the provisions of 16-3-306"; in (1)(g) at end substituted "taught at the postsecondary institution or in conjunction with research at the postsecondary institution" for "taught at the community college or Montana state university-Billings"; in (3)(a) near middle substituted "postsecondary institution's" for "community college district"; in (3)(b) near end inserted "or where research is to take place"; inserted (4) providing definition of postsecondary institution; and made minor changes in style. Amendment effective March 16, 2023.

Section 9, Ch. 749, L. 2023, in (3)(c) substituted "16-4-401(2)(a)" for "16-4-401(4)(a)". Amendment effective May 22, 2023.

Effective Date: Section 3, Ch. 343, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 7, 2017.

Codification Change: Section 2, Ch. 343, L. 2017, provided that this section was to be codified as an integral part of Title 16, chapter 3. The code commissioner has codified this section in Title 16, chapter 4, to more closely reflect the subject matter.

16-4-315. Limited all-beverages license for continuing care retirement communities — requirements — rulemaking — definitions.

Compiler's Comments

Effective Date: Section 5, Ch. 473, L. 2019, provided: "[This act] is effective July 1, 2019."

Administrative Rules

ARM 42.12.151 Limited all-beverages license for continuing care retirement community.

Part 4
Licensing Criteria

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-4-401. License as privilege — criteria for decision on application — restrictions — colocated licenses.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 13, Ch. 601, L. 2023. Amendment effective July 1, 2023.

The amendments to this section made by sec. 2, Ch. 371, L. 2023, sec. 11, Ch. 601, L. 2023, and sec. 10, Ch. 749, L. 2023, were replaced by sec. 13, Ch. 601, L. 2023, a coordination section.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendments — Composite Section: Chapter 161 in (2)(a)(iii) at end inserted exception clause. Amendment effective April 8, 2021.

Chapter 568 in (2)(a)(iv) at end inserted "however, nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license"; inserted (2)(a)(v) regarding an applicant's criminal felony history; in (2)(b)(i), (2)(b)(iii), (2)(c)(i), (2)(c)(iii), (2)(e), (2)(f), (3)(b)(i), (3)(c)(i), (3)(e), (3)(f), (4)(b)(i), (4)(c)(i), (4)(e), and (4)(f) increased references to ownership percentage from 10% to 15%; in (3)(a)(v) at end inserted "however, nothing in this subsection (3)(a)(v) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license"; in (4)(a)(iv) at end inserted "however, nothing in this subsection (4)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor when renewing the license"; inserted (9)(a) regarding obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity;

inserted (9)(b) regarding a licensee's use of short-term financing of 90 days or less; inserted (9)(c) regarding facilitation of the efficient administration of an entity; and made minor changes in style. Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

2019 Amendment: Chapter 336 in (2)(a)(i) inserted last sentence providing an exception concerning resort retail all-beverages licenses issued under 16-4-213; and made minor changes in style. Amendment effective May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

2013 Amendment: Chapter 211 in (2) after "section" inserted "and subject to subsection (8)"; in (2)(a)(i) before "the applicant" inserted "and the application is approved" and substituted "three establishments" for "one establishment"; at end of (2)(b)(iii) and (2)(c)(iii) inserted "except that the provisions of subsection (8) apply"; in (3) after "consumption" inserted "and subject to subsection (8)"; in (3)(a)(i) before "the applicant" inserted "and the application is approved" and substituted "three establishments" for "one establishment"; inserted (8) concerning ownership limitations for all-beverages license in quota area; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 197 deleted former (2)(a)(iv) that read: "(iv) the applicant is a resident of the state and is qualified to vote in a state election"; in (2)(b) substituted "if the applicant is a publicly traded corporation" for "in the case of a corporate applicant"; deleted former (2)(b)(i) that read: "(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv)"; in (2)(b)(i) inserted second sentence regarding designation of officers or board members if no single owner owns more that 10% of the outstanding stock; deleted former (2)(b)(vi) that read: "(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii)"; inserted (2)(c) setting out requirements if the applicant for an on-premises license is a privately held corporation; deleted former (2)(c) that read: "(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b)"; inserted (2)(d) providing that if the applicant is a general partnership, each partner must meet the requirements of subsection (2)(a); inserted (2)(e) setting out requirements if the applicant for an on-premises license is a limited partnership or limited liability partnership; inserted (2)(f) setting out requirements if the applicant for an on-premises license is a limited liability company; in (3)(b) substituted "if the applicant is a publicly traded corporation" for "in the case of a corporate applicant"; deleted former (3)(b)(i) that read: "(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv)"; in (3)(b)(i) inserted second sentence regarding designation of officers or board members if no single owner owns more that 10% of the outstanding stock; inserted (3)(c) setting out requirements if the applicant for an off-premises license is a privately held corporation; deleted former (3)(c) that read: "(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b)"; inserted (3)(d) providing that if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a); inserted (3)(e) setting out requirements if the applicant for an off-premises license is a limited partnership or limited liability partnership; inserted (3)(f) setting out requirements if the applicant for an off-premises license is a limited liability company; in (4)(b) substituted "if the applicant is a publicly traded corporation" for "in the case of a corporate applicant"; deleted former (4)(b)(i) that read: "(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii)"; in (4)(b)(i) inserted second sentence regarding designation of officers or board members if no single owner owns more that 10% of the outstanding stock; inserted (4)(c) setting out requirements if the applicant for a manufacturing, importing, or wholesale license is a privately held corporation; deleted former (4)(c) that read: "(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b)"; inserted (4)(d) providing that if the applicant is a general partnership, each partner must meet the requirements of subsection (4)(a); inserted (4)(e) setting out requirements if the applicant for a manufacturing, importing, or wholesale license is a limited partnership or limited liability partnership; inserted (4)(f) setting out requirements if the applicant for a manufacturing, importing, or wholesale license is a limited liability company; inserted (7) requiring that an applicant's source of funding must be from a suitable source and setting out circumstances when a source may be found unsuitable; and made minor changes in style. Amendment effective October 1, 2007.

Preamble: The preamble attached to Ch. 197, L. 2007, provided: "WHEREAS, the Montana District Court decision in Hotel Venture East v. State, Cause No. CDV-2002-493(2005), requires the elimination of the residence requirement for liquor licenses."

2005 Amendment: Chapter 591 in (2) near beginning in exception clause inserted reference to 16-4-311; in (4) at beginning inserted reference to 16-4-311; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 448 in (2)(b)(iii) after "license" deleted "or shares in the profits or liabilities of the license"; inserted (2)(b)(iv) requiring each person who shares in the profits or liabilities of a license, other than a shareholder owning less than 10% of a corporation's stock, to meet certain requirements for individual license applicants; and made minor changes in style. Amendment effective April 30, 2001.

1999 Amendment: Chapter 148 inserted (2)(b)(iii) concerning each person with control over operation or sharing in profits; and made minor changes in style. Amendment effective March 23, 1999.

1995 Amendment: Chapter 530 inserted (2)(a)(ii), (3)(a)(ii), and (4)(a)(ii) regarding an applicant's ownership interest; in (2)(b)(iv) inserted reference to subsection (2)(a)(ii); adjusted subsection references; and made minor changes in style. Amendment effective April 25, 1995.

1987 Amendment: In (2)(a)(ii) and (3)(a)(ii) substituted "alcoholic beverages" for "beer, wine, or liquor".

1985 Amendments: Chapter 19 in (2)(a)(ii) and (3)(a)(ii) inserted "importer"; and near beginning of (4) inserted "importing".

Chapter 133 inserted (2)(c), (3)(c), and (4)(c) relating to other business entities.

1983 Amendment: In (2)(a)(i) and (3)(a)(i), substituted "the applicant will not possess an ownership interest in more than one establishment" for "neither the applicant nor any member of his immediate family has an ownership interest in any other establishment"; near beginning of (3), after "off-premises consumption" deleted "or that is for the manufacture or wholesaling of an alcoholic beverage"; inserted (4) establishing requirements for issuance or transfer of a license to manufacture or wholesale alcoholic beverages; in (5), inserted "and (4)(b)"; and made minor changes in phraseology.

1981 Amendment: Inserted "Except as provided in subsection (5), in the case of a license that permits on-premises consumption" at the beginning of (2); inserted (2)(a) (introductory clause), (2)(b), (3), (4), and (5) (see 1981 Session Law).

Effect on Existing Licenses: Section 4, Ch. 359, L. 1981, provided: "The provisions of this act do not affect the validity of any alcoholic beverage license that permits on-premises consumption and that has been issued prior to the effective date of this act [October 1, 1981] or the reissuance of the license."

Administrative Rules

ARM 42.12.141 and 42.12.143 Corporate license restrictions.
ARM 42.12.205 Requirements when license subject to lien.
ARM 42.12.206 Prohibition and exception regarding leasing of license.
ARM 42.12.209 Transfer of a license to another person.
ARM 42.12.210 Completed transactions under bona fide sales.
ARM 42.12.212 Loan standards.

Case Notes

Showing of Constitutionally Protected Property Interest Required — Federal and State Claims: Plaintiff brought property interest claims against a city and city council members on several state and federal grounds after a state liquor license was denied. The city had enacted ordinances disallowing the sale of alcohol in the city without a conditional use permit and then denied plaintiff's application for a permit. The District Court held that plaintiff's property interest claims were invalid, and plaintiff appealed. The Supreme Court noted that to establish a viable claim under 42 U.S.C. 1983, a plaintiff must first establish that it possesses a protected liberty or property interest and has a legitimate claim of entitlement to that interest. Under state due process and takings law, a plaintiff must also establish a property interest, and a property interest exists only when the Legislature has so narrowly circumscribed the issuing agency's discretion that approval of the interest is virtually assured. Receipt of a liquor license is a privilege and not a right. Plaintiff had yet to obtain a state liquor license at the time that the ordinances were passed and thus had no property interest in operating a bar, nor could plaintiff assert ultimate entitlement to a liquor license. Therefore, plaintiff's inability to demonstrate a protected property interest in operating property as a bar precluded the establishment of federal or state property claims against the city and City Council members, nor did the city deprive plaintiff of a protected property interest by enacting the ordinances or denying a conditional use permit. The District Court was affirmed. Germann v. Stephens, 2006 MT 130, 332 M 303, 137 P3d 545 (2006), following ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), and Kiely Constr. v. Red Lodge, 2002 MT 241, 312 M 52, 57 P3d 836 (2002).

Successful Applicant for Liquor License Required to Be Citizen When License Issued — Deference to Agency Interpretation of Statute: Tokumoto, Merhi, and others applied for several new liquor licenses to be issued for Missoula. At the time of his application, Merhi was not a U.S. citizen. The Department of Revenue determined, in accordance with its longstanding interpretation of the statutes, that Merhi did not have to be a citizen at the time that the relative merits of Merhi's application for a license were determined, as long as he was a citizen at the time of issuance of a license. Citing Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460 (1991), the Supreme Court affirmed the Department's decision, noting that the Supreme Court gives great deference to an interpretation of a statute by the agency charged with its administration. Tokumoto v. Dept. of Revenue, 264 M 56, 869 P2d 782, 51 St. Rep. 144 (1994).

"All Applicable Laws" — Meaning: In this section, which provides that a license permitting on-premises consumption of alcoholic beverages cannot be renewed unless the Department of Revenue finds that the licensee's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments, "all applicable laws" is not limited to the alcoholic beverages laws and the zoning and nuisance laws. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

License Renewal Denied for Assaults and Other Misdemeanors Relating to Fighting, Guns, and Alcoholic Beverage Misuse: Evidence was sufficient to deny renewal of a license to sell alcoholic beverages for on-premises consumption. Misdemeanor convictions for DUI, reckless driving, barroom brawling, and discharging a firearm in the direction of a passing motorist may not alone have been sufficient to refuse to renew the license. However when viewed in connection with licensee's misdemeanor criminal mischief conviction for plowing snow from his lodge's parking lot onto a highway, resulting in a two-car collision, and four misdemeanor assault convictions arising when he chased two children from his lodge for wishing to use the bathroom without making a purchase, pointed a rifle at the family's vehicle as they left, and chased the family in his truck, becoming involved in an accident with the family vehicle, there was ample evidence to refuse to renew. Licensee's actions indicated that he had a disregard for the safety of others, a violent temperament, and a tendency toward alcohol abuse. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

Requirement That Individual Person Licensee Comply With Applicable Laws — No Unconstitutional Vagueness or Overbreadth: This section provides that a license permitting on-premises consumption of alcoholic beverages cannot be renewed unless the Department of Revenue finds that the licensee's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments. The statute is capable of reasonable interpretation and construction. It is set forth in terms an ordinary person exercising ordinary common sense can understand and comply with. "All applicable laws" means those designed to protect the welfare, health, peace, morals, and safety of the citizens of the state as they relate to the manufacture, sale, and distribution of alcoholic beverages. The statute is not unconstitutionally vague or overbroad. Broers v. Dept. of Revenue, 237 M 367, 773 P2d 320, 46 St. Rep. 873 (1989).

Attorney General's Opinions

Citizenship and Residency Required of Gambling License Applicant: Sections 23-5-322 and 23-5-422 require that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. Therefore, an alien who resided in the state for 18 years did not meet both requirements and was not entitled to a license. 42 A.G. Op. 105 (1988).

16-4-402. Application — investigation.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 336 in (2)(a) in first sentence after "necessary license fee" deleted "or letter of credit as provided in 16-4-501(7)(f)"; and in (2)(c) in first sentence after "application for transfer of" inserted "ownership or". Amendment effective May 7, 2019.

Chapter 342 in (2)(b) substituted "16-4-204(5)" for "16-4-204(11)". Amendment effective May 7, 2019.

Chapter 479 in (2)(a)(ii)(B) substituted current text regarding qualified applicant for "the requirements of this code and the rules promulgated by the department are met and complied with"; inserted (2)(a)(ii)(C) regarding suitable premises; in (2)(c) inserted last sentence regarding sufficient protests; deleted former (4) and (5) regarding conditional approval letter (see 2019 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 12 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Applicability — Retroactive Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 in (2)(b) substituted "16-4-204(11)" for "16-4-204(2)". Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 in (2)(b) substituted "16-4-204(4)" for "16-4-204(2)".

2007 Amendment: Chapter 257 inserted (3)(b) concerning a statement on application or at hearing; and made minor changes in style. Amendment effective April 26, 2007.

Applicability: Section 3, Ch. 257, L. 2007, provided: "[This act] applies to license denial or revocation proceedings that have been commenced but have not been finally adjudicated on [the effective date of this act]." Effective April 26, 2007.

2003 Amendment: Chapter 110 in (2)(a) near middle of sentence after "department" deleted "shall request that the department" and after "justice" inserted "shall"; and in (2)(c) in first sentence after "days of the" deleted "request from the department to the department of justice" and inserted "receipt of a completed application" and inserted third sentence concerning tolling of time period for altered or newly constructed premises. Amendment effective March 24, 2003.

1999 Amendment: Chapter 54 in (1) after "application" deleted "in writing, signed by the applicant and" and deleted former second sentence that read: "The application must be verified by the affidavit of the person making it before a person authorized to administer oaths." Amendment effective March 15, 1999.

1997 Amendment: Chapter 528 in (2)(a), in second sentence of introductory clause after "investigation", inserted "or on other information"; inserted (2)(c) requiring completion of department activity within 90 days of a request and setting out criteria for tolling the deadline; and substituted (4) and (5) regarding issuance of a conditional approval letter for former (4) that read: "If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207." Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1995 Amendment: Chapter 228 in (2)(b) inserted "a retail beer and wine license for off-premises consumption as provided in 16-4-115". Amendment effective March 24, 1995.

1993 Amendments: Chapter 414 in (2)(a), in first sentence, substituted "request that the department of justice" for "within 30 days" and at beginning of second sentence inserted "Based on the results of the investigation"; inserted (4) requiring the Department of Revenue to publish notice of the application if no basis for denying the application is found within 30 days; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 599 near middle of (2)(b) inserted reference to 16-4-111; and made minor changes in style. Amendment effective May 4, 1993.

1991 Amendment: In (3), near beginning before "application", inserted "original" and after "application" inserted "in any part of an annual renewal application, or in any hearing conducted pursuant to an application"; and made minor changes in style.

1983 Amendments: Chapter 37 inserted last sentence of (2) exempting catering endorsements under 16-4-204(2) and special permits under 16-4-301.

Chapter 51, in (2), after "accompanied by the necessary license fee" inserted "or letter of credit as provided in 16-4-501(7)(f)".

Administrative Rules

ARM 42.12.101 Application for license.
ARM 42.12.209 Transfer of a license to another person.
ARM 42.12.210 Completed transactions under bona fide sales.
ARM 42.12.212 Loan standards.
ARM 42.13.1102 All-beverages license — conditions for operating.
ARM 42.13.1103 Restaurant beer and wine license — conditions for operating.
ARM 42.13.1104 On-premises consumption beer license — conditions for operating.
ARM 42.13.1105 Off-premises consumption beer and table wine license — conditions for operating.
ARM 42.13.1202 Beer wholesaler and table wine distributor — conditions for operating.

Case Notes

County Liquor License Improperly Issued for Bar Within Five Miles of City Limits: Owens received a county liquor license for her bar, which she attested was more than 5 miles from the city limits of Kalispell, based on a survey by a private licensed surveyor who used an engineer's ruler to measure on a map the distance from the city limit to the boundary of Owens' property nearest to the city limit. After receiving three contacts alleging problems with Owens' license, including a charge that the bar was not located beyond the 5-mile requirement, the Department of Justice had a land-based survey conducted, and the radial distance from the bar's nearest entrance measured 4.911 miles from the nearest boundary of Kalispell—470 feet short of 5 miles. The Department of Revenue (Department) then notified Owens that it was revoking the license based on incorrect information in the application and for noncompliance with the distance requirement. Owens contested the revocation, but a hearings examiner recommended that the revocation be affirmed, the Department Director agreed, and the District Court affirmed the revocation. On appeal, the Supreme Court also affirmed. Substantial evidence supported the Director's findings, and nothing in the record indicated that the Director misapprehended the effect of the findings. Statutory and administrative guidelines allowed for revocation of the license under these circumstances, and the District Court correctly affirmed the Director's decision to revoke the license. Owens v. Dept. of Revenue, 2007 MT 298, 340 M 48, 172 P3d 1227 (2007).

Transfer of Liquor License Properly Approved Given Compliance With License Transfer Laws and Lack of Evidence Requiring Denial of Transfer: A group of 83 citizens protested the transfer of a liquor license to a proposed truck stop casino on grounds that gambling can be addictive and lead to criminal behavior for some persons, that gambling should not be legal, and that gambling should be restricted to certain areas of town other than near the residential area where many of the protesters lived. Following the required hearing on transfer of the license, the Department of Revenue approved the transfer and the citizens appealed. The Supreme Court noted that the citizens' arguments were very broad policy-type concerns that would more appropriately be raised with the Legislature rather than in the context of a license transfer and found that the Department properly considered each component of public convenience and necessity and correctly concluded that there was no substantial evidence that required denial of the license. The applicant and the Department complied with all laws regarding license transfer, and the court declined to interfere with the approval of the transfer. In re Protests to Application for Transfer of Liquor License, 2007 MT 192, 338 M 363, 168 P3d 68 (2007).

Location Requirement Not Unreasonable: Kiser submitted an application for a liquor license but failed to specify a location for his proposed establishment. Kiser was allowed to participate in the licensing process anyway, and the application was considered on its merits, but denied. Kiser contended that the licensing requirement was unreasonable, discriminatory, and unconstitutional. The Supreme Court disagreed, finding that identification of the location where the license will be used is an element to be weighed when balancing applicants' qualifications and the relative degrees to which their proposals serve public convenience and necessity. Further, the distinction made between enforcement of the location requirement and enforcement of the citizenship requirement was not clearly erroneous. Kiser v. Dept. of Revenue, 1999 MT 228, 296 M 93, 987 P2d 363, 56 St. Rep. 897 (1999).

Determination of Applicants' Qualifications — Running of Statutory Period: Applicants argued that the Department of Revenue (now Department of Justice) abused its discretion and exceeded its statutory authority by failing to make an investigation and determination of qualifications within 30 days of receipt of the completed application (see 1997 amendment), despite the fact that the establishment was not yet constructed. However, this section also requires a Department inspection of the premises of the proposed establishment, and the inspection of the building cannot take place before construction is completed. Therefore, the 30-day investigative period does not begin to run until an applicant has submitted all required paperwork and the proposed establishment is constructed. Ramage v. Dept. of Revenue, 236 M 69, 768 P2d 864, 46 St. Rep. 187 (1989).

State Preemption of Local Control:

The Montana Liquor Control Board (now Department of Revenue) has complete control of the liquor traffic within the state, and cities and towns are without power to interfere with such control. State ex rel. McCarten v. Corwin, 119 M 520, 177 P2d 189 (1947).

Under the maxim expressio unius est exclusio alterius the Legislature has made manifest its intent to inhibit all powers of cities and towns over the matter of intoxicating liquors, except as to those powers specifically enumerated. Stephens v. Great Falls, 119 M 368, 175 P2d 408 (1946).

City Fee: Holder of retail liquor license issued by Montana Liquor Control Board (now Department of Revenue) was entitled to engage in retail liquor business without interference by city authorities subject only to payment of a license fee, which city might exact. State ex rel. Wily v. District Court, 118 M 50, 164 P2d 358 (1945).

Opposition by Inhabitants of Locality or Neighborhood:

Opposition by inhabitants of the particular locality or neighborhood was not provided for by the law as a basis for refusal. If applicant met the legal requirements, rules, and regulations of the Liquor Control Board (now Department of Revenue), he was entitled to a license. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

That a majority of the inhabitants of a town and vicinity may be opposed to granting of a license does not constitute grounds for refusal of the license by the Board. State ex rel. McCarten v. Harris, 112 M 344, 115 P2d 292 (1941).

"Premises" Defined: The word "premises" as used in subsection (2) means the building in which the liquor business is to be carried on, and its meaning cannot be extended to include the locality or neighborhood in which the building is located. McFatridge v. District Court, 113 M 81, 122 P2d 834 (1942).

Suitability of Premises: Among other things, the test of suitability of premises should be established by rule made, promulgated and published, and not left to the caprice and whim of the board. In making the investigation of an application the board has discretion to determine if all qualifications exist, but if it finds that they do exist, it has no discretion to refuse a license for extraneous reasons. State ex rel. McCarten v. Harris, 112 M 344, 115 P2d 292 (1941).

16-4-404. Protest period — contents of license — posting — privilege — transfer.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 6, L. 2023, in (4) near beginning substituted "transferred pursuant to 16-4-431 to the personal representative, executor, or administrator of the estate of a deceased licensee, or to a designee of the personal representative, executor, or administrator" for "transferred to the executor or administrator of the estate of a deceased licensee"; and made minor changes in style. Amendment effective February 16, 2023.

Section 2, Ch. 28, L. 2023, in (5) substituted current text for former (5) (see sec. 2, Ch. 28, L. 2023, for former text); in (6) deleted former last sentence that read: "The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department"; inserted (7) relating to transfer of alcoholic beverage inventory; and made minor changes in style. Amendment effective March 2, 2023.

1997 Amendment: Chapter 528 in (5)(a), in introductory clause after "premises", inserted "within the quota area"; in (5)(b), at end of first sentence, inserted "pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1993 Amendments: Chapter 311 inserted third sentence of (7) regarding a subsequent licensee's obligation to pay for beer or wine sold on credit even though a lien on the license is not created; and made minor changes in style.

Chapter 414 in (2), in last sentence after "of the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (5)(b), near beginning of first sentence, substituted "after notice and opportunity for protest" for "in its discretion", after "cases" inserted "specified in subsection (5)(a)", at end inserted "and is justified by public convenience and necessity", and near beginning of second sentence, after "department", substituted "may not allow" for "shall in no event nor for any cause permit"; near end of (6), after "approval", substituted "if there has not been a change in location and" for "providing"; and made minor changes in style.

1987 Amendment: In (4) and (5) substituted "alcoholic beverages" for "liquor".

Administrative Rules

ARM 42.12.132 Location manager.
ARM 42.12.205 Requirements when license subject to lien.
ARM 42.12.206 Prohibition and exception regarding leasing of license.
ARM 42.12.208 Temporary operating authority.
ARM 42.12.209 Transfer of a license to another person.
ARM 42.12.210 Completed transactions under bona fide sales.
ARM 42.12.212 Loan standards.

Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue (now Department of Justice) throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

Transfer at End of Lease: When plaintiffs rented premises and allowed defendant to use their liquor license under a homemade lease, liquor license was not transferred to defendant at the expiration of the lease. Beard v. McCormick, 147 M 361, 411 P2d 964 (1966).

License Transferred With Lease: A court decree adjudged that the liquor licenses be transferred to the defendants. Because they were unable under Montana law to hold such licenses, an arrangement was made between the plaintiff and the defendants to transfer the licenses to the plaintiff along with a lease of the premises. Such lease and transfer were upheld as there was consideration. Sears v. Barker, 126 M 101, 244 P2d 516 (1952).

Transfer of Location:

Montana Liquor Control Board (now Department of Revenue) conformed to legislative directive in refusing to authorize removal of license from premises for which it was granted to another location. State ex rel. Boulds v. Paige, 124 M 353, 224 P2d 141 (1950).

Purchaser of a license from a licensee cannot compel Montana Liquor Control Board (now Department of Revenue) to consent to transfer of license when he intends to carry on business at a location different from that authorized in the original license. State ex rel. Jester v. Paige, 123 M 301, 213 P2d 441 (1949).

Assignment of License: An "involuntary" assignment and coerced surrender, enforced by court decree, after making for the parties a contract to which they did not and could not agree, are not authorized. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualification of Partner: The disqualification of a single partner works a disqualification of all the partners. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Evidence: Complaint in suit for reformation of contract on ground that words "stock and fixtures" in contract for sale of beer and liquor establishment, containing provision for surrender of property in case of default, were intended by the parties to include the beer and liquor licenses. Plaintiffs had no right in the original licenses which were transferred to purchasers where the several plaintiffs were alleged to have been joint owners, but the original liquor and beer licenses were in the name of only one of them. Light v. Zeiter, 124 M 67, 219 P2d 295 (1950).

Disqualified Person Interested in Premises: License issued in name of one person who failed to state in application that two others who were ineligible for license had an interest in the premises was invalid and subject to cancellation. Perry v. Luding, 123 M 570, 217 P2d 207 (1950).

Attachment of License: A retail liquor license is subject to attachment. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

Transfer After Sheriff's Sale: A retail liquor dealer's license could be purchased by a qualified person at a Sheriff's sale, and, under a previous version of this section, the purchaser could insist that the license so purchased be transferred to him. Stallinger v. Goss, 121 M 437, 193 P2d 810 (1948).

16-4-405. Denial of license.

Compiler's Comments

2019 Amendment: Chapter 479 deleted former (3)(d) that read: "(d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been verified"; and made minor changes in style. Amendment effective October 1, 2019.

1997 Amendment: Chapter 528 in (2), after "town", inserted "or county"; in (3)(a), after "residing", inserted "or of retail licensees located"; in (3)(b), at beginning, inserted "if required" and at end inserted "pursuant to 16-4-203"; inserted (3)(d) regarding verification of a possible reason for denial; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1991 Amendment: In (3), at end of introductory clause, inserted reference to 16-4-207(3); inserted (3)(b) regarding public convenience and necessity; inserted (3)(c) regarding failure to meet licensing criteria; and made minor changes in style.

1987 Amendment: In (1) and (2) substituted "alcoholic beverages" for "beer or all-beverages" in (1) and for "beer or liquor" in (2).

Case Notes

Transfer of Liquor License Properly Approved Given Compliance With License Transfer Laws and Lack of Evidence Requiring Denial of Transfer: A group of 83 citizens protested the transfer of a liquor license to a proposed truck stop casino on grounds that gambling can be addictive and lead to criminal behavior for some persons, that gambling should not be legal, and that gambling should be restricted to certain areas of town other than near the residential area where many of the protesters lived. Following the required hearing on transfer of the license, the Department of Revenue approved the transfer and the citizens appealed. The Supreme Court noted that the citizens' arguments were very broad policy-type concerns that would more appropriately be raised with the Legislature rather than in the context of a license transfer and found that the Department properly considered each component of public convenience and necessity and correctly concluded that there was no substantial evidence that required denial of the license.

The applicant and the Department complied with all laws regarding license transfer, and the court declined to interfere with the approval of the transfer. In re Protests to Application for Transfer of Liquor License, 2007 MT 192, 338 M 363, 168 P3d 68 (2007).

Successful Applicant for Liquor License Required to Be Citizen When License Issued — Deference to Agency Interpretation of Statute: Tokumoto, Merhi, and others applied for several new liquor licenses to be issued for Missoula. At the time of his application, Merhi was not a U.S. citizen. The Department of Revenue determined, in accordance with its longstanding interpretation of the statutes, that Merhi did not have to be a citizen at the time that the relative merits of Merhi's application for a license were determined, as long as he was a citizen at the time of issuance of a license. Citing Norfolk Holdings, Inc. v. Dept. of Revenue, 249 M 40, 813 P2d 460 (1991), the Supreme Court affirmed the Department's decision, noting that the Supreme Court gives great deference to an interpretation of a statute by the agency charged with its administration. Tokumoto v. Dept. of Revenue, 264 M 56, 869 P2d 782, 51 St. Rep. 144 (1994).

16-4-406. Renewal — suspension or revocation — penalty — mitigating and aggravating circumstances — contrived events.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 103 deleted former (3)(e) that read: "(e) the investigation was not based on complaints received or on observed misconduct, but was based solely on the investigating authority creating the opportunity for a violation"; inserted (5) concerning violations based on contrived events; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 568 in (2)(b) and (2)(d) at end inserted "only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place"; and made minor changes in style. Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

2019 Amendment: Chapter 479 in (1) after "retailer" inserted "concessionaire"; throughout section following references to license inserted references to concession agreement and following references to licensee inserted references to concessionaire; and made minor changes in style. Amendment effective May 10, 2019.

2015 Amendment: Chapter 97 in (1) after "wholesaler" substituted "domestic distillery, table wine distributor, beer or wine importer, retailer, or any other person or business licensed or registered under this code" for "or retailer licensed under this code". Amendment effective March 20, 2015.

2013 Amendment: Chapter 327 inserted (3) and (4) requiring department to consider mitigating and aggravating circumstances. Amendment effective October 1, 2013.

2003 Amendment: Chapter 110 in (1) after "department" deleted "may upon its own motion and"; in (2) after "after" inserted "reviewing admissions of the licensee or" and after "justice's" inserted "or a local law enforcement agency's"; and deleted former (3) that read: "(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act." Amendment effective March 24, 2003.

2001 Amendment: Chapter 163 in (1) added "winery" to the list of entities that may be investigated. Amendment effective March 28, 2001.

1993 Amendment: Chapter 414 in (1), after "person", inserted "request that the department of justice"; and near beginning of (2) and (3), after "after", inserted "receiving the results of the department of justice's". Amendment effective July 1, 1993.

1991 Amendment: Inserted (3) regarding license revocation upon a finding of reasonable cause and subject to the opportunity for a contested case hearing; and made minor changes in style.

Administrative Rules

ARM 42.12.110 Service of notices.
ARM 42.12.222 Procedure upon revocation or suspension of license.
ARM 42.13.101 Compliance with laws and rules.
ARM 42.13.402 Wine distributor's monthly reports.

Case Notes

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in 16-6-301 prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

Limitation of Actions: Under this section's procedural provisions, which were deleted in 1975, a licensee whose license was revoked for nonuse was barred from relief by his failure to take action within 15 days after receipt of notice from the Montana Liquor Control Board (now Department of Revenue). State ex rel. Gillespie v. Mont. Liquor Control Bd., 150 M 26, 430 P2d 112 (1967).

Review of Agency Action: The principal reason for the enactment of this section was to afford to any person, original applicant or otherwise, appearing before the Montana Liquor Control Board (now Department of Revenue), the right to have the agency's actions reviewed judicially for abuse of discretion. Skaggs Drug Centers v. Mont. Liquor Control Bd., 146 M 115, 404 P2d 511 (1965).

Jurisdiction: On application for Writ of Prohibition by the ex officio beer board to restrain the District Court proceeding instituted by beer licensees to annul an order suspending their licenses, it was held that Board did not exceed its jurisdiction in suspending licenses, but trial court in issuing order to show cause exceeded its jurisdiction. State ex rel. Stewart v. District Court, 103 M 487, 63 P2d 141 (1936).

Attorney General's Opinions

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

16-4-407. Renewal and nonrenewal of licenses — notices of federal permit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 42, L. 2023. Amendment effective March 2, 2023.

2001 Amendment: Chapter 163 in first sentence added "wineries" to listed entities and near end substituted "upon payment of the fees" for "and with the fees"; and made minor changes in style. Amendment effective March 28, 2001.

1999 Amendment: Chapter 54 at beginning of first sentence, after "July 1", inserted "or, when applicable, on the licensee's anniversary date" and near end after "year" inserted "or 1 year after the anniversary"; and made minor changes in style. Amendment effective March 15, 1999.

1985 Amendment: Near beginning of section, inserted "beer importers".

1983 Amendment: Before "midnight", substituted "are subject to suspension or revocation under 16-4-406 after" for "shall expire at"; and inserted the "if" clause at the end of the first sentence.

Administrative Rules

ARM 42.12.110 Service of notices.

ARM 42.12.222 Procedure upon revocation or suspension of license.

16-4-411. Appeals concerning alcoholic beverages laws.

Compiler's Comments

2021 Amendment: Chapter 535 in (1) at end deleted "or, at the appellant's option, in the district court of the first judicial district". Amendment effective October 1, 2021.

1987 Amendment: In (1) substituted "alcoholic beverages" for "beer or liquor".

1985 Amendment: At end of (1) after "liquor licenses to the" substituted remainder of (1) (see 1985 Session Law) for "state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act, and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review"; and inserted (2) requiring appeal to be in conformity with Title 2, chapter 4, part 7.

Case Notes

Interested Party May Intervene in Mandamus Action: Party opposed to transfer of a liquor license is an interested party under 16-4-411 and therefore has standing to intervene in mandamus action. A person having an interest in the subject matter of a mandamus action may be permitted to intervene for the purpose of resisting the granting of the writ. Christopherson v. St., 226 M 350, 735 P2d 524, 44 St. Rep. 712 (1987).

Mandamus Denied — Adequate Remedy Under This Statute: Applicant who was denied transfer of a liquor license had plain, adequate, and speedy remedy in law under 16-4-411; therefore, the court properly denied his application for alternative Writ of Mandamus or Prohibition. Applicant failed to exhaust his administrative remedies and did not show that the Department of Revenue or State Tax Appeal Board (now Montana Tax Appeal Board) was acting contrary to law. Christopherson v. St., 226 M 350, 735 P2d 524, 44 St. Rep. 712 (1987).

16-4-412. Limits on concurrent applications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 93, L. 2023. Amendment effective April 18, 2023.

Administrative Rules

ARM 42.12.116 Concurrent applications.

16-4-413. Denial of application — two-year moratorium.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 32, L. 2023. Amendment effective March 2, 2023.

Case Notes

Reapplication Within Five Years — Return of Application Only Option: When an applicant for a liquor license reapplied within 5 years of the first denial, the plain language of the statute precluded the Department of Revenue from denying the subsequent application. The only action available to the Department was to return the application without further consideration. In re E-Z Supply, Inc., 267 M 298, 883 P2d 833, 51 St. Rep. 1029 (1994).

16-4-414. Fingerprints required of applicants and location managers — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 140, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: Chapter 568 in (1) in first sentence after "if the applicant is a" inserted "privately held", and near middle substituted "each person holding 15% or more of the outstanding stock and each officer shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. If the applicant is a publicly traded corporation, any person employed by the applicant as a location manager and an officer" for "each person holding 10% or more of the outstanding stock and each officer and director"; in (2)(a)(iii) after "if the applicant is a corporation" substituted "each officer" for "each person holding 10% or more of the outstanding stock and each officer and director"; inserted (4) regarding use of a single background check and set of fingerprints for multiple license applications within 3 years; and made minor changes in style. Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

2005 Amendment: Chapter 495 in (1) in first sentence at beginning inserted exception clause; inserted (2) and (3) regarding fingerprint and background checks for off-premises consumption license; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date: Section 13, Ch. 110, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 24, 2003.

16-4-415. Changes in business entity ownership — department approval required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 97, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 568 in (1) in two places substituted "15%" for "10%" and near end after "qualifies for ownership of a" deleted "liquor"; in (2) after "interest in the license owning" substituted "15% or more interest" for "an interest"; and in (3) at end inserted "If the existing owners and ownership percentages do not change under the proposed change in business entity, the new entity shall notify the department of the new business entity type, but prior department approval is not required". Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

Effective Date: Section 4, Ch. 148, L. 1999, provided: "[This act] is effective on passage and approval." Approved March 23, 1999.

16-4-416. Ownership of alcoholic beverage license by United States.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 28, L. 2023. Amendment effective March 2, 2023.

Effective Date: This section is effective October 1, 2001.

16-4-417. Approval of a licensee without premises — nonuse approval.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 29, L. 2023. Amendment effective March 2, 2023.

Effective Date: Section 12, Ch. 479, L. 2019, provided that this section is effective October 1, 2019.

16-4-418. Concession agreements.

Compiler's Comments

2021 Amendment: Chapter 532 in (1) at beginning inserted exception clause, near middle substituted reference to 16-4-105 for 16-4-104, and at end inserted "A licensee may enter into a maximum of three concession agreements for each license at any given time"; inserted (2) concerning the criteria required for a concession agreement to be considered for approval; inserted (3) concerning a licensee's gaming endorsement; inserted (4) concerning a licensee and a concessionaire sharing employees; inserted (5) concerning a licensee entering into a management agreement to satisfy the provisions of subsection (2)(b); inserted (6) concerning compensation arrangements between concessionaires and licensees; inserted (7) concerning submission of changes to a concession agreement other than changes to the compensation agreement to the department for approval; inserted (8) stating that a concession agreement does not constitute an ownership interest in the license; inserted (9) requiring the department to create a standardized concession agreement; inserted (10) concerning the application and renewal fees for concession agreements; inserted (11) defining contiguous premises; and made minor changes in style. Amendment effective May 14, 2021.

Applicability: Section 5, Ch. 532, L. 2021, provided: "For entities entering into a concession agreement where one has not previously existed, the provisions of [this act] apply immediately. For entities electing to comply with [this act] under [section 1(7)(b)], the provisions of [this act] apply September 1, 2021."

Severability: Section 3, Ch. 532, L. 2021, was a severability clause.

Effective Date: Section 12, Ch. 479, L. 2019, provided that this section is effective on passage and approval. Approved May 10, 2019.

16-4-419. Location managers.

Compiler's Comments

Effective Date: Section 5, Ch. 140, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 18, 2023.

16-4-420. Restaurant beer and wine license — competitive bidding — rulemaking.

Compiler's Comments

2023 Amendments — Composite Section: Section 7, Ch. 60, L. 2023, throughout section substituted "beer licenses" for "beer and wine licenses"; and made minor changes in style. Amendment effective July 1, 2024.

Section 4, Ch. 93, L. 2023, deleted former (9)(b) and (9)(c) (see sec. 4, Ch. 93, L. 2023, for former text); substituted current (7) for former (10) that read: "(10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine license becomes available at the same time in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license"; in (10)(a) in first sentence near middle substituted "curbside pickup, between the hours of" for "curbside pickup, during the hours of"; and made minor changes in style. Amendment effective April 18, 2023.

Section 1, Ch. 242, L. 2023, in (1)(b)(i) at end inserted "The department may audit the 65% requirement at any time in the first year of ownership"; deleted former (1)(c) and (2) (see sec. 1, Ch. 242, L. 2023, for former text); in (3) substituted "license" for "beer and wine license"; deleted former (5) (see sec. 1, Ch. 242, L. 2023, for former text); in (4)(a)(ii) in two places after "food" inserted "prepared on the premises"; in (4)(a)(iii) inserted last sentence requiring the dining room to contain at least half of the total available seats; in (4)(a)(iv) deleted former last sentence that read: "The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license"; inserted (4)(c) providing that provisions of (4)(a)(iv) and (4)(b) do not apply to a restaurant for which a restaurant beer and wine license was in effect as of April 9, 2009, or to subsequent renewals of that license; deleted former (7) (see sec. 1, Ch. 242, L. 2023, for former text); in (10)(a) near middle of second sentence after "also be ordered" inserted "the purchase price of the off-premises beer and wine may not exceed the purchase price of the food ordered"; in (11) deleted former first five sentences (see sec. 1, Ch. 242, L. 2023, for former text) and at end inserted "and must be paid before the license is issued"; in (14) near beginning substituted "number of licenses issued under this section" for "number of beer and wine licenses issued" and at end substituted "25% of the number of restaurant beer and wine licenses allowed in the quota area" for "25% of the total licenses issued"; and made minor changes in style. Amendment effective October 1, 2023.

Section 12, Ch. 601, L. 2023, inserted (16) relating to the use of liquor in a kitchen for the preparation of food; and made minor changes in style. Amendment effective July 1, 2023.

Saving Clause: Section 14, Ch. 601, L. 2023, was a saving clause.

2021 Amendments — Composite Section: Chapter 194 in (13)(a) at beginning substituted "Beer and wine may be sold" for "Under a restaurant beer and wine license, beer and wine may not be sold" and after "off-premises consumption" inserted "including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section"; and made minor changes in style. Amendment effective April 14, 2021.

Chapter 451 in (13)(a) at beginning substituted "Except as provided in subsection (13)(b)" for "Under a restaurant beer and wine license"; inserted (13)(b) authorizing delivery of beer and wine in original packaging if delivery includes food prepared by the licensee and limiting the amount of beer and wine that can be delivered; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendments — Composite Section: Chapter 342 in (7)(a) near beginning inserted "not issued through a competitive bidding process as provided in 16-4-430" and at end inserted "unless that transfer is due to the death of an owner"; inserted (8)(d) concerning overlapping quota areas; in (9) substituted current text concerning new restaurant beer and wine licenses allowed by separating a combined quota area or allowed by license transfers for "If any new restaurant beer and wine licenses are allowed by separating a combined quota area, pursuant to 16-4-105 as of November 24, 2017, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached"; inserted (10) requiring the department to conduct a separate competitive bidding process at separate times for restaurant beer and wine licenses available at the same time in the same quota area; in (12) near middle after "process" inserted "as provided in 16-4-430" and deleted former last sentence (see 2019 Session Law for former text); deleted former (12) through (17) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 7, 2019.

Chapter 479 in (3)(b)(ii) substituted current text concerning qualified applicant for "the requirements of this code and the rules promulgated by the department are complied with"; in (3)(b)(iii) at beginning inserted "if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and"; in (5) in first sentence substituted "issue a license" for "issue a conditional license" and inserted last sentence regarding nonuse; and made minor changes in style. Amendment effective October 1, 2019.

Termination Provision Repealed: Section 11, Ch. 342, L. 2019, repealed secs. 14 and 17, Ch. 5, Sp. L. November 2017, making permanent amendments to this section that were to terminate December 31, 2023.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

2017 Special Session Amendment: (Temporary version) Chapter 5 deleted (8)(d) that read: "(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9)"; in (10) deleted former second sentence that read: "If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery"; deleted former (9)(b), (9)(c), and (9)(d) that read: "(b) A preference must be given to an applicant who does not yet have in any quota area a restaurant beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described in subsection (8) in which the license has become available and that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a license before any applicant without a preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(d) If a successful lottery applicant does not use a license within 1 year of notification by the department of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the application fee and offer the license to the next eligible ranked applicant in the lottery"; inserted (11) through (17) relating to competitive bidding processes; inserted (24) granting rulemaking authority; and made minor changes in style. Amendment effective November 24, 2017, and terminates December 31, 2023.

(Version effective January 1, 2024) Chapter 5 inserted (17) granting rulemaking authority; and made minor changes in style.

(Both versions) Chapter 5 inserted (9) relating to new licenses resulting from separating combined quota areas; and made minor changes in style.

2015 Amendment: Chapter 49 in (8)(a)(v) substituted "as defined in 7-6-1501" for "as the resort community is designated by the department of commerce under 7-6-1501(5)"; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 187 in (1)(a) at beginning substituted "the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license" for former (1)(a) through (1)(c) that read: "(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii)"; in (6)(a)(iv) at beginning of first sentence substituted "that serves" for "A full-service restaurant is a restaurant that provides", after "meal" inserted "at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m.", and inserted second sentence clarifying certain exceptions; inserted (6)(b) excluding fast-food restaurant; in (7)(a) at beginning deleted "Subject to the conditions of subsection (7)(a)(ii)", and after "owner of the restaurant" substituted "only after 1 year of use by the original owner" for "if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner"; in (9)(b) at beginning of first sentence substituted "A preference must be given to an" for "Any", after "applicant who" inserted "does not yet have in any quota area a restaurant beer and wine license or a retail beer license and who", after "restaurant" inserted "that is in the quota area described in subsection (8) in which the license has become available and", at end deleted "must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference", and in second sentence after "An applicant with" substituted "a preference" for "both preferences" and near end after "applicant" substituted "without a" for "with only one"; inserted (9)(d) regarding forfeiture of a license for nonuse and refund of certain fees; and made minor changes in style. Amendment effective April 9, 2009.

Saving Clause: Section 2, Ch. 187, L. 2009, was a saving clause.

Applicability: Section 4, Ch. 187, L. 2009, provided: "[This act] applies to restaurant beer and wine licenses applied for and to lotteries conducted on or after [the effective date of this act]." Effective April 9, 2009.

2007 Amendment: Chapter 348 in (2)(b)(i) at beginning substituted reference to on-premises retail licensee for "A restaurant"; inserted (2)(b)(ii) prohibiting certain persons from obtaining ownership interest in license applied for under this section; inserted (8)(a)(i) regarding issuance of restaurant license in certain quota areas; in (8)(a)(ii) substituted "population of 5,001 to 20,000 persons" for "population of 20,000 persons or fewer" and substituted "160%" for "80%"; in (8)(a)(iii) substituted "100%" for "50%"; in (8)(a)(iv) substituted "80%" for "40%"; in (8)(a)(v) substituted "200%" for "100%"; in (8)(b) substituted "subsections (8)(a)(i) through (8)(a)(v)" for "subsections (8)(a)(i) through (8)(a)(iii)"; in (8)(c) substituted "subsection (8)(a)(i)" for "subsections (8)(a)(i) through (8)(a)(iii)" and substituted "four additional licenses" for "one additional license"; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 2, Ch. 348, L. 2007, was a saving clause.

2003 Amendment: Chapter 110 in (3) in second sentence near middle substituted "investigate" for "request that the department of justice make an investigation of all"; deleted former (3)(b) that read: "(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications"; in (11) in fourth sentence after "denies" substituted "an application" for "issuing a license to an applicant" and after "less a" substituted "processing fee established by rule" for "$100 processing fee"; and made minor changes in style. Amendment effective March 24, 2003.

2001 Amendment: Chapter 7 in second sentence of (11) substituted "rate of 1% a month" for "rate set in 16-1-409(4)"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 324 in (1)(d)(i) decreased from 75% to 65% the amount of a restaurant's gross income expected to be from the sale of food; inserted (2)(b) prohibiting a restaurant that sells its retail license from applying for a restaurant beer and wine license for 1 year after license transfer; in (6) in second and third sentences decreased from 75% to 65% the amount of annual gross revenue attributable to the sale of food and at end of fifth sentence after "dinner" substituted "meal" for "menu"; in (8)(a)(i) near end after "less than" substituted "80%" for "60%"; inserted (8)(c) allowing a one-time quota adjustment of one additional license; in (9)(b) at end of first sentence inserted "and any unsuccessful lottery applicants from previous selections must also be given a preference" and inserted second sentence regarding award preference to an applicant with both preferences; in (9)(c) at end of second sentence substituted "a one-time required fee" for "the required fee"; in (11) near beginning after "fee" inserted "equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate set in 16-1-409(4) until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined"; in (13) near beginning after "restaurant" inserted "licensed under this part", in two places substituted references to licensee for references to applicant, in two places substituted references to fees for references to application fee, and near end after "original application" inserted "and issuance of a license"; and made minor changes in style. Amendment effective April 16, 1999.

Applicability: Section 4, Ch. 324, L. 1999, provided: "[This act] applies only to new applications received after [the effective date of this act]." Effective April 16, 1999.

Administrative Rules

Title 42, chapter 12, subchapter 5, ARM Competitive bidding process.

ARM 42.13.1103 Restaurant beer and wine license — conditions for operating.

16-4-430. Competitive bidding process — all-beverages, retail beer and wine, and restaurant beer and wine licenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 93, L. 2023. Amendment effective April 18, 2023.

Effective Date: Section 13, Ch. 342, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

Retroactive Applicability: Section 14, Ch. 342, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to existing licenses or licenses that resulted from applications in process for alcohol licenses as of November 24, 2017."

16-4-431. Death or incapacity of licensee or owner of license — rulemaking.

Compiler's Comments

Effective Date: Section 4, Ch. 6, L. 2023, provided: "[This act] is effective on passage and approval." Approved February 16, 2023.

16-4-432. License operation requirements.

Compiler's Comments

Effective Date: Section 4, Ch. 29, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 2, 2023.

16-4-433. Temporary operating authority.

Compiler's Comments

Effective Date: Section 8, Ch. 28, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 2, 2023.

Part 5
Licensing Fees

16-4-501. License and permit fees.

Compiler's Comments

2023 Amendments — Composite Section: Chapter 55 in (1)(b)(ii) after "subwarehouse" inserted "and winery storage depot"; inserted (11)(b) in temporary version and (10)(b) in version effective July 1, 2024, regarding the annual fee for a distillery storage depot; and made minor changes in style. Amendment effective October 1, 2023.

Section 8, Ch. 60, L. 2023, in (1)(c) increased fee for each beer and wine retailer from $200 to $400; in (1)(d)(i) at end substituted "consumption only, $200" for "consumption only, the same as a retail beer license"; deleted former (5) that read: "(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200"; in (12) substituted "department" for "department of revenue"; and made minor changes in style. Amendment effective July 1, 2024.

Section 4, Ch. 138, L. 2023, substituted current (1)(b)(i) for former text that read: "(i) each beer wholesaler, $400; each winery, $200; each table wine distributor, $400". Amendment effective July 1, 2024.

Applicability: Section 5, Ch. 55, L. 2023, provided: "[This act] applies to new licenses for storage depots issued on or after October 1, 2023, and to renewal of licenses for storage depots that existed before October 1, 2023."

2019 Amendments — Composite Section: Chapter 336 in (7)(f) substituted current text for former text that read: "(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. However, all licenses are subject to the specified annual renewal fees." Amendment effective May 7, 2019.

Chapter 473 inserted (6)(c) concerning continuing care retirement communities; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

2017 Amendment: Chapter 271 in (6)(a) substituted "10,000" for "20,000". Amendment effective October 1, 2017.

2007 Amendment: Chapter 501 in (1)(b)(i) after "$400" substituted "each winery" for "each domestic winery producing more that 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine"; in (7) at beginning inserted exception clause; in (7)(a), (7)(b), and (7)(c) at beginning deleted "except as provided in this section"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 293 inserted (9) establishing fee for license at Yellowstone airport; and made minor changes in style. Amendment effective April 20, 2005.

Chapter 591 inserted (11) related to distillery fee; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 369 in (2) before "rate" inserted "following"; in (2)(a) substituted "events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c)" for "those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events"; inserted (2)(b) setting permit fee rate at $1,000 a season for professional sporting contests or junior hockey contests; and made minor changes in style. Amendment effective April 16, 2003.

2001 Amendments — Composite Section: Chapter 163 in (1)(b) inserted "each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200". Amendment effective March 28, 2001.

Chapter 405 in (1) in first sentence before "license fee" deleted "annual" and in second sentence inserted "Unless otherwise specified in this section, the fee is an annual fee and is imposed"; inserted (6)(a) regarding brewer producing 20,000 or fewer barrels of beer; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 4, Ch. 405, L. 2001, provided: "[This act] applies to beer sold by a wholesaler on or after July 1, 2001."

1999 Amendment: Chapter 54 in (11) after "July 1 of the renewal year" inserted "or 1 year after the licensee's anniversary date", after "August 1 of the renewal year" inserted "or 1 year and 1 month after the licensee's anniversary date", and after "September 1 of the renewal year" inserted "or 1 year and 2 months after the licensee's anniversary date"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendments: Chapter 371 in (6), after "annual", inserted "renewal"; in (7)(f), near beginning of first sentence after "described in", substituted "subsections (6) and (7)(d)" for "subsection (7)(d)" and in fourth sentence, after "subject to the", inserted "specified" and after "renewal" substituted "fees" for "fee"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 528 in (2), after "rate of", substituted "$10" for "$15" and at end, after "but", substituted "the fee may not exceed $300 for a series of scheduled sporting events" for "in no case shall the fee be less than $30"; and made minor changes in style. Amendment effective July 1, 1997.

Applicability: Section 9, Ch. 528, L. 1997, provided: "[This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act]." Effective July 1, 1997.

1989 Amendments: Chapter 83 in (2), before "be less than", inserted "shall the fee".

Chapter 225 inserted (12) relating to deposit of license and permit fees; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendments: Chapter 68 in (1)(c) deleted from end "with a wine license amendment, an additional $200"; in (5) inserted "pursuant to 16-4-105"; and in (6) substituted "all-beverages" for "liquor".

Chapter 380 inserted (9) establishing the fee for a beer or table wine license for a nonprofit arts organization.

1985 Amendments: Chapter 19 in (1)(a) inserted "and each beer importer".

Chapter 141 in (1)(b) inserted "each subwarehouse, $400".

1983 Amendments: Chapter 29 inserted (10) establishing late fees.

Chapter 51, in (7)(f), inserted the provision providing for an irrevocable letter of credit.

Chapter 595, in subsection (7)(b) through (7)(e), substituted "in a straight line" for "over the shortest public road or highway".

1981 Amendments: Chapter 181 inserted the provision for a $250 license in (7)(a), a $350 license in (7)(b), a $500 license in (7)(c), and a $650 license in (7)(d) for a unit of a nationally chartered veterans' organization; and deleted "of $800" after "renewal fee" at the end of (7)(f).

Chapter 401 added "and table wine" after "beer" in (2) and (3).

Chapter 519 changed the method of measuring the 5-mile limitation from a straight line to the shortest public road or highway in subsections (7)(b), (7)(c), (7)(d), and (7)(e).

1978 Amendment by Initiative: Initiative No. 81, proposed by initiative petition and approved at the general election held November 7, 1978, amended this section to allow the sale of table wine in grocery stores and drug stores for off-premises consumption. Amendment effective July 1, 1979.

Administrative Rules

ARM 42.12.111, 42.12.114, and 42.12.115 Fees.

Case Notes

McCracken Not a Town: In a proceeding in mandamus to compel the Montana Liquor Control Board (now Department of Revenue) to refund to relator, a retail liquor dealer doing business at a place called "McCracken", situated within a distance of 5 miles of the city of Billings, the difference between $600 paid by him as a license fee and $200 properly chargeable in a "town" located as is McCracken, the Supreme Court held, under the facts presented, that McCracken was not a town, as claimed by relator under the decision in Pollard v. Mont. Liquor Control Bd., 114 M 44, 131 P2d 974 (1942), although mail so addressed reached its destination, and it appeared on the official map of the railroad commission. State ex rel. McCracken v. Mont. Liquor Control Bd., 115 M 347, 143 P2d 891 (1943).

16-4-502. Census.

Compiler's Comments

1981 Amendment: Substituted "counties and incorporated cities or towns" for "municipalities"; substituted the last sentence directing Department, between censuses, to use most recent population estimates published by Bureau of the Census as basis to determine populations of counties and incorporated cities or towns for language allowing a published direct enumeration by state or municipality.

Administrative Rules

ARM 42.12.104 Action taken with census update.

16-4-503. City and county licenses — fees.

Case Notes

Preemption: Cities do not have the authority or jurisdiction to enact ordinances dealing with the control of sales of liquor because the state has reserved exclusive control of that function. State ex rel. Libby v. Haswell, 147 M 492, 414 P2d 652 (1966), overruled, pertaining to planning and zoning, in Town Pump, Inc. v. Bd. of Adjustment of Red Lodge, 1998 MT 294, 292 M 6, 971 P2d 349, 55 St. Rep. 1205 (1998).

Attorney General's Opinions

No Authority in Local Governing Body to Prohibit Minors in Licensed Premises: An incorporated town with general powers does not have the authority to enact an ordinance prohibiting underage persons from being on licensed premises where alcoholic beverages are sold and consumed because the entire control of the manufacture, sale, and distribution of alcoholic beverages is retained within the State of Montana. The local government may not enact an ordinance providing for greater penalties than those found in 45-5-624 for an underage person convicted of possession of alcoholic beverages. 41 A.G. Op. 84 (1986).

State Authority to Regulate Liquor — No Delegation to Municipalities: The authority granted to the state by the 21st amendment to the U.S. Constitution to regulate the sale of liquor has not been delegated to municipalities with general powers. Therefore, a municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender. 41 A.G. Op. 75 (1986).

Maximum Fee: A city which currently charges the maximum fee allowed under this section does not have the authority to enact an ordinance establishing a delinquent fee schedule for alcohol licenses. The statute expressly limits the maximum fee amount chargeable by local governments and provides no power to access a higher fee under any circumstances. 41 A.G. Op. 20 (1985).

Local Governments Preempted From Controlling Beer Sales: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county. 40 A.G. Op. 48 (1984).

City License — Effect on State License: A city may license a beer distributor but may not thereby limit or make ineffective a state license. 37 A.G. Op. 100 (1977).

Part 8
Liquor License Security Interest

Part Case Notes

Security Interest Retained in Beer and Wine License — Assignment Contingent on Fulfillment of Premises Lease: Groshelle leased a bar to Bertschs. The lease provided that Groshelle would assign the beer and wine license to Bertschs and retain a security interest in the license and that Bertschs would reassign the license to Groshelle upon termination of the lease. The transfer of license was approved by the Department of Revenue. After deciding to sell the business to Reids, Bertschs applied for transfer of the license to Reids, subject to Groshelle's security interest and a reassignment to Groshelle upon termination of the lease. That transfer was also approved. After a lease period of several years, Reids and Groshelle could not come to terms regarding a new lease. Groshelle filed a complaint seeking a judgment declaring the reassignment provisions of the lease valid and enforceable. The District Court properly granted partial summary judgment to Groshelle after holding the reassignment enforceable, subject to Department approval. The Supreme Court affirmed on appeal, finding nothing in the language of the various leases of the bar premises, fixtures, and furniture that created a lease in the beer and wine license and nothing in the record indicating Groshelle's intent to relinquish the license. Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995), distinguishing Feurherm v. Schmaing, 181 M 136, 592 P2d 924 (1979).

Purported Equitable Ownership of Beer License: A person who claims equitable ownership of a retail beer license and wishes to have the license transferred to him may not enforce his claim when he has never been the record owner of the license, his name has never been endorsed on the license in any other capacity, and, as a result, he has never been subjected to the scrutiny of the Liquor Division of the Department of Revenue throughout the time he has claimed his equitable interest. Feurherm v. Schmaing, 181 M 136, 592 P2d 924, 36 St. Rep. 479 (1979), distinguished in Groshelle v. Reid, 270 M 443, 893 P2d 314, 52 St. Rep. 261 (1995).

16-4-801. Security interest in alcoholic beverage license — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 28, L. 2023. Amendment effective March 2, 2023.

2017 Amendment: Chapter 301 in (4) substituted current text concerning a regulated lender obtaining a security interest in a liquor license or the assets of a business operating a liquor license without creating an undisclosed ownership interest and concerning documentation of a security interest and notification of revocation, nonrenewal, or lapse of a license for former text that read: "(4) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in order to secure a loan or a guaranty of a loan. This section does not prohibit or limit the ability of a regulated lender to use loan and security documentation consistent with that used by the regulated lender generally, and the documentation does not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest"; inserted (5) concerning requirements for payments on an institutional loan made by the owner of the licensee borrower; inserted (6) concerning requirements for not creating an undisclosed ownership interest in a liquor license by a borrower, coborrower, or guarantor; inserted (7) concerning a regulated lender's absence of duty to ensure a coborrower's or guarantor's compliance with certain requirements; inserted (8) defining borrower; and made minor changes in style. Amendment effective May 4, 2017.

2009 Amendment: Chapter 62 inserted (4) providing that a regulated lender may obtain a security interest in a liquor license and that documentation of the interest does not constitute control of the business or liquor licensee. Amendment effective March 25, 2009.

2003 Amendment: Chapter 422 inserted (1)(b)(i)(C) providing that default means there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and made minor changes in style. Amendment effective April 18, 2003.

Effective Date: Section 3, Ch. 280, L. 1999, provided: "[This act] is effective on passage and approval." Approved April 7, 1999.

Administrative Rules

ARM 42.12.205 Requirements when license subject to lien.
ARM 42.12.211 Transfer of a license due to foreclosure.
ARM 42.12.212 Loan standards.

Part 9
Connoisseur's Licenses

Part Compiler's Comments

Effective Date: Section 13(2), Ch. 543, L. 2001, provided that this part is effective October 1, 2001.

16-4-901. Connoisseur's licenses — application — fees.

Compiler's Comments

2013 Amendment: Chapter 184 in (1) in first sentence after "beer" deleted "only, wine only, or both beer and wine" and after "brewery" deleted "or winery"; deleted former (1)(b) and (1)(c) that read: "(b) $50 for a wine connoisseur's license; or

(c) $100 for a beer and wine connoisseur's license"; in (3) at end after "connoisseur's license" deleted "or a wine connoisseur's license and a $50 renewal fee for a beer and wine connoisseur's license"; in (4) after "beer" deleted "or wine"; and made minor changes in style. Amendment effective October 1, 2013.

16-4-902. Payment of taxes — authority of department.

Compiler's Comments

2013 Amendment: Chapter 184 in (1) in two places after "beer" deleted reference to wine and after "out-of-state brewery" deleted "or winery"; and made minor changes in style. Amendment effective October 1, 2013.

16-4-903. Direct shipment of beer — limitations.

Compiler's Comments

2013 Amendment: Chapter 184 in (1) after "may receive up to" deleted "144 bottles or 12 cases of wine or" and deleted last sentence that read: "A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license"; in (1), (2), and (3) after "out-of-state brewery" deleted "or winery"; in (3) in two places after "beer" deleted "or wine"; and made minor changes in style. Amendment effective October 1, 2013.

16-4-906. Out-of-state brewery registration — limitation on shipping — penalty.

Compiler's Comments

2013 Amendment: Chapter 184 throughout section in three places after "out-of-state brewery" deleted "or winery"; in (1) after "beer" deleted "or wine"; in (2) after "beer" deleted "for breweries"; deleted former (2)(b) that read: "(b) 720 bottles or 60 cases of wine for wineries"; in (3)(a) after "brewery's" deleted "or winery's"; deleted former (3)(b) that read: "(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendments — Composite Section: Chapter 501 in (3) at end after "distributor" inserted "or for a winery properly licensed pursuant to 16-4-107 through direct shipment to licensed retailers in accordance with the provisions of 16-3-411". Amendment effective October 1, 2007. This language was not codified because the same concept was contained in subsection (3)(b) added by Ch. 516.

Chapter 516 in (3) at end of introductory clause substituted "may" for "shall"; inserted (3)(b) concerning direct shipment to licensed retailers; inserted (3)(c) concerning distribution as a brewery; and made minor changes in style. Amendment effective October 1, 2007.

Part 10
Responsible Alcohol Sales and Service

Part Compiler's Comments

Effective Date: This part is effective October 1, 2011.

Part Administrative Rules

Title 42, chapter 13, subchapter 9, ARM Responsible Alcohol Sales and Service Act.

16-4-1005. Licensees required to ensure training.

Compiler's Comments

2019 Amendment: Chapter 336 in (1) near beginning substituted "sell, serve, or deliver" for "sell or serve". Amendment effective May 7, 2019.

Applicability: Section 15, Ch. 336, L. 2019, provided: "Existing resort area designations issued before [the effective date of this act] [May 7, 2019] are not subject to the application requirements of [section 2] [16-4-212] but are subject to [section 3] [16-4-213]. On and after [the effective date of this act] [May 7, 2019], resort area designations and resort retail all-beverages license applications will be reviewed and processed under the conditions set forth in [sections 2 and 3] [16-4-212 and 16-4-213]."

16-4-1008. Penalty.

Administrative Rules

ARM 42.12.110 Service of notices.

Part 11

Direct Shipment Endorsements — Table Wine

Part Compiler's Comments

Effective Date: This part is effective October 1, 2013.

16-4-1102. Requirements for direct shipment endorsements — fee — labeling — taxes — recordkeeping.

Compiler's Comments

2019 Amendment: Chapter 29 in (3)(b) in first sentence substituted "The winery shall electronically file a wine tax return" for "The winery shall, by the 15th day of each month following a month in which a shipment was made, report to the department in the manner and form prescribed by the department information on direct shipments in the preceding month" and substituted "16-1-411" for "16-1-411(1)(a)". Amendment effective October 1, 2019.

Administrative Rules

ARM 42.13.401 Importation of wine.

CHAPTER 6

ENFORCEMENT

Chapter Case Notes

State Jurisdiction to Punish Criminal Violations of State Liquor Laws by Indians in Indian Country: Under the holding in Rice v. Rehner, 463 US 713 (1983), and 18 U.S.C. 1161, the state has the power to enforce state criminal statutes against Indians for violations of state law relating to the sale or possession of liquor within Indian reservations. Brown v. District Court, 238 M 248, 777 P2d 877, 46 St. Rep. 1242 (1989).

Chapter Law Review Articles

Good History, Good Law (and by Coincidence Good Policy Too: Granholm v. Heald), Nielson, 29 Harv. J.L. & Pub. Pol'y 743 (2006).

The Twenty-First Amendment in the Twenty-First Century: Reconsidering State Liquor Controls in Light of Granholm v. Heald, Norton, 67 Ohio St. L.J. 1465 (2006).

Who's Selling the Next Round: Wines, State Lines, the Twenty-First Amendment and the Commerce Clause, Rutledge & Daniels, 33 N. Ky. L. Rev. 1 (2006).

Part 1

Investigations

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

16-6-101. Employment of investigators and prosecuting officers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 312, L. 2023. Amendment effective October 1, 2023.

1993 Amendment: Chapter 414 near beginning of (1), after "department", inserted "of justice" and at end deleted "and who shall be paid such salaries, fees, and expenses as the department may fix"; inserted (2) requiring the Department of Justice, when requested by the Department of Revenue, to investigate when a license application is made, to investigate other matters relating to alcoholic beverages, and to serve as a liaison to local law enforcement; and made minor changes in style. Amendment effective July 1, 1993.

16-6-102. Search warrants.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, before "investigator", inserted "department of justice" and in two places, before reference to premises, deleted reference to building; and made minor changes in style. Amendment effective July 1, 1993.

Case Notes

Warrant Proper for Seizure of Beer and Wine Served Without Valid License: Investigators complied with constitutional and statutory requirements for search and seizure when they: (1) knew a crime was being committed and were able to state of their own knowledge that defendant was serving beer without a valid license; (2) established reasonable cause; (3) were able to describe the place to be searched and articles to be seized; (4) showed the warrant to defendant while executing the search; and (5) provided defendant with a copy of the warrant and supporting paperwork. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

16-6-103. Examination of licensee's or agency liquor store premises and carriers' cars and aircraft — access control systems permitted — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 129, L. 2023. Amendment effective April 18, 2023.

2019 Amendment: Chapter 153 inserted (2) concerning implementation of an access control system; inserted (3) providing rulemaking authority; inserted (4) defining access control system and immediate access; and made minor changes in style. Amendment effective April 17, 2019.

1993 Amendment: Chapter 414 near beginning, after "department", inserted "of justice", before "may at any time" substituted "a peace officer" for "the sheriff of any county", and near end, after "the department", inserted "or the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 42.13.103 Department examinations.

16-6-104. Unlawful alcoholic beverage — seizure — forfeiture.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 312, L. 2023. Amendment effective October 1, 2023.

2007 Amendments — Composite Section: Chapter 501 in (2) at beginning after "beer" inserted "or wine" and after "Montana" substituted "in violation of this code" for "and has not been shipped to and distributed from a warehouse of a licensed wholesaler"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 516 in (2) near beginning after "beer" inserted "or wine" and after "Montana" substituted "in violation of this code" for "and has not been shipped to and distributed from a warehouse of a licensed wholesaler"; and made minor changes in style. Amendment effective October 1, 2007.

1987 Amendment: In (2), at end, substituted "alcoholic beverages" for "intoxicating liquor".

1983 Amendment: In (1), deleted reference to a violation of 16-3-102.

Administrative Rules

ARM 42.11.251 Unlawful acts.

16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in two places, substituted "an agency liquor store" for "a state liquor store"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 414 in (1), near beginning before "investigator", inserted "department of justice"; in (2), in two places, inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendments: Chapter 20 deleted former (5) (see Ch. 83 amendment note for deleted language).

Chapter 83 deleted former (2) that read: "The department shall commence an action in the district court of the county in which the alcoholic beverage is found and seized against said alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The alcoholic beverage shall be named as one of the defendants to said action"; inserted (2) and (3) that read: "(2) The department shall determine if the seized alcoholic beverage is suitable for resale. When the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county"; in (4) at beginning of first sentence substituted "notice must show" for "complaint shall show", near middle of first sentence, after "control", substituted "of the alcoholic beverage" for "thereof", and near middle and end of second sentence substituted "hearing examiner" for "court"; deleted former (4) and (5) that read: "(4) A summons shall be issued, served, or published as in other civil actions provided by Title 25, except that the summons shall be published in the county where the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this code, proof of the absence of the official seal of the department upon the bottle, jug, package, container, or containers of an alcoholic beverage on which a seal is required shall be prima facie evidence that the alcoholic beverage is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the department. The court shall order all such alcoholic beverage contraband and forfeited to the state of Montana"; and made minor changes in style and phraseology.

Case Notes

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in 16-6-301 prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

16-6-107. Disposal of forfeited alcoholic beverages — report.

Compiler's Comments

1995 Amendment: Chapter 530 in (1), in three places, substituted reference to agency liquor store for reference to state liquor store. Amendment effective April 25, 1995.

1993 Amendment: Chapter 414 in (1), in third sentence after "sale", inserted "in a state liquor store"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near beginning of first sentence, after "court", inserted "or hearing examiner", near middle of first sentence, after "16-6-105" inserted "or 16-6-106", near end of first sentence after "kept" substituted "shall be delivered" for "shall forthwith be delivered", near beginning of second sentence, after "department", substituted "shall determine" for "shall thereupon determine", at beginning of fourth sentence substituted "All alcoholic beverages found" for "Each forfeited alcoholic beverage which is found", and near end of fourth sentence, after "destroyed", deleted "under competent supervision as may from time to time be directed"; and in (2) near middle of sentence, after "duty to", deleted "forthwith".

16-6-108. Inspection of carriers' records.

Compiler's Comments

1993 Amendment: Chapter 414 near beginning, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it". Amendment effective July 1, 1993.

16-6-109. Unlawful for carrier to refuse inspection of records.

Compiler's Comments

1993 Amendment: Chapter 414 near end, after "the department", inserted "or the department of justice" and after "appointed by" substituted "either department" for "it"; and made minor changes in style. Amendment effective July 1, 1993.

Part 2
Prosecutions

16-6-201. Jurisdiction of courts.

Compiler's Comments

2007 Amendment: Chapter 49 in (1) at end substituted "the Montana Alcoholic Beverage Code described in 16-1-101" for "this code"; inserted (2) clarifying the jurisdiction of courts regarding misdemeanor criminal actions prosecuted under the alcoholic beverage code; and made minor changes in style. Amendment effective October 1, 2007.

Case Notes

Liquor Laws Controlling: The provisions of the Retail Liquor License Act (now ch. 1 through 6 of this title) control with respect to prosecution of licensee for making a sale to an interdicted person, and Justice's Court had jurisdiction to act upon a complaint charging defendant with sale of liquor to an interdicted person. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P2d 906 (1959).

District Court Original Jurisdiction: This section expressly confers upon the District Courts concurrent original jurisdiction with Justices' Courts in prosecutions for violations. St. v. Winter, 129 M 207, 285 P2d 149 (1955).

16-6-205. Sufficiency of evidence.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-6-207. Analyst's report as prima facie evidence of contents.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-6-209. Inferences of fact from evidence found.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Miscellaneous Prohibitions and Penalties

16-6-301. Transfer, sale, possession, and manufacture of alcoholic beverages — when unlawful.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 312, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 184 in (3)(c) in two places after "beer" deleted "or wine", after "out-of-state brewery" deleted "or winery", and at end after "16-4-901" inserted language concerning table wine purchased from wineries with direct shipment endorsements. Amendment effective October 1, 2013.

2001 Amendment: Chapter 543 in (3) substituted "code" for "section"; in (3)(a) substituted "actual physical possession" for "possession"; inserted (3)(c) concerning possession by connoisseur licensee; and made minor changes in style. Amendment effective May 1, 2001.

1997 Amendment: Chapter 546 in (1), near beginning after "code", substituted "a person or the person's agents or employees may not" for "no person shall, within the state, by himself, his clerk, servant, or agent"; in (1)(a) and (1)(b) inserted "an alcoholic beverage"; in (3)(a), near middle after "3", deleted "wine" and at end, after "country", deleted "but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage which shall not have been purchased within the state of Montana"; inserted (3)(b) providing that this section does not prohibit brewing beer for personal use that meets the exemptions provided by federal law; in (3)(c), at beginning before "alcoholic", substituted "possession" for "This section shall not apply to the department or to the keeping or having"; in (4), near beginning after "code", substituted "a person or the person's agents or employees may not" for "no person shall, within the state, by himself, his clerk, servant, or agent"; and made minor changes in style.

1987 Amendment: In (1), (2), and (3) substituted references to alcoholic beverages for references to liquor or liquor or beer; in (2), in first sentence, substituted "alcoholic beverage which has not been purchased within the state" for "liquor within the state which has not been purchased from the state" and at end of second sentence substituted "within the state of Montana" for "from a state liquor store"; and at end of (3) substituted "a licensee" for "in the case of beer, to a brewer, beer licensee, club licensee, or canteen licensee".

Administrative Rules

ARM 42.11.251 Unlawful acts.

ARM 42.12.107 Educational materials.

Case Notes

State Jurisdiction to Prosecute Indians for On-Reservation Liquor Law Violations Upheld: Montana filed charges against Indian grocery store owners for possessing and selling liquor without a state license within the boundaries of the Fort Peck Reservation. When the tribe filed suit in District Court, arguing that Montana could not criminally prosecute Indians for liquor violations, Montana filed a motion arguing that the 11th amendment barred the tribes action and that federal law permitted the state to prosecute Indians for criminal violations of state liquor laws. The District Court granted the states 11th amendment motion, but granted summary judgment for the tribe, ruling that the state had no jurisdiction to maintain the prosecutions. On appeal, the Ninth Circuit Court reversed, holding that pursuant to the interpretation of Rice v. Rehner, 463 US 713 (1983), Montana has jurisdiction to prosecute Indians who violate state liquor laws on an Indian reservation. Fort Belknap Indian Community of the Fort Belknap Indian Reservation v. Mazurek, 793 F. Supp. 949 (D.C. Mont. 1992), affirmed in part and reversed in part, 43 F3d 428 (9th Cir. 1994), certiorari denied, 516 US 806, 133 L Ed 2d 15, 116 S Ct 49 (1995).

State Jurisdiction to Punish Criminal Violations of State Liquor Laws by Indians in Indian Country: Under the holding in Rice v. Rehner, 463 US 713 (1983), and 18 U.S.C. 1161, the state has the power to enforce state criminal statutes against Indians for violations of state law relating to the sale or possession of liquor within Indian reservations. Brown v. District Court, 238 M 248, 777 P2d 877, 46 St. Rep. 1242 (1989).

Common-Law Rights Giving Way to Liquor Licensing System: Defendant asserted that as a natural born white citizen she had a common-law right to sell beer and wine without a valid state license. Although both Art. IV, sec. 2, and the 14th amendment of the U.S. Constitution protect a citizen's federal rights from abridgment by another person or by the state, the protections afforded by these clauses are not absolute and yield to the reasonable exercise of state police powers, such as the liquor licensing system. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Jurisdiction of Offense of Selling Alcohol Without a License: The District Court was the proper court to try the offense of sale of beer or wine without a valid state license. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

"Liquor" to Include Table Wine — Fine for Possession of Untaxed Table Wine Affirmed: A $1,500 fine was properly assessed against an all-beverages licensee found in possession for sale of table wine upon which no Montana tax had been paid, because the wine came within the definition of "liquor" as the term was used in this section prior to 1987 amendment. The District Court was constrained by 2-4-704 to affirm the penalty, absent a showing of abuse of discretion by the Department of Revenue. Swan Corp. v. Dept. of Revenue, 232 M 210, 755 P2d 1388, 45 St. Rep. 998 (1988).

Sale of Liquor and of Management Interest: The bulk sale of liquor on the shelves and not a retail sale and the transfer of a business conducted under a liquor license is permissible under this section. Johnstone v. Svejkovsky, 170 M 504, 554 P2d 1329 (1976).

Commerce Clause of Federal Constitution Not Violated: The State Liquor Control Act of Montana (Ch. 105, L. 1933), in effect regulating the importation of intoxicating liquor from other states, does not violate the Commerce Clause in view of the section in the 21st amendment prohibiting the transportation or importation into any state of intoxicating liquor in violation of the laws of a state. St. v. Andre, 101 M 366, 54 P2d 566 (1936).

Information in Language of Statute Sufficient: Information charging unlawful sale of intoxicating liquor was not demurrable as uncertain and ambiguous. If too general in character, defendant had a plain remedy by application for a bill of particulars. St. v. Driscoll, 101 M 348, 54 P2d 571 (1936).

16-6-302. Sale of alcoholic beverage without license — sale or importation in violation of code — penalty.

Compiler's Comments

2001 Amendment: Chapter 543 inserted (1) defining person; in (2) near beginning after "sale" inserted "in Montana", after "beverage" substituted "commits a criminal offense" for "is guilty of a felony", and after "fine" substituted "not to exceed $5,000" for "of not less than $1,000 or more than $5,000"; inserted (3) concerning civil offense for importing or distributing alcoholic beverages; inserted (4) concerning civil penalties for progressive number of offenses; and made minor changes in style. Amendment effective May 1, 2001.

Case Notes

Common-Law Rights Giving Way to Liquor Licensing System: Defendant asserted that as a natural born white citizen she had a common-law right to sell beer and wine without a valid state license. Although both Art. IV, sec. 2, and the 14th amendment of the U.S. Constitution protect a citizen's federal rights from abridgment by another person or by the state, the protections afforded by these clauses are not absolute and yield to the reasonable exercise of state police powers, such as the liquor licensing system. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

Illegal Sale of Alcohol Not Requiring "Victim": The District Court properly ruled that the state did not have to produce a "victim" of an offense under this section if it could show that the defendant continued to sell alcoholic beverages without paying a fair share for the privilege. In this respect the entire state and every resident other than defendant was the "victim" of defendant's conduct. St. v. Barnes, 232 M 405, 758 P2d 264, 45 St. Rep. 1150 (1988).

16-6-303. Sale of liquor not purchased or transferred from agency liquor store forbidden — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 28, L. 2023. Amendment effective March 2, 2023.

1995 Amendment: Chapter 530 in two places substituted reference to agency liquor store for reference to state liquor store; and made minor changes in style. Amendment effective April 25, 1995.

Case Notes

Issuance of Revocation Notice Eight Months After Satisfaction of Violation Not Considered Timely — Immediate Revocation Required: Seaman was cited, and ultimately convicted, of selling liquor that was not purchased from a Montana agency liquor store. This section requires that the Department of Revenue immediately revoke the liquor license when satisfied that the license holder has violated the statute, but here, Seaman was not notified of the intent to revoke until at least 8 months after being convicted. The subsequent revocation of Seaman's license was improper because the Department did not act immediately as required by law. Seaman v. Dept. of Revenue, 2002 MT 34, 308 M 307, 42 P3d 790 (2002).

16-6-304. Providing alcoholic beverage to intoxicated person prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 312, L. 2023. Amendment effective October 1, 2023.

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

Annotator's Note: See case notes under 16-3-301.

16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.

Compiler's Comments

2007 Amendment: Chapter 180 in (3) at end inserted "including a tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: In (1)(a), after "beverage", substituted "provided in a nonintoxicating quantity to a person under 21 years of age by his parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist" for "given to a person under 21 years of age by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist", after "physician" inserted "or an ordained minister or priest in connection with a religious observance', substituted "sell or otherwise provide" for "sell, give, or otherwise supply", and at end deleted "or permit any person under that age to consume an alcoholic beverage"; inserted (1)(b) prohibiting a parent or guardian from providing a minor an intoxicating quantity of a beverage; inserted (1)(c) defining intoxicating quantity; inserted (4) relating to civil liability; and made minor changes in phraseology.

1987 Amendments: Chapter 68 in (2)(b) substituted "alcoholic beverages" for "liquor".

Chapter 217 throughout section changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

Construction With Other Law: Under 27-1-710(2), no provision of Title 16 may be used to find civil liability for furnishing alcohol to a person who causes damage or an injury. Liability may only be grounded in a violation of 27-1-710.

Case Notes

Annotator's Note: See case notes under 16-3-301.

Attorney General's Opinions

Legal Age for Serving Alcoholic Beverages: A person who is 18 years old may be employed as a bartender, waiter, or waitress to serve customers purchasing alcoholic beverages at retail. 38 A.G. Op. 15 (1979). (Opinion rendered prior to 1979 and 1987 amendments raising minimum age.)

Law Review Articles

Rohlfs v. Klemenhagen, LLC: Is It Time to Revise Montana's Dram Shop Act?, Sharkey, 72 Mont. L. Rev. 127 (2011).

16-6-306. Bottle clubs prohibited.

Compiler's Comments

2021 Amendment: Chapter 568 substituted current language for former language that read: "The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue." Amendment effective May 14, 2021.

Severability: Section 12, Ch. 568, L. 2021, was a severability clause.

1987 Amendment: Near beginning, before "alcoholic beverage", deleted "beer or liquor or", near middle substituted "alcoholic beverages" for "beer or liquor", and near end substituted "beverages" for "liquors".

Administrative Rules

ARM 42.12.313 Wine or beer tastings.

16-6-309. Alcoholic beverages administered to institution inmates.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In two places substituted "alcoholic beverage(s)" for "liquor".

16-6-311. Occupant of premises deemed party to offense.

Case Notes

Ostensible Agency: A conviction may be had of the owner of a tavern for a violation for sale of beer to minors by a barmaid, although the barmaid was not on the defendant's payroll. There was ample evidence tending to show, at the very least, an ostensible agency. St. v. Erlandson, 126 M 316, 249 P2d 794 (1952).

Application of Section: This section is part of the State Liquor Control Act (now ch. 1 through 6 of this title) and is applicable only to an offense against that Act. St. v. Holt, 121 M 459, 194 P2d 651 (1948).

Quasi-Presumption: This section does not provide punishment for any offense, but merely purports to state a rule of evidence, a quasi-presumption. St. v. Holt, 121 M 459, 194 P2d 651 (1948).

16-6-313. Injunction actions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In two places substituted "alcoholic beverages" for "liquor or beer".

16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 591, L. 2023. Amendment effective May 18, 2023.

2007 Amendments — Composite Section: Chapter 501 in (3) after "violates" substituted "16-3-301(5)" for "16-3-301(4)"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 516 in (3) substituted reference to 16-3-301(5) for reference to 16-3-301(4); and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 481 in (3), at end after "45-5-624(2)", inserted "or (3)"; and made minor changes in style.

1989 Amendment: In (3) changed "16-3-301(3)" to "16-3-301(4)".

1987 Amendment: In (3) changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

1985 Amendment: In (1) after "code", deleted "shall, upon conviction thereof, be deemed" and inserted "is" and after "punishable", deleted "by such fine or imprisonment, or both"; in (3) after "age", substituted "who violates 16-3-301(3) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)" for "is convicted of an offense under this code he shall be subject to a $100 fine or 30 days in confinement"; and made other minor changes in phraseology and punctuation throughout section.

Administrative Rules

ARM 42.13.101 Compliance with laws and rules.

Case Notes

Jurisdiction: On application for Writ of Prohibition by the ex officio beer board to restrain the District Court proceeding instituted by beer licensees to annul an order suspending their licenses, it was held that board did not exceed its jurisdiction in suspending licenses, but trial court in issuing order to show cause exceeded its jurisdiction. State ex rel. Stewart v. District Court, 103 M 487, 63 P2d 141 (1936).

CHAPTER 10
REGULATION OF CIGARETTE MARKETING

Chapter Law Review Articles

Cigarette Advertising Regulation: A Meta-Analysis, Nelson, 26 Int'l Rev. L. & Econ. 195 (2006).

Part 1
Policy and Definitions

Part Compiler's Comments

Student Cigarette Tobacco Referendum: Section 1, Ch. 438, L. 1991, provided: "A referendum entitled the "Montana school tobacco referendum 1991", open to all Montana students enrolled in grades 7 through 12, must be held in the second week of October 1991 in a ballot form provided by the superintendent of public instruction. The referendum must be conducted as prescribed in this section.

(1) Students enrolled on the date of the referendum in grades 7 through 12 in each accredited public school and in each accredited nonpublic school whose principal notifies the superintendent of public instruction by September 20, 1991, of intent to participate may vote in the referendum.

(2) Not later than October 1, 1991, the superintendent of public instruction shall provide instructions for the referendum, as provided in this section, to each participating school that includes grades 7 through 12. The referendum must be conducted by secret ballot and be presented to students in school in the following ballot form:

☐ YES — I DO favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

☐ NO — I DO NOT favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

(3) Votes must be tabulated by the student governing body and the principal of each participating school. The principal shall transmit in writing the vote count for his school to the superintendent of public instruction not later than November 1, 1991, together with a statement by the principal that the referendum was conducted fairly and the vote count is genuine to the best of his knowledge and belief.

(4) The superintendent of public instruction shall tabulate the total vote in the referendum from all participating schools not later than November 15, 1991. If the number of students voting in the referendum is at least 50% of the number of students enrolled in public school grades 7 through 12 on October 1, 1991, and if a majority of students voting voted for the referendum, the superintendent of public instruction shall certify to the director of the department of revenue that the referendum has been approved. Otherwise, the superintendent shall certify that the referendum has been rejected.

(5) Within 60 days of receiving certification from the superintendent of public instruction that the referendum has been approved, the department of revenue shall inform each retailer who sells cigarettes and tobacco that the referendum has been approved and ask retailers to post prominently a sign where cigarettes and tobacco are sold, stating: "Out of respect for the wishes of Montana junior and senior high school students as expressed in the Montana School Tobacco Referendum 1991, this store voluntarily agrees not to sell cigarettes and tobacco to persons under 18 years of age. Your cooperation with our Montana students' vote against tobacco sales to minors is appreciated.""

16-10-102. Declaration of policy.

Compiler's Comments

1995 Amendment: Chapter 578 near beginning, after "trades", deleted "with the intent of injuring competitors or lessening competition". Amendment effective July 1, 1995.

16-10-103. Definitions.

Compiler's Comments

1995 Amendment: Chapter 578 deleted definition of administrative agency that read: ""Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such department"; in definition of basic cost of cigarettes, near beginning, substituted "list cost" for "invoice cost" and after "cigarettes" substituted "as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind" for "to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower"; in definition of cigarettes, near end after "made of", inserted "nontobacco"; in definition of cost to the retailer, in (a) at beginning, substituted "cost to the wholesaler from whom the cigarettes were purchased by the retailer" for ""basic cost of cigarettes" to the retailer", in (xi) inserted "patronage dividends", inserted (xii) concerning expenses prior to opening business, inserted (xiii) concerning local, regional, and national administrative and operation costs, in (xiv) substituted "business" for "establishment", in (b), at beginning, inserted "The cost of doing business by the retailer must be" and at end substituted "cost to the wholesaler from whom the cigarettes were purchased" for ""basic costs of cigarettes"", in (d), at end, substituted "cost to the wholesaler" for ""basic cost of cigarettes" to the retailer", and deleted former (c) that read: "(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler""; in definition of cost to the wholesaler, in (a) near beginning of first sentence, substituted "purchased by the wholesaler from a manufacturer" for "to the wholesaler" and at end substituted "business" for "establishment", inserted (xi) concerning rebate, patronage dividends, or concessions, inserted (xii) concerning expenses prior to opening for business, inserted (xiii) concerning local, regional, and national administrative costs, inserted (xiv) concerning indirect or overhead costs, and in (b), after "wholesaler", deleted "shall also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler"; inserted definitions of department and manufacturer; in definition of person, after "corporation", substituted "or other business entity, however formed" for "for profit or nonprofit corporation, joint-stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator"; in definition of retailer, after "concession", inserted "or other outlet"; inserted definition of sole distributor; in definition of wholesaler, at end of introductory clause, inserted "services retail outlets by maintaining an established place of business for the purchase of cigarettes and who", in (a), after "manufacturer", inserted "for the purpose of selling cigarettes to retailers", in (b), after "cigarettes from", substituted "a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers" for "any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers", and deleted (iii) and (b) that read: "(iii) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.

(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Cost of Wholesaler: State Board of Equalization (now Montana Tax Appeal Board) formula requiring cigarette wholesaler to reduce wholesale price by tax discount provided for under section 84-5606.12, R.C.M. 1947 (now 16-11-114), was improper because full face value of the tax insignia was to be used in determining wholesale price. Mont. Ass'n of Tobacco & Candy Distrib. v. Bd. of Equalization, 156 M 108, 476 P2d 775 (1970).

16-10-104. Powers of department.

Compiler's Comments

1995 Amendment: Chapter 578 in (1) deleted reference to 16-10-401; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

Title 42, chapter 31, subchapters 1 through 3, ARM Cigarettes and other tobacco products.

16-10-110. Licensure as both wholesaler and retailer allowed.

Compiler's Comments

Effective Date: Section 37, Ch. 578, L. 1995, provided: "[This act] is effective July 1, 1995."

Part 2
Sales Price of Cigarettes

Part Administrative Rules

ARM 42.31.107 Accounting control of cigarette distribution.

16-10-201. Wholesaler-to-wholesaler sales.

Compiler's Comments

1995 Amendment: Chapter 578 at end substituted reference to 16-10-103(5) for reference to 16-10-103(6); and made minor changes in style. Amendment effective July 1, 1995.

16-10-203. Sales to meet competition permitted.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-10-204. Determining cost — prices below cost — free merchandise.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), in first sentence after "made", substituted "below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused" for "at a fictitious price"; in (2), after "purposes", inserted "any type of discount"; and made minor changes in style. Amendment effective July 1, 1995.

Part 3
Unlawful Practices — Exceptions

Part Administrative Rules

Title 42, chapter 31, ARM Miscellaneous tax — commercial activities.

16-10-301. Sales below cost.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), after "wholesaler", deleted "with intent to injure a competitor or substantially lessen competition"; deleted former (2) that read: "(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition"; and made minor changes in style. Amendment effective July 1, 1995.

16-10-303. Cost survey as evidence.

Compiler's Comments

1995 Amendment: Chapter 578 near beginning, after "practices", substituted "used for income tax reporting purposes" for "including those defined in 16-10-103(6)(a)", after "group" substituted "a wholesaler, or a retailer" for "for the trading area in which the offense is committed", and after "wholesaler" inserted "or both, for the state"; and made minor changes in style. Amendment effective July 1, 1995.

16-10-304. Exceptions.

Administrative Rules

ARM 42.31.305 through 42.31.313 Cigarette pricing.

16-10-306. Cigarette and tobacco product labels — federal requirements — penalty.

Compiler's Comments

2005 Amendment: Chapter 511 in (5) at end substituted "means all products containing tobacco for human consumption or use except cigarettes" for "has the meaning defined in 16-11-201"; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: This section is effective October 1, 1999.

Part 4
Enforcement

16-10-402. Injunctive and other civil relief.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), near beginning, substituted "16-10-403" for "16-10-401"; and made minor changes in style. Amendment effective July 1, 1995.

16-10-403. Revocation or suspension of license — civil penalty.

Compiler's Comments

1999 Amendment: Chapter 51 in (4) at end deleted "as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947]"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendment: Chapter 578 in (1), after "license of", substituted "impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on" for "or permit of"; in (2), at end of second and third sentences, inserted "impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty" and at end of fourth sentence inserted "and, in its discretion, may impose a civil penalty in an amount not to exceed $500"; and made minor changes in style. Amendment effective July 1, 1995.

CHAPTER 11
TAXATION OF TOBACCO PRODUCTS

Chapter Law Review Articles

State Taxation of Online Tobacco Sales: Circumventing the Archaic Bright Line Penned by Quill, Graff, 58 Fla. L. Rev. 375 (2006).

Part 1
Tax on Tobacco Products

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

Collection of Cigarette Sales Tax — Resolution of Reservation Taxation Issues — Negotiations Between State and Tribal Governments Required — Report to Legislature: Section 1, Ch. 697, L. 1991, provided: "(1) The legislature directs the department of revenue to:

(a) discuss and negotiate alternative methods for the collection of cigarette taxes, including the possibility of future tribal taxation, with the tribal governments of each Montana reservation or their designated representatives, the Montana tribal chairman's association, and the state coordinator of Indian affairs;

(b) discuss and negotiate with individual Indian tribes in Montana the possibility of resolving other state taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, through state-tribal cooperative agreements; and

(c) report its findings on negotiations with tribal authorities on a comprehensive state-tribal taxation agreement or proposed legislation to the interim committee on Indian affairs [now law and justice interim committee] prior to the 53rd legislative session.

(2) The legislature also directs the interim committee on Indian affairs [now law and justice interim committee] to work with the Montana tribal chairman's association, the state coordinator of Indian affairs, and individual tribes to:

(a) monitor negotiations conducted pursuant to subsection (1)(a) for proposed cigarette tax collection;

(b) consider alternatives for cigarette tax collection, including possible cooperative agreements to avoid dual taxation by state and tribal governments;

(c) after public hearings and consultation with tobacco wholesalers and retailers, propose legislation to the 53rd legislature to provide for collection of the cigarette sales tax from non-Indian purchasers for cigarettes sold on Indian reservations. The legislation must include a mechanism to prevent dual taxation by providing for revenue sharing between the state and a tribal government that has adopted an ordinance imposing a cigarette tax that is identical to that imposed by the state.

(d) identify other unresolved taxation issues, including but not limited to the imposition of fuel and alcohol taxes on Indian reservations, between the state and Montana Indian tribes; and

(e) propose legislation to the 53rd legislature that would facilitate a cooperative government-to-government resolution of all Indian reservation taxation issues."

Effective Date: Section 2, Ch. 697, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

Termination: Section 3, Ch. 697, L. 1991, provided: "[This act] terminates July 1, 1993."

Severability Clause: Section 31, Ch. 140, L. 1969, read: "The provisions of this act shall be severable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Part Administrative Rules

Title 42, chapter 31, subchapter 1, ARM Cigarettes.

16-11-101. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 114 substituted "Internal Revenue Code, 26 U.S.C. 164, as amended" for "federal Internal Revenue Code of 1954". Amendment effective October 1, 2003.

16-11-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 652, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 4, Ch. 652, L. 2023, provided: "[This act] applies to premium cigars sold by a wholesaler after June 30, 2023."

2019 Amendment: Chapter 3 in (1)(c) substituted "group of persons" for "group or persons". Amendment effective October 1, 2019.

2005 Amendment: Chapter 511 in (1) deleted chapter definition of cigarettes that read: ""Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco", inserted definition of contraband, and in definition of person near middle inserted "committee, other group or persons"; in (2) inserted definitions of cigarette, controlling person, directory, manufacturer's original container, moist snuff, roll-your-own tobacco, tobacco product, tobacco product vendor, and wholesale price, throughout subsection substituted references to tobacco products for references to cigarettes, deleted definition of cigarette vendor that read: ""Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer", deleted definition of public warehouses that read: ""Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers", in definition of retailer substituted "a person, other than a wholesaler, who is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines" for "a person who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail", in definition of subjobber deleted third and fourth sentences that read: "A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part", and in definition of wholesaler in introductory clause after "person who" deleted "services retail outlets by maintaining an established place of business for the purchase of cigarettes and who" and near end of (i) and (ii) inserted references to subjobbers, tobacco product vendors and wholesalers; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in definition of person, after "firm", deleted "fiduciary", after "corporation" deleted "trust, organization", and after "association" inserted "company, or other business entity"; inserted definition of manufacturer; in definition of retailer, after "person", substituted "who operates a store, stand, booth, concession, or other outlet for the purpose" for "other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business"; in definition of sale, after "cigarettes", substituted "for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means" for "by sale, as defined by 30-2-106, or by gift, barter, or exchange"; inserted definition of sole distributor; in definition of wholesaler, after "person", substituted "who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

(i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers" for "resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In definition of insignia, after "mark", inserted "or stamp"; inserted definition of record; at end of definition of subjobber substituted "this part" for "16-11-144"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

Part of Section Not Codified: The first three definitions in section 84-6801, R.C.M. 1947, were not codified in the MCA as they also appeared in subsection (1) of this section and were redundant. The remainder of section 84-6801 was codified as 16-11-201 (now repealed), which gives the history of section 84-6801.

16-11-103. Powers of department.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) in first sentence near middle and at end substituted "chapter" for "part" and in second sentence near end after "imposed by" deleted "part 2 of"; in (2) in three places after "department" inserted references to the department of revenue and the department of justice, in two places after "director" inserted "the attorney general", and in third sentence near end after "make findings and" inserted "issue"; in (3) in two places substituted "chapter" for "part" and in second sentence near middle substituted "tobacco product" for "cigarette"; in (4) at end substituted "chapter" for "part"; inserted (5) relating to department of justice investigators and prosecutors; inserted (6) relating to matters the department of revenue may request from department of justice; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 in (2), in first sentence after "empowered to conduct", deleted "investigations" and after "matter of inquiry" deleted "or investigation"; in (3), after "authorized to", inserted "contract with the department of justice for the investigations required under this part"; in (4), after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 42, chapter 31, subchapters 1 and 2, ARM Cigarettes and other tobacco products.

16-11-104. Carriers to report shipments — penalties.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at beginning inserted exception clause, in first sentence near middle substituted "state or country any tobacco products shall report" for "state any cigarettes shall, if requested by the department, report", and in third sentence increased retention time to 36 months from 30 months; inserted (2) relating to penalties; inserted (3) relating to transport to a licensed wholesaler; and made minor changes in style. Amendment effective July 27, 2005.

1991 Amendment: Near middle of first sentence, after "cigarettes shall", inserted "if requested by the department" and inserted second sentence requiring 30-month retention of records by the carrier.

Coordination Instruction: Section 4, Ch. 207, L. 1991, provided: "If Senate Bill No. 116 is passed and approved, including a section extending the statute of limitations for assessments by the state from 2 years to 5 years, the code commissioner shall change the language in the amendment to 16-11-104, requiring the retention of records regarding cigarette shipments, from 30 months to 66 months." Senate Bill No. 116 was approved March 27, 1991, but did not include an extension of the statute of limitations for assessments. Therefore, the Code Commissioner did not change the 30-month record retention requirement implemented under sec. 3, Ch. 207, L. 1991, and the coordination instruction in sec. 4, Ch. 207, L. 1991, is void.

Administrative Rules

ARM 42.31.107 Accounting control of cigarette distribution.

16-11-105. Rulemaking authority of department of justice.

Compiler's Comments

2009 Amendment: Chapter 364 at end after "16-11-147" deleted "and 16-11-149"; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

1993 Statement of Intent: The statement of intent attached to Ch. 414, L. 1993, provided: "A statement of intent is required for this bill because [sections 3 and 28] [section 3 amended 16-1-303 and section 28 was codified as 16-11-105 and 53-2-505] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. The investigative functions that rulemaking may address are limited to the factfinding responsibilities of investigators and the search and seizure functions associated with illegally stored or transported alcoholic beverages or tobacco products. It is the intent of the legislature to consolidate investigative functions under the supervision of the state attorney general."

Effective Date: Section 29, Ch. 414, L. 1993, provided that this section is effective April 19, 1993.

16-11-106. Regular and systematic solicitation of business — compliance with chapter.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-107. Secretary of state as process agent for unlicensed person doing business in state.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-108. Service of process.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-111. Cigarette, tobacco products, and moist snuff sales tax — exemption for sale to tribal member.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 652, L. 2023. Amendment effective May 19, 2023.

Applicability: Section 4, Ch. 652, L. 2023, provided: "[This act] applies to premium cigars sold by a wholesaler after June 30, 2023."

2005 Amendment: Chapter 511 inserted (7) through (10) relating to tax and administration of tax on tobacco products other than cigarettes. Amendment effective July 27, 2005.

2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1)(a) in second sentence increased tax from 70 cents to $1.70. Amendment effective January 1, 2005.

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) in second sentence increased tax from 18 cents a pack to 70 cents a pack; and made minor changes in style. Amendment effective April 30, 2003.

Transition: Section 55, Ch. 544, L. 2003, provided: "(1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year."

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

2001 Amendment: Chapter 56 in (1)(a) near end after "packages contain" substituted "other than 20 cigarettes" for "more or less than 20 cigarettes"; inserted (1)(b) providing that the tax computed under subsection (1)(a) applies to illegally packaged cigarettes; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 578 in (2) substituted "quota cigarettes" for "a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located". Amendment effective July 1, 1995.

1993 Amendment: Chapter 352 at beginning of first sentence of (1) inserted "A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business", after "must be" substituted "precollected by the wholesaler" for "collected", and after "Montana" substituted "The tax is" for "upon cigarettes sold or possessed in this state an excise tax of"; inserted (2) clarifying sales to which the tax does not apply; inserted (3) requiring precollection of tax on cigarettes entering a reservation; inserted (4) allowing for wholesaler refund of certain precollected taxes; inserted (5) providing for distribution of tax-free cigarettes; inserted (6) capping the amount of allowable wholesaler refunds; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

1992 Special Session Amendment: Chapter 15, Sp. L. July 1992, increased tax from 18 cents to 19.26 cents.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(8), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax liabilities beginning August 15, 1992. This section terminates August 15, 1993.

1991 Amendment: Near middle, after "excise tax", deleted "which shall be paid prior to the time of sale and delivery of cigarettes"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Near middle increased cigarette excise tax from 16 cents to 18 cents; and made minor changes in phraseology.

1985 Amendments: Chapter 450 at beginning deleted "From and after July 1, 1981"; and near end after "then", substituted "a tax on each cigarette equal to 1/20th the tax on a package containing not more than 20 cigarettes" for "16 cents on each 20 or fraction of 20 cigarettes contained in such package".

Chapter 704 in version effective on occurrence of contingency, at beginning deleted "From and after July 1, 1981"; and increased tax from 16 cents to 24 cents in two places.

Chapter 704 Contingent Effective Date and Termination: Section 5, Ch. 704, L. 1985, provided: "This act is effective October 1, 1985, but only if the rate of tax on cigarettes imposed by 26 U.S.C. 5701(b)(1) is reduced from $8 per thousand to $4 per thousand on that date."

Section 4, Ch. 704, L. 1985, provided that the act terminates June 30, 1987.

Nonoccurrence of Contingency: Chapter 704, L. 1985, which amended this section, provided in section 5 that the act would become effective October 1, 1985, only if the federal tax rate was reduced on that date. The tax rate was not so reduced, and therefore the amendment did not take effect.

Composite Section: Chapter 450, on packages containing more than 20 cigarettes, provided for a formula which assesses a greater amount of tax than the 24 cents per package set forth in Ch. 704. Therefore, in preparation of the composite of the Ch. 450 and 704 amendments, the Code Commissioner has codified the formula set forth in Ch. 450. Section 4, Ch. 704, L. 1985, provided a termination date of June 30, 1987; therefore, the version printed as temporary is revived July 1, 1987.

1983 Amendment: Changed tax from 12 cents to 16 cents twice.

1981 Amendment: Substituted "July 1, 1981" for "March 5, 1971" following "after" in the first sentence; consolidated the sales tax on cigarettes by adding the 2-cent tax in (2) and the 1-cent tax in (3) to subsection (1); deleted former subsections (2) and (3). For former text, see sec. 4, Ch. 222, L. 1971.

Administrative Rules

ARM 42.31.107 Accounting control of cigarette distribution.

ARM 42.31.131 Cigarette tax refunds.

Case Notes

Tax Not Applicable on Flathead Reservation: The cigarette excise tax imposed by the State of Montana is invalid with respect to the sale of cigarettes by a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation when sale is made within the Flathead Reservation to Indians residing on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

Tax Not Arbitrary: There is no merit in the contention that this is an arbitrary tax. State ex rel. Graham v. Bd. of Examiners, 125 M 419, 239 P2d 283 (1952).

16-11-112. Tax on ultimate consumer.

Compiler's Comments

Part of Section Not Codified: The first sentence of section 84-5606.10, R.C.M. 1947, was not codified in the MCA as it was a temporary definition. The second sentence became the second sentence of this section. The temporary definition was enacted by sec. 9, Ch. 140, L. 1969. It has not been repealed and is still valid law.

Administrative Rules

ARM 42.31.131 Cigarette tax refunds.

Case Notes

Tax Not Applicable on Flathead Reservation: The cigarette excise tax imposed by the State of Montana is invalid with respect to the sale of cigarettes by a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation when sale is made within the Flathead Reservation to Indians residing on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

16-11-113. Tax insignia.

Compiler's Comments

1995 Amendment: Chapter 578 in (1) substituted "wholesaler" for "distributor or dealer" and deleted second sentence that read: "A person specifically exempted under the provisions of 16-11-132(2) is not considered to be acting unlawfully under this section"; at beginning of (3) deleted "Wholesalers and" and at end deleted "and licensed retailers"; and substituted (5) concerning nonapplicability to cigarettes for an Indian tribe or a military reservation for former text that read: "Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler." Amendment effective July 1, 1995.

1991 Amendment: In (1), at beginning, substituted "Except as provided in this section" for "Within 72 hours after receipt by" and after "any cigarettes" deleted exception clause; in (2) substituted "applied" for "canceled" and after "sale" deleted "or removal for consumption"; deleted former (3) that read: "(3) Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened"; in (4), near beginning after "cigarettes", inserted "without the insignia affixed" and near middle, after "other person", deleted "without the insignia affixed and canceled or not marked as having been received by the unlicensed wholesaler, retailer, or person within the preceding 72 hours", and near end, after "kept", inserted "in that place of business"; inserted (5) requiring affixation of insignia prior to sale by wholesaler; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

Section Not Codified: Section 84-5606.11, R.C.M. 1947, was not codified in the MCA as subsection (4) of this section states the same law. It has not been repealed and is still valid law. It was enacted by sec. 10, Ch. 140, L. 1969.

Administrative Rules

ARM 42.31.101 Affixing cigarette tax insignia.

ARM 42.31.102 Marking unstamped cigarettes.

ARM 42.31.107 Accounting control of cigarette distribution.

16-11-114. Insignia discount.

Compiler's Comments

2007 Amendment: Chapter 475 in (2) in first sentence after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 511 inserted (2) relating to wholesaler defrayment for taxes on tobacco products other than cigarettes; and made minor changes in style. Amendment effective July 27, 2005.

2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1) decreased percentage from 1.66% to 0.90%; in (2) decreased percentage from 1.11% to 0.60%; and in (3) decreased percentage from 0.83% to 0.45%. Amendment effective January 1, 2005.

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) reduced discount from 6% to 1.66%; in (2) reduced discount from 4% to 1.11%; in (3) reduced discount from 3% to 0.83%; and made minor changes in style. Amendment effective April 30, 2003.

Transition: Section 55, Ch. 544, L. 2003, provided: "(1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year."

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

1995 Amendment: Chapter 578 near beginning, after "wholesaler", deleted "and licensed retailer"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Near middle of introductory clause after "less" deleted "3%" and inserted "the following percentage"; inserted (1) through (3) establishing progressive percentage amounts.

1981 Amendment: Reduced the discount on the purchase of an insignia from 8% to 3% of face value; deleted "This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program." at the end of the section.

Case Notes

Calculating Wholesale Price: Despite provisions of this section for discount to wholesalers in purchasing tax insignia, under 16-11-112 the full face value of the insignia is to be used in calculating wholesale cigarette price, so that State Board of Equalization (now Tax Appeal Board) formula reducing wholesale cost by discount was improper. Mont. Ass'n of Tobacco & Candy Distrib. v. Bd. of Equalization, 156 M 108, 476 P2d 775 (1970).

16-11-115. Tax meter machine — tax stamp-applying machine — purchase of stamps.

Compiler's Comments

1995 Amendment: Chapter 578 in (1), near end of third sentence after "wholesaler", deleted "or retailer"; in last sentence of (1) and in (2)(a), after "wholesaler", deleted "or licensed retailer"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted (2) allowing use of and setting regulations regarding heat-applied tax stamp machines; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

1983 Amendment: In sixth sentence, after "defrayment" deleted "of 8%".

Administrative Rules

ARM 42.31.105 Storage of stamps.

ARM 42.31.111 Purchasing roll or hand-applied cigarette tax insignia.

16-11-116. Resale of insignia prohibited — rebate.

Compiler's Comments

1995 Amendment: Chapter 578 in three places, after "wholesaler", deleted "or retailer"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In second sentence, in two places after "settings", inserted "or tax insignia"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

16-11-117. When payment for insignia due.

Compiler's Comments

1995 Amendment: Chapter 578 in first and third sentences, after "wholesaler", deleted "or licensed retailer"; near beginning of first sentence substituted "may" for "shall" and at end deleted "after the date of purchase and shall require such licensee to"; at beginning of second sentence inserted "To be eligible to defer payment, a wholesaler" and after "department" substituted "either a surety bond or other cash security, as approved by the department" for "a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state"; in last sentence, near end after "bond", inserted "or security"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers.

Compiler's Comments

2005 Amendment: Chapter 511 throughout section in three places substituted "tobacco products" for "cigarettes"; in (1) in introductory clause inserted reference to subjobbers and decreased number of years from 5 to 3; in (1)(a) at end inserted "or sold"; inserted (2) relating to invoices to be kept by retailers and tobacco product vendors; in (3) near beginning inserted "retailer, subjobber, or tobacco product vendor"; inserted (4) relating to penalties; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in first sentence, near beginning, substituted "wholesalers" for "tax meter users and stampers" and after "cigarettes" deleted "by the tax meter users or stampers"; at beginning of second sentence substituted "A wholesaler" for "The tax meter users or stampers", after "examine all" deleted "taxable items of", and at end substituted "compliance with this chapter" for "whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 414 in second sentence, after "department", inserted "and the department of justice"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In three places, after "tax meter users", inserted reference to stampers; near beginning of first sentence substituted "5 years" for "a period of 1 year"; near middle of second sentence, after "meter machine", inserted "or tax stamp-applying machine"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 8, Ch. 130, L. 1991, was a saving clause.

16-11-119. Disposition of taxes — statutory appropriation.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 547, L. 2023, in (2)(a) substituted "$5 million" for "$4 million". Amendment effective July 1, 2023.

Section 2, Ch. 738, L. 2023, inserted (2)(d) regarding deposit in veterans and surviving spouses state special revenue account; and made minor changes in style. Amendment effective July 1, 2023.

Applicability: Section 4, Ch. 547, L. 2023, provided: "[This act] applies to fiscal years beginning after June 30, 2023."

2021 Amendment: Chapter 561 in (2)(a) after "8.3% or" substituted "$4 million" for "$2 million". Amendment effective July 1, 2021.

Applicability: Section 4, Ch. 561, L. 2021, provided: "[This act] applies to fiscal years beginning after June 30, 2021."

2019 Amendment: Chapter 469 in (2)(b) before "long-range building program" inserted "major repair". Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2017 Amendment: Chapter 77 inserted (1) regarding deposit or allocation of amount needed to purchase cigarette tax stamps; in (2) at beginning inserted "After the deposit or allocation in subsection (1)"; deleted former (2)(b) that read: "(b) for fiscal years beginning July 1, 2011, and ending June 30, 2015, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana"; inserted (5) regarding statutory appropriation of amount needed to purchase cigarette tax stamps; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment — Coordination: Chapter 324 in (1)(b) near beginning after "years" substituted "beginning July 1, 2011, and ending June 30, 2015" for "ending June 30, 2010, and June 30, 2011". Amendment effective July 1, 2011.

The amendments to this section made by sec. 12, Ch. 19, L. 2011, were rendered void by sec. 8, Ch. 324, L. 2011, a coordination section.

Preamble: The preamble attached to Ch. 324, L. 2011, provided: "WHEREAS, the 61st Legislature in section 1, Chapter 461, Laws of 2009, provided for the establishment of a southwestern Montana state veterans' home; and

WHEREAS, the 61st Legislature established a state special revenue account that is funded by a portion of cigarette tax collections for the construction of a state veterans' home in southwestern Montana; and

WHEREAS, a portion of cigarette tax collections has been historically used for the operation and maintenance of state veterans' nursing homes; and

WHEREAS, based on a recent cost estimate, additional cigarette tax collections are needed in the state special revenue account to construct the state veterans' home in southwestern Montana in the future."

2009 Amendments — Composite Section: Chapter 461 inserted (1)(b) providing for deposit in state special revenue fund for construction of state veterans' home; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 486 in (1)(a) in first sentence after "in" inserted "an account in" and inserted second and third sentences prohibiting expenditure and transfer of certain funds in the account; in (1)(d) before "health" deleted "state special revenue fund to the credit of the"; in (2) near beginning after "revenue" substituted "account" for "fund"; and made minor changes in style. Amendment effective July 1, 2009, and terminates June 30, 2011.

2007 Amendment: Chapter 475 in (1) in introductory clause and in (3) in introductory clause after "provisions of" substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

2005 Amendment: Chapter 511 inserted (3) relating to taxes collected on tobacco products other than cigarettes. Amendment effective July 27, 2005.

2004 Amendment by Initiative: Initiative Measure No. 149, proposed by initiative petition and approved at the general election held November 2, 2004, in (1)(b) decreased percentage from 4.3% to 2.6%; inserted (1)(c) concerning allocation to health and medicaid initiatives account; and made minor changes in style. Amendment effective January 1, 2005.

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8%.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

2003 Amendment: Chapter 544 in (1) after "must" inserted "in accordance with the provisions of 15-1-501" and substituted "deposited" for "allocated"; in (1)(a) substituted "8.3% or $2 million, whichever is greater" for "The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited"; deleted former (2) that read: "(2) The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund"; in (1)(b) substituted "4.3%" for "The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited"; inserted (1)(c) concerning deposit in general fund; inserted (2) concerning amount in fund for maintenance of state veterans' nursing homes; and made minor changes in style. Amendment effective April 30, 2003.

Saving Clause: Section 59, Ch. 544, L. 2003, was a saving clause.

Severability: Section 60, Ch. 544, L. 2003, was a severability clause.

Applicability: Section 62(1)(a), Ch. 544, L. 2003, provided: "(1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003."

1997 Amendment: Chapter 422 inserted introductory clause; in (1), after "collected", deleted "under the provisions of 16-11-111"; deleted former (2) that read: "(2) All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501, be deposited as follows"; in (2), at beginning, substituted present language relating to deposit of 73.04% in the state general fund for "79.75% in the long-range building program fund in the debt service fund type"; in (3) substituted present language relating to deposit of 15.85% in the long-range building account for "20.25% in the long-range building program account provided for in 17-7-205"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 18 near end of introductory clause of (2), after "15-1-501", deleted reference to subsection (6); at beginning of (2)(a) substituted "79.75%" for "79.25%"; and made minor changes in style.

Chapter 456 at beginning of (2)(a) substituted "79.75%" for "79.25%"; in (2)(b), at end, substituted "account provided for in 17-7-205" for "fund in the capital projects fund type"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in first sentence of (1) substituted "department of public health and human services" for "department of corrections and human services"; and at beginning of (2)(a) substituted "79.75%" for "79.25%". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 455 near middle inserted "in accordance with the provisions of 15-1-501(6)" and after "be" deleted "paid to the state treasurer and"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 548 at beginning inserted "The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes"; in second sentence increased percentage deposited to debt service fund type from 70.89% to 79.25% and decreased percentage deposited to capital projects fund type from 29.11% to 20.25%; and made minor changes in style. Amendment effective July 1, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

1992 Special Session Amendments: Chapter 3, Sp. L. July 1992, in (1), at beginning, inserted exception clause and after "taxes" deleted "levied, imposed, and assessed by said section"; inserted (2) transferring money to the general fund; and made minor changes in style. Amendment effective July 21, 1992, and terminates June 30, 1993.

Chapter 15, Sp. L. July 1992, increased percentage of proceeds deposited in long-range building program fund from 70.89% to 72.79% and decreased percentage of proceeds deposited in capital projects fund type from 29.11% to 27.21%.

Effective Date: Section 38, Ch. 15, Sp. L. July 1992, provided that this act is effective on passage and approval. The act became effective pursuant to Article VI, sec. 10, of the Montana Constitution due to the passage of 25 days after delivery without gubernatorial action on the bill. Effective August 14, 1992.

Applicability — Termination: Section 39(8), Ch. 15, Sp. L. July 1992, provided that this section applies for 1 calendar year to tax liabilities beginning August 15, 1992. This section terminates August 15, 1993.

1989 Amendment: Near middle decreased percentage to be deposited in debt service fund type from 79.75% to 70.89% and increased percentage to be deposited in capital projects fund type from 20.25% to 29.11%. Amendment effective November 1, 1989.

1985 Amendment: In version effective on occurrence of contingency, inserted provision for 33.33% to be deposited in the state general fund; decreased debt service percentage to 53.17% from 79.75%; and decreased capital projects percentage to 13.5% from 20.25%.

1985 Amendment Contingent Effective Date — Termination: Section 5, Ch. 704, L. 1985, provided: "This act is effective October 1, 1985, but only if the rate of tax on cigarettes imposed by 26 U.S.C. 5701(b)(1) is reduced from $8 per thousand to $4 per thousand on that date."

Section 4, Ch. 704, L. 1985, provided that the act terminates June 30, 1987.

Nonoccurrence of Contingency: Chapter 704, L. 1985, which amended this section, provided in section 5 that the act would become effective October 1, 1985, only if the federal tax rate was reduced on that date. The tax rate was not so reduced, and therefore the amendment did not take effect.

1983 Amendments: Chapter 281, substituted "fund in the debt service fund type" for "account in the sinking fund"; and substituted "fund in the capital projects fund type" for "account in the bond proceeds and insurance clearance fund".

Chapter 608, increased the amount deposited in the long-range building program fund in the debt service fund type from 73% to 79.75% and reduced the amount deposited in the long-range building program fund in the capital projects fund type from 27% to 20.25%.

1981 Amendment: Deleted "(1)" after "16-11-111" in the first sentence; deleted "50% in the general fund" after "as follows:" in the middle of the section; increased the amount deposited in the long-range building program account in the sinking fund from 15% to 73%; reduced the amount deposited in the long-range building program account in the bond proceeds and insurance clearance fund from 35% to 27%; deleted former subsections (2) through (5). For former text see sec. 222, Ch. 516, L. 1973.

16-11-120. Tobacco product licenses.

Compiler's Comments

2005 Amendment: Chapter 511 in three places substituted "tobacco product" for "cigarette"; and made minor changes in style. Amendment effective July 27, 2005.

1997 Amendment: Chapter 366 at beginning of third sentence, after "forms", substituted "must include" for "shall require" and at end substituted "rules" for "regulations" and inserted fourth sentence requiring Department compliance with rules issued by the Board of Review; and made minor changes in style.

Administrative Rules

ARM 42.31.121 Corporate applicants for cigarette licenses.

Case Notes

Indian Dealer on Flathead Reservation: Cigarette dealer's license tax imposed by the State of Montana is invalid with respect to a member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation selling cigarettes on the reservation. Moe v. Confederated Salish & Kootenai Tribes, 425 US 463, 96 S Ct 1634, 48 L Ed 2d 96 (1976), affirming Confederated Salish & Kootenai Tribes v. Moe, 392 F. Supp. 1297 (D.C. Mont. 1975).

16-11-121. Vending machines not places of business.

Compiler's Comments

1995 Amendment: Chapter 578 at beginning of second sentence substituted "The form must include" for "which shall state"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-122. License fees — renewal.

Compiler's Comments

2021 Amendment: Chapter 455 in (3) increased fee from $5 to $50; and in (4) increased fee from $5 to $20. Amendment effective May 10, 2021.

2015 Amendment: Chapter 337 inserted (4) regarding fee for alternative nicotine or vapor products license; and made minor changes in style. Amendment effective January 1, 2016.

2005 Amendment: Chapter 511 in (1) near middle inserted "or a tobacco product vendor's license". Amendment effective July 27, 2005.

1997 Amendment: Chapter 366 inserted (4) allowing payment of license fees by credit card; in (5), after "annually", inserted "on or before the anniversary date established by rule by the board of review established in 30-16-302 and" and after "fee" substituted "are" for "in the amount set forth above and shall be"; and made minor changes in style.

16-11-124. Disposition of license fees.

Compiler's Comments

2009 Amendment: Chapter 10 deleted former (3) that read: "All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports". Amendment effective October 1, 2009.

1993 Amendment: Chapter 414 in (2), after "department", inserted "and the department of justice" and at end substituted "cigarette enforcement responsibilities of each department" for "department's cigarette enforcement division"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near end of (1) substituted "general" for "department's cigarette enforcement account in the state special revenue"; at beginning of (2) deleted "For the biennium beginning July 1, 1971, and each", after "biennium" deleted "thereafter", and at end, after "division", deleted "providing that after payment of all pending and known expenses, all sums so appropriated in excess of $7,500 not needed for the administration of this part shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within 15 days of the last day of the biennium"; in (3) substituted "the appropriation" for "said cigarette enforcement account"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part of Section Not Codified: An appropriation provision of section 84-5606.6, R.C.M. 1947, relating to the 1971 fiscal year, was not codified in the MCA as it is a temporary provision. It has not been repealed and is still technically valid law.

16-11-125. Licensure as both wholesaler and retailer allowed.

Compiler's Comments

Effective Date: Section 37, Ch. 578, L. 1995, provided: "[This act] is effective July 1, 1995."

16-11-126. Joint and several liability.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-128. Tobacco product sales reporting requirements.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-129. Enforcement.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

16-11-131. Transporting tobacco products without compliance a misdemeanor — invoices and delivery tickets required — stop and inspection authorized.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at end substituted "any tobacco products that do not comply with the requirements of this chapter" for "any cigarettes that do not bear the insignia (stamps) required by this part"; in (2)(a) in three places inserted "or roll-your-own tobacco"; in (2)(b) in introductory clause near beginning inserted "or roll-your-own tobacco", near middle inserted reference to contraband, after "forfeiture" inserted "destruction", and near end inserted references to 16-11-159 and 16-11-509; in (2)(b)(iii) at end inserted "or roll-your-own tobacco"; inserted (2)(b)(iv) relating to cigarettes and roll-your-own tobacco not on the directory; in (3) near beginning inserted "or roll-your-own tobacco" and near middle inserted "or cigarettes or roll-your-own tobacco that is not on the directory"; in (4) near middle substituted "tobacco products" for "cigarettes" and substituted "chapter" for "section"; inserted (5) relating to requiring labeling for tobacco products not shipped in original container or wrapping; in (6) at end inserted "and is subject to the penalties in 16-11-148"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 at end of (1) deleted "except for a person specifically exempted in 16-11-132(2)"; and deleted second sentence of (2)(a) that read: "If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state." Amendment effective July 1, 1995.

1993 Amendment: Chapter 352 in (1), after "insignia", inserted "(stamps)"; inserted (2) establishing requirements applicable to transporting unstamped cigarettes; inserted (3) regarding transportation of cigarettes from a point outside the state to a point in another state; inserted (4) allowing certain agents and officers to stop and inspect a vehicle that is reasonably believed to be transporting illegal cigarettes; in (5), after "misdemeanor", deleted "and shall be punished as hereinafter provided"; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the references to the Department of Justice in (4) are effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

16-11-132. Unlawful to sell tobacco products without valid license — exceptions.

Compiler's Comments

2005 Amendment: Chapter 511 throughout section substituted references to tobacco products for references to cigarettes; throughout section after "subjobber" inserted "tobacco product vendor"; in (1) at beginning inserted "Unless approved by the department"; in (3) near beginning substituted "this section shall be punished as provided in 16-11-148" for "this section is guilty of a misdemeanor and shall be punished as provided in this part" and at end substituted "and destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159" for "to the state"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in (2), in second sentence before "wholesaler" and "subjobber", deleted "resident" and before "person" substituted "any" for "resident or nonresident"; at beginning of (2)(a), (2)(b), and (2)(c) deleted "such resident or nonresident"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-133. Sale and use of cigarettes without insignia unlawful.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) at beginning inserted "Unless approved by the department" and at end inserted "and is subject to the penalties in 16-11-148"; inserted (2) relating to transportation into state for personal use; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 at end deleted "and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-134. Forged license stamp or insignia.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

16-11-141. Powers of arrest — search and seizure.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) in second sentence near middle substituted "chapter" for "part" and near end substituted "contraband" for "any unlawful or unlawfully possessed license, stamp, or insignia"; inserted (2) relating to seizure and forfeiture of contraband; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 at end of first sentence substituted "of justice is a criminal justice agency" for "shall administer and enforce this part" and in second sentence, after "agents", inserted "of the department of justice" and substituted "have peace officer status" for "have the powers of peace officers"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-142. Duties of county attorneys and peace officers.

Compiler's Comments

2005 Amendment: Chapter 511 in two places substituted "chapter" for "part"; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendment: Chapter 414 in two places, after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

16-11-143. Penalty and interest for unpaid tobacco product tax.

Compiler's Comments

2005 Amendment: Chapter 511 in two places before "tax" inserted "tobacco product". Amendment effective July 27, 2005.

1999 Amendment: Chapter 427 in (1) at end substituted "penalty and interest as provided in 15-1-216" for "a penalty that is the greater of 5% of the tax or $50 against the person and notify the person of the amount"; and made minor changes in style. Amendment effective January 1, 2000.

Applicability: Section 57, Ch. 427, L. 1999, provided that this section applies to all tax periods beginning after December 31, 1999.

1995 Amendment: Chapter 578 in (1), after "assess the tax", substituted "plus a penalty that is the greater of 5% of the tax or $50" for "so determined" and deleted second sentence that read: "After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater"; in (2), in two places in first sentence after "tax", inserted "penalty"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-144. Revocation or suspension of license.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) near beginning inserted "tobacco product vendor", after "retailer" deleted "cigarette vendor", after "provision of" deleted "this part", and near end substituted "this chapter" for "the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3)"; in (4) in two places substituted "tobacco products" for "cigarettes" and near middle substituted "is subject to the penalties in 16-11-148" for "must be punished as provided in this part"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendments — Composite Section: Chapter 439 in (1), after "vendor", inserted "or person licensed under 16-11-303" and inserted "Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3)"; and made minor changes in style.

Chapter 578 in (2), at beginning of second sentence, inserted "If the person is aggrieved by the decision of the department"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

16-11-145. Place where violations committed considered public nuisance.

Compiler's Comments

2005 Amendment: Chapter 511 in two places substituted "tobacco products" for "cigarettes"; in two places substituted "chapter" for "part"; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 in first sentence, after "permits", substituted "cigarettes to be sold in violation of this part" for "the same to be done"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-146. Penalty for forged license stamp or insignia.

Compiler's Comments

2005 Amendment: Chapter 511 inserted last sentence relating to civil penalties. Amendment effective July 27, 2005.

16-11-147. Seizure and forfeiture of property used in transporting contraband.

Compiler's Comments

2005 Amendment: Chapter 511 near beginning substituted "in which contraband with a value of $1,000 or more is being unlawfully transported, together with the contraband" for "in which cigarettes are being unlawfully transported, together with the cigarettes" and at end substituted "16-11-159" for "subsection (2)"; deleted former (2) through (4) that read: "(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than $500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized"; and made minor changes in style. Amendment effective July 27, 2005.

1993 Amendments — Composite Section: Chapter 352 near middle of (2), after "made", inserted "or any other person having a right or interest in the seized property" and deleted second sentence that read: "The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312"; inserted (3) allowing forfeiture of seized property within 15 days absent written notice; inserted (4) providing for a hearing upon a written claim of ownership; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 414 in (1), near end after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

A style change in (2) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Preamble: The preamble attached to Ch. 352, L. 1993, provided: "WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes."

Coordination: Section 13(2), Ch. 352, L. 1993, provided: "If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] [amending 16-11-131 and 16-11-147] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void." House Bill No. 609 was approved as Ch. 414, L. 1993; therefore, the reference to the Department of Justice in (4) is effective.

Applicability: Section 15, Ch. 352, L. 1993, provided that the 1993 amendments to this section apply to cigarette sales made by a wholesaler after September 30, 1993.

1991 Amendment: Near end of (2) substituted "46-5-311" for "46-5-302"; and made minor changes in style.

16-11-148. Penalties and other remedies.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) near beginning of first sentence inserted "purposeful, knowing, or negligent" and at end inserted "punishable by imprisonment for a term of up to 1 year or by a fine of up to $1,000, or both", deleted former second sentence that read: "A person violating any provision of this part shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or both", inserted second sentence relating to a first offense involving contraband worth less than $1,000, deleted former third sentence that read: "If the person is the holder of a license issued under this part, the license must be revoked by the department for 1 year", and inserted third sentence relating to punishment for second and subsequent violations; inserted (2) relating to suspension or revocation of a license; inserted (3) and (4) relating to civil penalties for cigarette contraband; and made minor changes in style. Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 near beginning of second sentence, after "provision", inserted "of this part"; and made minor changes in style. Amendment effective July 1, 1995.

16-11-149. Hearings before department.

Compiler's Comments

2021 Amendment: Chapter 142 in (4) substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2009 Amendment: Chapter 364 in (1) near middle and in (2) in two places substituted reference to department for reference to state tax appeal board; inserted (4) allowing appeal of a final department order to the state tax appeal board; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 364, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2008."

2007 Amendment: Chapter 44 in third sentence after "order" substituted "on the grounds that" for "in the premises as". Amendment effective October 1, 2007.

2005 Amendment: Chapter 511 in first sentence near beginning substituted "agents taken to enforce the tax provisions" for "agents under the provisions". Amendment effective July 27, 2005.

1995 Amendment: Chapter 578 near middle of first sentence inserted "except for a revocation of a license pursuant to 16-11-144"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 414 made minor changes in style. Amendment effective July 1, 1993.

16-11-150. Appeal to district court.

Compiler's Comments

2005 Amendment: Chapter 511 near beginning substituted "department or the department of justice" for "state tax appeal board"; and made minor changes in style. Amendment effective July 27, 2005.

16-11-155. Definitions.

Compiler's Comments

2005 Amendment: Chapter 511 in introductory clause deleted reference to 16-11-157; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-156. Stamps affixed on cigarettes — exception.

Compiler's Comments

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

Administrative Rules

ARM 42.31.102 Marking unstamped cigarettes.

16-11-158. Sale or retention of forfeited property — use of sale proceeds — destruction of contraband.

Compiler's Comments

2005 Amendment: Chapter 511 in (1) substituted "16-11-159" for "16-11-147"; in (1)(a) near middle substituted "this chapter" for "16-11-111, 16-11-131, 16-11-147, and 16-11-155 through 16-11-158"; in (1)(b) inserted "other than contraband" and deleted last sentence that read: "The department, before delivering a seized item, shall first require stamps to be affixed"; in (2) in first sentence near middle substituted "property" for "item"; inserted (3) relating to destruction of contraband; and made minor changes in style. Amendment effective July 27, 2005.

Effective Date: Section 14(2), Ch. 352, L. 1993, provided that this section is effective July 1, 1993.

Applicability: Section 15, Ch. 352, L. 1993, provided that this section applies to cigarette sales made by a wholesaler after September 30, 1993.

16-11-159. Forfeiture of contraband and property used in transporting contraband.

Compiler's Comments

Effective Date: Section 37, Ch. 511, L. 2005, provided: "[This act] is effective 90 days after passage and approval." Approved April 28, 2005, effective July 27, 2005.

Part 3
Youth Access to Tobacco Products Control Act

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 569, L. 1993, provided: "A statement of intent is required for this bill because [section 11] [16-11-312] grants the department of revenue authority to adopt rules.

It is the intent of the legislature to reduce the number of young people who use tobacco products, to recognize the responsibility of retail sellers for contributing to the use of tobacco products by young people, to establish a system of regulations and sanctions prohibiting the sale or distribution of tobacco products to young people, and to provide for the posting of signs informing young people that sales or distribution of tobacco products to them is illegal."

16-11-302. Definitions.

Compiler's Comments

2015 Amendment: Chapter 337 inserted definitions of alternative nicotine product and vapor product; in definition of tobacco product inserted (b) regarding products excluded from the definition of tobacco product; and made minor changes in style. Amendment effective January 1, 2016.

16-11-303. License for retail sale of tobacco products — alternative nicotine products — vapor products.

Compiler's Comments

2015 Amendment: Chapter 337 in (1) and (2) after "tobacco products" inserted "alternative nicotine products, or vapor products"; and made minor changes in style. Amendment effective January 1, 2016.

16-11-304. Signs.

Compiler's Comments

2015 Amendment: Chapter 337 in three places after "tobacco products" inserted references to alternative nicotine products and vapor products; and made minor changes in style. Amendment effective January 1, 2016.

1995 Amendment: Chapter 439 near middle, before "sold", inserted "displayed and".

Administrative Rules

ARM 42.31.335 Signs.

16-11-305. Sale or distribution of tobacco products, alternative nicotine products, or vapor products to persons under 18 years of age prohibited.

Compiler's Comments

2021 Amendment: Chapter 264 inserted (3) concerning compliance with 16-3-313. Amendment effective October 1, 2021.

2015 Amendment: Chapter 337 after "tobacco product" inserted "alternative nicotine product, or vapor product"; and made minor changes in style. Amendment effective January 1, 2016.

16-11-306. Sales of tobacco, alternative nicotine products, or vapor products through vending machines restricted.

Compiler's Comments

2015 Amendment: Chapter 337 in (1) in three places, in (2), and in (3) in two places after "tobacco products" inserted references to alternative nicotine products and vapor products; and made minor changes in style. Amendment effective January 1, 2016.

1997 Amendment: Chapter 518 in (1), near beginning after "only in", substituted "places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products" for "(1) factories, businesses, offices, and other places not open to the general public;
(2) places to which individuals under 18 years of age are not permitted access;
(3) places where alcoholic beverages are sold and consumed on the premises; and
(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of 16-11-305"; inserted (2) limiting vending machine sale of tobacco products in restaurants; and inserted (3) clarifying that sale of tobacco products from a vending machine is considered a sale by the owner or employee of an establishment.

Administrative Rules

ARM 42.31.330 Decals on vending machines.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited — minimum package size.

Compiler's Comments

2001 Amendment: Chapter 56 inserted (2) prohibiting distribution or manufacture of cigarettes in packages of less than 20 and defining rolling tobacco; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 439 inserted second sentence prohibiting the sale of single cigarettes.

16-11-308. Civil penalties — license suspension — tobacco education fee.

Compiler's Comments

2015 Amendment: Chapter 337 in (2)(c) and (6) after "tobacco product" inserted "alternative nicotine product, or vapor product"; and made minor changes in style. Amendment effective January 1, 2016.

2001 Amendment: Chapter 56 in (1) near middle inserted "or the manufacture or sale of cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307"; in (2) near beginning substituted "16-11-307(1)" for "16-11-307"; in (2)(d) inserted "under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2)"; in (2)(e) inserted "under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent offense under 16-11-307(2)"; in (4) inserted "or civil penalties"; in (6) near beginning substituted "16-11-307(1)" for "16-11-307"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 389 in (9) substituted present language requiring fees to be deposited into general fund for former language that read: "(9) Fees assessed pursuant to this section must be deposited in an account in the state special revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of public health and human services to defray the costs of the tobacco education program. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144 and this section." Amendment effective July 1, 1999.

1997 Amendment: Chapter 518 in (5), at end of third sentence deleted "pursuant to the provisions of the Montana Administrative Procedure Act" and inserted fourth sentence allowing a hearing to be conducted with electronic equipment and requiring compliance with the Montana Administrative Procedure Act; in (6), at end of fourth sentence, deleted "pursuant to the provisions of the Montana Administrative Procedure Act" and inserted fifth sentence allowing a hearing to be conducted with electronic equipment and requiring compliance with the Montana Administrative Procedure Act; and made minor changes in style.

1995 Amendment — Coordination Instruction: Chapter 439 inserted second sentence in (1) authorizing Department to collect penalty in manner provided for collection of other debts; and substituted (2) through (9) relating to punishment for first through seventh and subsequent offenses and assessment of tobacco education fees for former language in (2) through (5) that read: "(2) A person who violates 16-11-305(1) may be punished by a civil penalty of $100. A subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).

(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty."

The amendments to this section in Ch. 578, L. 1995, were rendered void pursuant to sec. 36, Ch. 578, L. 1995, a coordination section.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

Administrative Rules

ARM 42.31.345 Penalties for youth access.

16-11-309. Inspection and notification of violation required.

Compiler's Comments

2015 Amendment: Chapter 337 in (1) near beginning after "tobacco products" inserted "alternative nicotine products, or vapor products"; and made minor changes in style. Amendment effective January 1, 2016.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

16-11-310. Minors not liable for possession or attempt to purchase.

Compiler's Comments

2015 Amendment: Chapter 337 after "tobacco product" inserted "alternative nicotine product, or vapor product". Amendment effective January 1, 2016.

2001 Amendment: Chapter 498 inserted "or the attempt to purchase"; and made minor changes in style. Amendment effective October 1, 2001.

16-11-311. Local regulations.

Compiler's Comments

2021 Amendment: Chapter 455 near middle inserted "including alternative nicotine or vapor products as provided in 16-11-313" and at end inserted "and 16-11-313"; and made minor changes in style. Amendment effective May 10, 2021.

16-11-313. Alternative nicotine products and vapor products — local ordinance or resolution — prohibition.

Compiler's Comments

Effective Date: Section 6, Ch. 455, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 10, 2021.

Part 4

Tobacco Products Reserve Fund — Administration

Part Compiler's Comments

Effective Date: Section 5, Ch. 412, L. 1999, provided that this part is effective on passage and approval. Approved April 21, 1999.

16-11-402. Definitions.

Compiler's Comments

2005 Amendment: Chapter 324 in definition of units sold at end of first sentence deleted "bearing the excise tax stamp of the State"; and made minor changes in style. Amendment effective April 21, 2005.

16-11-403. Requirements.

Compiler's Comments

2003 Amendment: Chapter 397 in (2)(b)(ii) after "escrow" inserted "on account of units sold in the state" and after "than the" substituted reference to Master Settlement Agreement payments that the manufacturer would have been required to make on units had it been a participating manufacturer for "State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer"; and made minor changes in style. Amendment effective April 17, 2003.

16-11-404. Attorney fees and costs.

Compiler's Comments

2005 Amendment: Chapter 324 in (2) at end deleted "The funds are statutorily appropriated as provided in 17-7-502." Amendment effective July 1, 2005.

Severability: Section 17(1), Ch. 397, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 397, L. 2003, provided that this section is effective on passage and approval. Approved April 17, 2003.

Retroactive Applicability: Section 21, Ch. 397, L. 2003, provided: "The legislature intends that [section 13 and 15][16-11-404 and 17-7-502] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act]." Effective April 17, 2003.

Part 5

Tobacco Products Reserve Fund — Enforcement

Part Compiler's Comments

Severability: Section 17(1), Ch. 397, L. 2003, was a severability clause.

Effective Date: Section 20, Ch. 397, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 17, 2003.

16-11-502. Definitions.

Compiler's Comments

2005 Amendment: Chapter 324 in definition of wholesaler at end inserted provision relating to a person required to remit the tax on other tobacco products; and made minor changes in style. Amendment effective April 21, 2005.

16-11-503. Certifications.

Compiler's Comments

2005 Amendment: Chapter 324 in (1) at end substituted "parts 4 and 5 of this chapter and any rules adopted pursuant to 16-11-511" for "16-11-403". Amendment effective April 21, 2005.

16-11-507. Reporting of information.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 324 in (4) inserted second sentence requiring that information be full, complete, and accurate. Amendment effective April 21, 2005.

Chapter 511 in (1) in first sentence near end after "16-11-113" deleted "or 16-11-203". Amendment effective July 27, 2005.

16-11-509. Penalties and other remedies.

Compiler's Comments

2005 Amendment: Chapter 324 in (1) at end of first sentence substituted "initiated by the department or at the request of the attorney general" for "brought by the department or by the attorney general" and near middle of third sentence inserted "and each pack sold, offered for sale, or possessed for sale"; inserted (4)(b) relating to determination of attorney fees if the state prevails; in (5)(a)(i) at beginning after "sell" inserted "offer for sale" and at end inserted "that the person knows or should know are intended for distribution or sale in the state in violation of 16-11-505"; inserted (7) relating to the allocation and statutory appropriation of recovered penalties, investigation expenses, and attorney fees and costs; and made minor changes in style. Amendment effective April 21, 2005.

16-11-511. Rules.

Compiler's Comments

2005 Amendment: Chapter 324 inserted reference to part 4; and made minor changes in style. Amendment effective April 21, 2005.

CHAPTER 12
MARIJUANA REGULATION AND TAXATION

Chapter Compiler's Comments

Severability: Section 55, Initiative Measure No. 190, was a severability clause.

Part 1
General Provisions

Part Administrative Rules

Title 42, chapter 39, ARM Cannabis control.

16-12-101. Short title — purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 746, L. 2023. Amendment effective May 22, 2023.

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 throughout section substituted "marijuana products" for "marijuana-infused products"; in (2)(b) after "licensure and regulation of" substituted "the" for "commercial" and after "distribution" inserted "transportation"; deleted former (2)(c) that read: "(c) allow for limited cultivation, manufacture, delivery, and possession of marijuana as permitted by this chapter"; in (2)(f) at end substituted "licensed premises" for "registered premises and adult-use dispensaries"; in (2)(g) at end substituted "licensees" for "adult-use providers and adult-use marijuana-infused products providers"; in (2)(h) substituted "licensees" for "registered premises"; in (2)(i) after "testing of marijuana" inserted "and marijuana products"; in (2)(j) after "give local governments" substituted "authority to allow for the operation of marijuana businesses in their community and establishing standards for" for "a role in establishing standards for"; in (2)(k) after "products to" deleted "generate revenue for the state and" and at end substituted "economic and social costs of marijuana" for "economic and social costs of past and current marijuana cultivation, processing, and use, by directing funding to:

(i) conservation programs to offset the use of water and soil in marijuana cultivation;
(ii) substance abuse treatment and prevention programs;
(iii) veterans' services and support;
(iv) health care;
(v) localities where marijuana is sold; and
(vi) the state general fund"; inserted (2)(m) concerning the preservation and protection of the hemp industry; inserted (3) stating that marijuana and marijuana products are not agricultural products subject to regulation by the department of agriculture unless expressly provided; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-102. Definitions.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 12, Ch. 743, L. 2023, in definition of former medical marijuana licensee substituted "April 27, 2021" for "November 3, 2020"; in definition of marijuana product at end of first sentence deleted "by a means other than smoking" and at end of second sentence inserted "including concentrates intended for use by smoking or vaping"; deleted definition that read: ""State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses"; and made minor changes in style. Amendment effective May 22, 2023.

Section 5, Ch. 746, L. 2023, in definition of marijuana in (b) substituted "as provided in 80-18-101" for "including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products" and inserted (c) concerning synthetic marijuana products; inserted definitions of synthetic cannabinoids and synthetic marijuana product; and made minor changes in style. Amendment effective May 22, 2023.

The amendments to this section made by sec. 3, Ch. 712, L. 2023, and sec. 1, Ch. 743, L. 2023, were replaced by sec. 12, Ch. 743, L. 2023, a coordination section.

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 throughout section substituted "licensed premises" for "registered premises" and substituted "marijuana products" for "marijuana-infused products"; inserted definitions of affiliate; beneficial owner, beneficial ownership of, or beneficially owns an; control, controls, controlled, controlling, controlled by, and under common control with; controlling beneficial owner; cultivator; debilitating medical condition; former medical marijuana licensee; indoor cultivation facility; licensed premises; manufacturer; marijuana business; marijuana transporter; medical marijuana; medical marijuana dispensary; outdoor cultivation, owner's interest; passive beneficial owner; qualified institutional investor; registered cardholder or cardholder; registry identification card; and usable marijuana; in definition of adult-use dispensary at end substituted "person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both" for "licensed adult-use provider or adult-use marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a consumer"; deleted definition that read: ""Adult-use marijuana-infused products provider" means a person licensed by the department to manufacture and provide marijuana-infused products for consumers as allowed by this chapter"; deleted definition that read: ""Adult-use provider" means a person licensed by the department to cultivate and process marijuana for consumers as allowed by this chapter"; in definition of consumer after "marijuana products for personal use" substituted "from a licensed dispensary" for "or for use by persons who are at least 21 years of age"; in definition of correctional facility or program substituted "53-1-202(2) or (3)" for "53-1-202"; in definition of financial interest in (a) near middle substituted "5%" for "1%" and in (b) inserted "but does include holders of private loans or convertible securities"; deleted former definition that read ""Manufacturing" means the production of marijuana concentrate"; in definition of marijuana inserted (c) excluding certain drugs approved by the United States food and drug administration; in definition of marijuana product at end inserted "marijuana derivatives, and marijuana concentrates"; in definition of mature marijuana plant substituted "harvestable marijuana plant" for "harvestable female marijuana plant that is flowering"; deleted former definition that read ""Owner" means a principal officer, director, board member, or individual who has a financial interest or voting interest of 10% or greater in an adult-use dispensary, adult-use provider, or adult-use marijuana-infused products provider"; deleted former definition that read ""Registered premises" means a location that is licensed pursuant to this chapter and includes:

(a) all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms; and

(b) if the department has specifically licensed a location for outdoor cultivation, production, manufacturing, wholesale sale, or retail sale of adult-use marijuana and adult-use marijuana-infused products, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases, or has the right to occupy"; in definition of testing laboratory substituted current definition for "has the meaning provided in 50-46-302"; deleted former definition that read: ""Unduly burdensome" means requiring such a high investment of money, time, or any other resource or asset to achieve compliance that a reasonably prudent businessperson would not operate"; and made minor changes in style. Amendment effective January 1, 2022. Subsection (15)(b)(ii) terminates October 1, 2023.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Termination: Section 117(1), Ch. 576, L. 2021, provided: "[Section 38(15)(b)(ii)] [16-12-102(15)(b)(ii)] terminates October 1, 2023. After October 1, 2023, a hoop house is not an indoor cultivation facility."

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-103. Department authority.

Compiler's Comments

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-104. Department responsibilities — licensure.

Compiler's Comments

2023 Amendments — Composite Section: Section 4, Ch. 712, L. 2023, in (11)(a) in first sentence after "persons" inserted "including the names of controlling beneficial owners"; inserted (11)(c) providing that the name of a controlling beneficial owner is not considered confidential information; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 714, L. 2023, in (7)(a) at beginning inserted exception clause; inserted (8) concerning probationary testing laboratory licenses; and made minor changes in style. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment — Coordination: Chapter 576 in (2) substituted a list of types of licenses that shall be issued to persons who submit applications meeting the requirements of this chapter and authorization for the department to establish additional types of license for former text that read: "(a) licenses:

(i) to persons who apply to operate as adult-use providers or adult-use marijuana-infused products providers and who submit applications meeting the requirements of this chapter; and

(ii) for adult-use dispensaries established by adult-use providers or adult-use marijuana-infused products providers; and

(b) endorsements for manufacturing to an adult-use provider or an adult-use marijuana-infused products provider that applies for a manufacturing endorsement and meets requirements established by the department by rule"; deleted former (2) that read: "(2) A person who obtains an adult-use provider license, adult-use marijuana-infused products provider license, or adult-use dispensary license or an employee of a licensed adult-use provider or adult-use marijuana-infused products provider is authorized to cultivate, manufacture, possess, sell, and transport marijuana as allowed by this chapter"; deleted former (3) that read: "A person who obtains a testing laboratory license or an employee of a licensed testing laboratory is authorized to possess, test, and transport marijuana as allowed by this chapter"; inserted (3) stating that a licensee may not cultivate or manufacture hemp at a licensed premises; deleted former (4) that read: "The department shall conduct criminal history background checks as required by 50-36-307 and 50-46-308 before issuing a license to a person named as a provider or marijuana-infused products provider"; inserted (4) concerning application of the Montana Pesticides Act; deleted former (5) that read "Licenses issued pursuant to this chapter must:

(a) be laminated and produced on a material capable of lasting for the duration of the time period for which the license is valid;

(b) indicate whether an adult-use provider or an adult-use marijuana-infused products provider has an endorsement for manufacturing;

(c) state the date of issuance and the expiration date of the license; and

(d) contain other information that the department may specify by rule"; inserted (5) requiring the department to assess applications for licensure or renewal to determine if an applicant, controlling beneficial owner, or a person with a financial interest in the applicant meets any of the criteria established in this chapter for denial of a license; deleted former (6)(a) that read: "The department shall make application forms available and begin accepting applications for licensure and endorsement under this chapter on or before January 1, 2022."; inserted (6) concerning display of licenses by licensees; in (7)(a)(i) near beginning substituted "60 days" for "30 days" and at end substituted "a former medical marijuana licensee or an existing licensee under this chapter" for "an existing licensed provider or marijuana-infused products provider"; in (7)(a)(ii) near beginning substituted "120 days" for "90 days"; deleted former (6)(d) that read "(d) Applications that are not processed within the time allowed under subsection (6)(b) remain active until the department takes final action"; deleted former (6)(e)(ii) that read "(ii) Failure by the department to complete the required inspection within the time allowed under subsection (6)(b) does not prevent an application from being considered complete for the purpose of subsection (6)(c)"; in (8)(a) after "as a contested case hearing" inserted "before the department's office of dispute resolution"; inserted (8)(b) concerning the ability to appeal an administrative decision of the department about the issuance, rejection, suspension, or revocation of a license to the district court; inserted (8)(c) concerning the procedure and timing of an appeal under this subsection; in (9) at beginning substituted "Licenses issued under this chapter" for "Licenses and endorsements issued to adult-use providers and adult-use marijuana-infused products providers"; in (10)(a) in first sentence substituted "persons licensed under this chapter" for "adult-use providers and adult-use marijuana-infused products providers" and substituted "licensed premises" for "registered premises and testing laboratories" and in second sentence at beginning inserted exception clause and at end substituted "location or address of a marijuana business" for "location or address of an adult-use provider, adult-use marijuana-infused products provider, adult-use dispensary, or testing laboratory"; inserted (10)(b) concerning the department sharing the physical location or address of a marijuana business with another state agency, political subdivision, and the state fire marshal; in (11) after "The department may not prohibit" substituted "a cultivator, manufacturer" for "an adult-use provider, adult-use marijuana-infused products provider", after "or adult-use dispensary licensee" inserted "operating in compliance with the requirements of this chapter", and at end substituted "medical marijuana dispensary" for "provider, marijuana-infused products provider, or dispensary as defined in 50-46-302 if the provider, marijuana-infused products provider, or dispensary is owned by the same person"; in (12) after "requiring a consumer to provide" substituted "a licensee" for "an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary licensee", before "identification" inserted "government-issued", and at end substituted "A licensee that scans a person's driver's license using an electronic reader to determine the person's age:

(a) may only use data or metadata from the scan determine the person's age;

(b) may not transfer or sell that data or metadata to another party; and

(c) shall permanently delete any data or metadata from the scan within 180 days, unless otherwise provided for in this chapter or by the department" for "or require the recording of personal information about consumers other than information typically required in a retail transaction"; inserted (13) concerning transferability of licenses and sale of marijuana businesses; inserted (14) concerning procedure for a person other than a controlling beneficial owner in a licensee to obtain an ownership interest in a licensee that results in the person becoming a controlling beneficial owner; and made minor changes in style. Amendment effective January 1, 2022.

The amendments to this section made by sec. 3, Ch. 264, L. 2021, were rendered void by sec. 114, Ch. 576, L. 2021, a coordination section.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-105. Department responsibility to monitor and assess marijuana production, testing, sales, and license revocation.

Compiler's Comments

2021 Amendment: Chapter 576 in (1)(a) after "a system for tracking marijuana" substituted "and marijuana products" for "marijuana concentrate, and marijuana-infused products" and at end substituted "it is sold to a consumer or registered cardholder" for "the marijuana, marijuana concentrate, or marijuana-infused product is sold to a consumer"; in (1)(b) after "ensure that marijuana" substituted "and marijuana products" for "marijuana concentrate, or marijuana-infused product" and at end substituted "21 years of age unless that person is a registered cardholder" for "21 years of age and who is not a medical marijuana registered cardholder"; in (1)(c) at beginning inserted "The system must" and substituted "be made available to licensees, except that licensees shall bear the responsibility and cost for procuring unique identification tracking tags to facilitate the tracking of marijuana and marijuana products" for "be made available to adult-use providers, adult-use marijuana-infused products providers, adult-use dispensaries, and testing laboratories at no additional cost"; inserted (2) concerning use of a mandatory semicashless payment system in dispensaries; inserted (3) concerning sharing of seed-to-sale information with the licensee's depository institution, any other government agency, or the semicashless processor; deleted former (1)(b) that read: "(b) The department may implement the same system that is used to track marijuana, marijuana concentrate, and marijuana-infused products pursuant to 50-46-304"; deleted former (2) that read: "(2) The department shall assess applications for an adult-use provider or adult-use marijuana-infused products provider license to determine if a person with a financial interest in the applicant meets any of the criteria established in 16-12-203 for denial of a license"; deleted former (3) that read: "(3) Before issuing or renewing a license, the department shall inspect the proposed registered premises of an adult-use provider or adult-use marijuana-infused products provider and shall inspect the property to be used to ensure an applicant for licensure or license renewal is in compliance with this chapter. The department may not issue or renew a license if the applicant does not meet the requirements of this chapter"; deleted former (4) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-106. Personal use and cultivation of marijuana — penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendments — Composite Section: Chapter 312 in (5) after "registered cardholder" substituted "possession, use, delivery without consideration, or distribution without consideration of marijuana is punishable in accordance with 45-5-624" for "possession, use, ingestion, inhalation, transportation, delivery without consideration, or distribution without consideration of 1 ounce or less of marijuana is punishable by forfeiture of the marijuana and the underage person's choice between:

(a) a civil fine not to exceed $100; or

(b) up to 4 hours of drug education or counseling in lieu of the fine"; in (6) after "punishable by" substituted "forfeiture of the marijuana paraphernalia and 8 hours of drug education or counseling" for "forfeiture of the marijuana paraphernalia and the underage person's choice between:

(a) a civil fine not to exceed $100; or

(b) up to 4 hours of drug education or counseling in lieu of the fine"; deleted former (7)(d) that read: "(d) for a person under 21 years of age, the person's choice between a civil fine not to exceed $200 or attending up to 8 hours of drug education or counseling in lieu of the fine"; and made minor changes in style. Amendment effective April 26, 2021.

Chapter 576 in (1)(a) and (1)(b) after "1 ounce or less of" inserted "usable" and at end inserted "and not more than 800 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form"; in (1)(c) after "possessing, planting, or cultivating up to" substituted "two mature marijuana plants and two seedlings, or four mature marijuana plants and four seedlings for a registered cardholder" for "four mature marijuana plants and four seedlings"; in (1)(c)(iv) near middle substituted "marijuana products" for "marijuana-infused products" and at end substituted "a marijuana business" for "an adult-use provider or an adult-use marijuana-infused products provider"; in (7) substituted reference to Title 16, chapter 12, part 5, for reference to Title 50, chapter 46, part 3; deleted former (10) through (12) that read: "(10) A person currently under parole, probation, or other state supervision or released awaiting trial or other hearing may not be punished or otherwise penalized solely for conduct that is permitted by this chapter.

(11) A holder of a professional or occupational license may not be subjected to professional discipline for providing advice or services arising out of or related to conduct that is permitted by this chapter solely on the basis that marijuana is prohibited by federal law.

(12) It is the public policy of the state of Montana that contracts related to the operation of licensees be enforceable"; and made minor changes in style. Amendment effective May 18, 2021, except that the amendment in subsection (7) is effective January 1, 2022.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective January 1, 2021. Approved November 3, 2020.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Case Notes

For Expungement Under Marijuana Act, Action Must Be Permitted Under Act: A man sought expungement of his 2002 conviction for felony criminal production or manufacture of dangerous drugs. He had grown eight marijuana plants on his landlord's property without the landlord's permission. The District Court denied the petition. On appeal, the Supreme Court affirmed, noting that the Montana Marijuana Regulation and Taxation Act does not permit the act for which he was charged, and thus he does not satisfy the threshold requirement for expungement under the Act. Rairdan v. St., 2021 MT 247, 405 Mont. 467, 495 P.3d 1050.

16-12-107. Legal protections — allowable amounts.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) at beginning substituted "A cultivator" for "An adult-use provider or adult-use marijuana-infused products provider" and deleted former last sentence that read: "The canopy allotment is a cumulative total for all of the adult-use provider's or adult-use marijuana-infused products provider's registered premises"; in (2) near end after "transports marijuana in the amounts" inserted "and manner"; in (3) near end substituted "marijuana products" for "marijuana-infused products"; and in (6) at beginning substituted "A cultivator or manufacturer" for "An adult-use provider or adult-use marijuana-infused products provider". Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-108. Limitations of act.

Compiler's Comments

2023 Amendments — Composite Section: Section 6, Ch. 712, L. 2023, in (1)(e), 1(f), and (1)(g) inserted language excepting registered cardholders from prohibitions concerning persons under

21 years of age; in (1)(h)(ii) after "school bus" deleted "or other form of public transportation"; deleted former (1)(g)(v) that read "(v) in a hotel or motel room"; inserted (1)(j) concerning hotel or motel rooms; inserted (1)(k)(ii) concerning trains, buses, or other forms of public transportation; inserted (2) concerning penalties; and made minor changes in style. Amendment effective October 1, 2023.

Section 6, Ch. 746, L. 2023, inserted (1)(d) concerning synthetic marijuana products; and made minor changes in style. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 throughout section after "marijuana" inserted "or marijuana products"; in (1)(c) after "smoking" inserted "or consuming"; in (1)(f) after "and is an employee of" substituted "a marijuana business licensed under this chapter" for "an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary"; in (1)(g)(ii) after "in a school bus" inserted "or other form of public transportation"; inserted (1)(g)(v) concerning use of marijuana or marijuana products in a hotel or motel room"; in (1)(h) at beginning substituted "using" for "smoking"; inserted (2) concerning cultivation of marijuana in a manner that is visible from the street or other public area; inserted (3) concerning adoption of a policy to allow use by a registered cardholder by a hospice or residential care facility; inserted (4)(d) concerning employer inclusion of a contract a provision prohibiting the use of marijuana for a debilitating medical condition; inserted (4)(e) concerning a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102"; in (5) after "display of marijuana" substituted "marijuana products" for "marijuana-infused products"; deleted former (4) that read: "(4) Nothing in this chapter limits the rights, privileges, immunities, or defenses provided under Title 50, chapter 46, part 3"; in (6) at beginning substituted "A licensee who violates 15-64-103 or 15-64-104 or fails to pay any other taxes owed to the department under Title 15 is subject to" for "An adult-use provider or adult-use marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to"; inserted (7) concerning the application of the provisions of Title 45, chapter 9, to the conduct of consumers, licensees, and registered cardholders; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective January 1, 2021. Approved November 3, 2020.

16-12-109. Unlawful conduct by licensees — penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 inserted (1) concerning actions the department may take when it has reasonable cause to believe that a licensee has violated a provision of this chapter or a rule of the department; inserted (2) concerning the department's consideration of mitigating circumstances to adjust penalties and providing examples of mitigating circumstances; inserted (3) concerning the department's consideration of aggravating circumstances to adjust penalties and providing examples of aggravating circumstances; inserted (4) concerning designation of the department as a criminal justice agency for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice; in (5) in introductory clause substituted "a person" for "an individual who"; in (5)(a) at beginning inserted "whose controlling beneficial owner is an individual"; in (5)(b) at beginning substituted "who allows another person" for "allows another individual" and near end after "possession of the" deleted "individual's"; deleted former (5)(c) that read: "(c) fails to cooperate with the department concerning an investigation or inspection if the individual is licensed and cultivating marijuana, engaging in manufacturing, or manufacturing marijuana-infused products"; inserted (5)(c), (5)(d), (5)(e), and (5)(f) concerning reasons for revocation of a license or endorsement; deleted former (2), (3), (4), and (6) (see 2021 Session Law for former text); in (7)(a) after "as a contested case hearing" inserted "before the department's office of dispute resolution"; inserted (7)(b) concerning the ability to appeal an administrative decision of the department to the district court; inserted (7)(c) concerning the process and timing for filing an appeal; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-110. Legislative monitoring.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 712, L. 2023. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 In (1), (2), and (3)(a) substituted "economic affairs interim committee" for "revenue interim committee"; in (3)(a)(i) after "the number of" substituted "cultivators, manufacturers, and dispensaries" for "adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries"; in (3)(a)(ii) at end substituted "and type of violations committed by licensees" for "of endorsements approved for manufacturing"; in (3)(a)(iv) after "the amount of marijuana" inserted "and marijuana products"; in (3)(b) after "provide any identifying information of" substituted "cultivators, manufacturers, and dispensaries except basic geographic or other statistical information" for "adult-use providers, adult-use marijuana-infused products providers, or adult-use dispensaries"; in (4)(b) after "the number of" substituted "licensees" for "adult-use providers or adult-use marijuana-infused products providers"; deleted former (5) that read: "(5) The reports provided for in this section must also be provided to the transportation interim committee provided for in 5-5-233"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-111. Marijuana state special revenue account — operating reserve — transfer of excess funds.

Compiler's Comments

2021 Amendment: Chapter 576 inserted (2) concerning the sources of funding for the marijuana state special revenue account; inserted (3) concerning use of the money in the account; inserted (4) concerning the amount and priority of transfer of funds in excess of a 3-month operating reserve from the account to other programs; deleted former (2) through (4) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021. Subsection (4)(b)(vi) terminates June 30, 2025.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by amending the effective date of this section imposed by I.M. No. 190 to July 1, 2021. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-112. Rulemaking authority — fees.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 505 in (1)(j) near middle before "required warning labels" inserted "that they have"; in (1)(n) at end inserted "and requirements and standards for electronic advertising as permitted under 16-12-211"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products"; in (1)(a) in two places after "licenses" inserted "permits"; in (1)(c) at end substituted "16-12-129" for "16-12-203"; in (1)(d) at end substituted "licensees" for "adult-use dispensaries"; in (1)(h) after "labeling" inserted "and packaging" and substituted "THC" for "tetrahydrocannabinol (THC)"; inserted (1)(i)concerning investigating and making rules to limit, if necessary, the appropriate THC potency percentages for marijuana and marijuana products; in (1)(j) inserted reference to 16-12-215, and after "be sold in resealable, child-resistant" inserted "exit"; in (1)(k) near end substituted "licensed" for "registered"; inserted (1)(p) concerning procedures for collecting and destroying samples of marijuana and marijuana products that fail to meet testing requirements pursuant to 16-12-209; in (1)(q) at beginning substituted "the fees for testing laboratories, the fingerprint-based and name-based background checks required under 16-12-129, employee certification, the marijuana transporter license, marijuana worker permits, and other fees necessary to administer and enforce the provisions of this chapter. The fees established by the department, taxes collected pursuant to Title 15, chapter 64, part 1, civil penalties imposed pursuant to this chapter, and the licensing fees established by rule and in part 2 of this chapter" for "the fees for endorsements for manufacturing, testing laboratories, additional canopy licensure tiers created in accordance with 16-12-203. The fees and other revenue collected through the taxes paid under 16-12-401, civil penalties imposed pursuant to this chapter, and the licensing fees established by rule and in 16-12-201"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-113. Decriminalized acts — petition for expungement or resentencing — retroactive application.

Compiler's Comments

2021 Amendment: Chapter 576 in (2) after "petition under subsection (1), the" substituted "expungement or resentencing of marijuana conviction court as provided in 16-12-114 through 16-12-116" for "court" and after "unless the county attorney" substituted "provides the court with a reasonable basis on which" for "proves by clear and convincing evidence that"; in (6) near middle after "unless the county attorney" substituted "provides the court with a reasonable basis on which" for "proves by clear and convincing evidence that"; inserted (12) concerning applicability of Title 46, chapter 18, part 11, for a person who petitions for expungement or resentencing pursuant to this section; and made minor changes in style. Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective January 1, 2021. Approved November 3, 2020.

Retroactive Applicability: Section 57, Initiative Measure No. 190, provided that this section applies retroactively, within the meaning of 1-2-109, as provided in this section.

Case Notes

Guilty Plea to Having More Than 2 Ounces of Marijuana — Denial of Expungement or Redesignation — No Error: The District Court did not err by denying a petitioner's request to expunge or redesignate his conviction for possession of dangerous drugs because he pleaded guilty to possessing approximately 2.12 ounces of marijuana, which, on its face, does not qualify for expungement or redesignation under the Montana Marijuana Regulation and Taxation Act. Maier v. St., 2021 MT 296, 406 Mont. 280, 498 P.3d 755.

For Expungement Under Marijuana Act, Action Must Be Permitted Under Act: A man sought expungement of his 2002 conviction for felony criminal production or manufacture of dangerous drugs. He had grown eight marijuana plants on his landlord's property without the landlord's permission. The District Court denied the petition. On appeal, the Supreme Court affirmed, noting that the Montana Marijuana Regulation and Taxation Act does not permit the act for which he was charged, and thus he does not satisfy the threshold requirement for expungement under the Act. Rairdan v. St., 2021 MT 247, 405 Mont. 467, 495 P.3d 1050.

16-12-114. Definitions.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective July 1, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-115. Appointment of judge.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective July 1, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-116. Petition for expungement — venue.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective July 1, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-117. Synthetic marijuana products prohibited — restriction on sale of marijuana products.

Compiler's Comments

Effective Date: Section 16, Ch. 746, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 22, 2023.

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

16-12-122. Healing and ending addiction through recovery and treatment account — report.

Compiler's Comments

2023 Amendments — Composite Section — Code Commissioner Correction: Section 1, Ch. 181, L. 2023, inserted (2)(b) regarding youth suicide prevention; and made minor changes in style. Amendment effective April 19, 2023.

Section 1, Ch. 186, L. 2023, inserted (4)(b)(iii) requiring a written report to the children, families, health, and human services interim committee; and made minor changes in style. Amendment effective April 20, 2023.

Section 2, Ch. 187, L. 2023, inserted (5)(a) regarding the chemical dependency treatment room and board voucher program; and made minor changes in style. Amendment effective July 1, 2023, and terminates June 30, 2027.

Section 1, Ch. 301, L. 2023, in (2)(d) inserted last sentence regarding crisis stabilization services. Amendment effective July 1, 2023.

In (3)(e) near middle the Code Commissioner substituted "subsections (2)(a) through (2)(d)" for "subsections (2)(a) through (2)(c)" to correct an erroneous reference.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Codification Change: Section 112, Ch. 576, L. 2021, provided that this section was to be codified in a new part in Title 16, chapter 12. The code commissioner has codified this section in Title 16, chapter 12, part 1, to more closely reflect the subject matter.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-125. Hotline — reporting — referrals.

Compiler's Comments

2023 Amendments — Composite Section: Section 9, Ch. 712, L. 2023, deleted former (3)(b) that read: "(b) The department may not redact the individual's name or city of residence from the complaint copy"; and made minor changes in style. Amendment effective October 1, 2023.

Section 7, Ch. 746, L. 2023, inserted (5) concerning public disclosure of certain complaints; and inserted (6) concerning reporting to the legislature. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-129. Department to conduct background checks.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Part 2
Licensing and Regulation

Part Administrative Rules

Title 42, chapter 39, ARM Cannabis control.

16-12-201. Licensing of cultivators, manufacturers, and dispensaries.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 11, Ch. 743, L. 2023, in (1)(a) near beginning substituted "June 30, 2025" for "June 30, 2023" and near middle substituted "April 27, 2021" for "November 3, 2020"; and in (1)(b) at end substituted "July 1, 2025" for "July 1, 2023". Amendment effective May 22, 2023.

The amendment to this section made by sec. 11, Ch. 712, L. 2023, was rendered void by sec. 11, Ch. 743, L. 2023, a coordination section.

The amendment to this section made by sec. 2, Ch. 743, L. 2023, was replaced by sec. 11, Ch. 743, L. 2023, a coordination section.

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 in (1)(a) substituted current text concerning issuance of licenses to only former medical marijuana licensees between January 1, 2022, and June 30, 2023, for "No later than October 1, 2021, the department shall promulgate rules and regulations to administer and enforce this chapter and shall begin accepting applications for and issuing licenses. The rules may not be unduly burdensome. For the first 12 months after the department begins to receive applications, the department shall only accept applications from and issue licenses to providers, marijuana-infused products providers, and dispensaries licensed under Title 50, chapter 46, part 3, that are in good standing with the department of public health and human services and in compliance with this chapter and rules adopted by the department"; inserted (1)(b) concerning licensing of applicants who are not former medical marijuana licensees; inserted (2) concerning the licensure of former medical marijuana licensees; inserted (3) concerning staggered expiration dates; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-202. Testing laboratories — licensing — inspection.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 712, L. 2023. Amendment effective July 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 inserted (1)(a) concerning possession and testing of marijuana by a person who obtains a testing laboratory license or is an employee of a licensed testing laboratory; inserted (1)(b) concerning restrictions on a person who is a controlling beneficial owner of a testing laboratory or holds a financial interest in a licensed testing laboratory; in (2)(a) substituted "The state laboratory shall endorse a testing laboratory to perform the testing required under 16-12-206 and 16-12-209 before a testing laboratory may apply for licensure or renewal with the department" for "The state laboratory shall license testing laboratories to perform the testing required under 16-12-206 and 16-12-209"; in (2)(b)(i) after "inspect a testing laboratory before" substituted "endorsing a testing laboratory for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant" for "issuing or renewing a license and may not issue or renew a license if the applicant"; deleted former (2)(b)(iii) that read: "(iii) Inspections conducted under this section must include the review provided for in 50-46-311(1)(b)"; inserted (3) concerning the required elements of an inspection for licensure or renewal; inserted (4) concerning the process for applying for licensure or renewal with the department once an applicant for a testing laboratory license has been endorsed by the state laboratory; in (5) deleted former subsections that read: "(a) use the criteria established under 50-46-311 in evaluating and approving licenses issued under this section;

(b) use the criteria established under 50-46-304(6) to establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that consumers receive consistent and uniform information about the potency and quality of the marijuana and marijuana-infused products they receive; and

(c) investigate inconsistent test results using the procedure provided for in 50-46-304(7)"; inserted (5)(a) through (5)(c) concerning the duties of the state laboratory; inserted (6) concerning retention of the services of the analytical laboratory provided by the department of agriculture for the testing contemplated in this section; in (8) at end of first sentence substituted "may suspend the testing laboratory's license" for "shall suspend the testing laboratory's license until additional testing determines whether the results are consistent" and at end inserted "A suspension must be based on rules adopted by the state laboratory"; in (9) at beginning substituted "The department" for "The state laboratory"; in (9)(a) after "fraudulent" inserted "or misleading"; in (9)(b)(i) near end substituted "marijuana products" for "marijuana-infused products"; deleted former (7) that read: "(7) The state laboratory:

(a) may license a testing laboratory to perform both the testing required under this chapter and under Title 50, chapter 46; and

(b) shall use the same administrative rules for testing laboratories licensed under this chapter and under Title 50, chapter 46"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-203. Licensing types — requirements — limitations — activities.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 712, L. 2023. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products" and substituted references to a "licensee" for references to an "adult-use provider or adult-use marijuana-infused products provider"; in (1)(a) at beginning substituted "Subject to subsection (3) and this subsection (1)" for "Subject to subsections (1)(b) and (3)" and after "person who is applying to be" substituted "a cultivator, manufacturer, medical-marijuana dispensary, adult-use dispensary, or testing laboratory" for "an adult-use provider or adult-use marijuana-infused products provider"; in (1)(a)(ii) at beginning substituted "proof that the natural person having day-to-day operational control over the business is" for "proof that the person is"; deleted former (1)(a)(iii) that read: "(iii) fingerprints meeting the requirements for a fingerprint-based background check by the department of justice and the federal bureau of investigation:

(A) with the application for initial licensure; and

(B) every 3 years thereafter"; in (1)(a)(iii)(A) after "consumers" inserted "or registered cardholders" and substituted "licensee" for "adult-use provider"; inserted (1)(a)(iii)(B) concerning pending citations for violations; in (1)(a)(iv) at end inserted "sold, or tested"; inserted (1)(a)(v) concerning proof that the applicant has a source of funding from a suitable source; deleted former (1)(a)(vi) that read: "(vi) a fee as determined by the department not to exceed the costs of required background checks and associated administrative costs of processing the license"; in (1)(b) at end inserted "owner having at least a 5% controlling beneficial ownership interest"; inserted (1)(c) concerning information that must be disclosed to the department by nonindividuals who apply for the issuance of a marijuana business license; inserted (1)(d) concerning disclosure of each beneficial owner and affiliate of an applicant, or marijuana business, or controlling beneficial owner that is not a publicly traded corporation; inserted (1)(e) concerning affirmations by an applicant or marijuana business; inserted (1)(f) concerning affirmation by an applicant or marijuana business that is a publicly traded corporation; inserted (1)(g) concerning the department's ability to reasonably request information or records; deleted former (2) that read: "(2) The department shall conduct:

(a) a fingerprint-based background check in association with an application for initial licensure and every 3 years thereafter; and

(b) a name-based background check in association with an application for initial licensure and each year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based background check"; in (2) in introductory clause at end inserted "including a person with a financial interest"; deleted former (2)(a), (2)(b), (2)(c), (2)(d), and (2)(e) that read: "(a) has a felony conviction involving fraud, deceit, or embezzlement or for distribution of drugs to a minor within the past 5 years and, after an investigation, the department finds that the applicant has not been sufficiently rehabilitated as to warrant the public trust;

(b) is in the custody of the department of corrections or a youth court;

(c) has been convicted of a violation under 16-12-302

(d) has resided in Montana for less than 1 year; or

(e) is under 18 years of age"; inserted (2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), and (2)(g) concerning disqualifying factors for a person or owner, including a person with a financial interest, to be licensed under this chapter; in (3) after "cultivated and manufactured in Montana" substituted "unless federal law otherwise allows" for "until federal law allows"; in (4) in introductory clause near end substituted "a cultivator, manufacturer, medical marijuana dispensary, or adult-use dispensary" for "an adult-use provider or adult-use marijuana-infused products provider"; in (4)(b) substituted "licensed" for "registered"; deleted former (4)(d) that read: "(d) obtain the license from the department of agriculture if required by 80-7-106 for the adult-use provider or adult-use marijuana-infused products provider that sells live plants as part of a sale of the adult-use provider's business. An adult-use provider or adult-use marijuana-infused products provider required to obtain a nursery license is subject to the inspection requirements of 80-7-108"; in (5)(a) after "consumers" inserted "or registered cardholders"; in (5)(a)(ii) after "written permission of the property owner" inserted "filed with the department when applying for or renewing a license"; inserted (5)(c) concerning consumption of marijuana or marijuana products on the premises of a licensed premises; in (6) in introductory clause substituted "A cultivator licensed under this chapter in accordance with licensing requirements set forth in this chapter and rules adopted by the department" for "A licensed adult-use provider or adult-use marijuana-infused products provider may:

(a) in accordance with rules adopted by the department"; deleted former (6)(b), (6)(c), (6)(d), and (6)(e) (see 2021 Session Law for former text); inserted (6)(c) concerning outdoor cultivation of marijuana; deleted former (8)(a) that read: "(8) (a) Except as provided in subsection (8)(b), an adult-use provider or adult-use marijuana-infused products provider:

(i) shall sell marijuana the adult-use provider has cultivated or marijuana products derived from marijuana the adult-use marijuana-infused products provider has cultivated for at least 50% of the provider's total annual sales;

(ii) may sell marijuana or marijuana-infused products to another adult-use provider for subsequent resale for up to 50% of the adult-use provider's total annual sales"; in (7) at beginning inserted "A cultivator or manufacturer"; in (7)(a) at end substituted "a cultivator's or manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or manufacturer for sale" for "the adult provider's or adult marijuana-infused products provider's marijuana into marijuana-infused products or marijuana concentrates and return the marijuana-infused products or marijuana concentrates to the adult-use provider for sale"; in (7)(b) after "open a dispensary" deleted "or allow for any on-site use"; deleted former (7)(b) that read: "(b) The department may adjust the percentages set forth in subsection (8)(a) for an individual license holder based on unforeseen circumstances leading to the loss of plants or products"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

2021 Code Commissioner Correction: In (5)(a) and (5)(b) at beginning the Code Commissioner deleted "Except as provided in 16-12-205" to remove erroneous references to a repealed section.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-206. Testing laboratories — licensing inspections.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 712, L. 2023. Amendment effective July 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products"; in (1) in introductory clause after "A testing laboratory" substituted "may" for "licensed pursuant to Title 50, chapter 46, part 3, shall"; deleted former (2) that read: "(2) The analytical laboratory services provided by the department of agriculture pursuant to 80-1-104 may be used for the testing provided for in this section"; deleted former (3) that read: "(3) A person with a financial interest in a licensed testing laboratory may not have a financial interest in any entity involved in the cultivation of marijuana or manufacture of a marijuana-infused product or marijuana concentrate for whom testing services are performed"; inserted (2) concerning employment by a testing laboratory of a scientific director; inserted (3) concerning requirement that all owners and employees of a testing laboratory submit fingerprints to the department to facilitate a fingerprint and background check; inserted (4) concerning the requirements for licensure for a testing laboratory; in (5)(a) after "samples of marijuana" substituted "and marijuana products submitted by cultivators and manufacturers" for "marijuana concentrate, and marijuana-infused products submitted by adult-use providers and adult-use marijuana-infused products providers"; in (5)(b) at end substituted "licensed premises" for "registered premises"; in (5)(c) at end inserted "or registered cardholders"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-207. Licensing as privilege — criteria.

Compiler's Comments

2023 Amendments — Composite Section: Section 15, Ch. 712, L. 2023, in (3)(a) near middle inserted "or testing laboratory license"; in (12) near end inserted "an employee of the marijuana business or"; and made minor changes in style. Amendment effective July 1, 2023.

Section 3, Ch. 743, L. 2023, in (3)(a)(iii) in first and third sentences inserted language concerning child-care facilities; in (3)(b) substituted "includes public and private preschools" for "and "postsecondary school" have the meanings provided in 20-5-402"; and inserted (3)(c) concerning applicability. Amendment effective January 1, 2024.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 in (1) at beginning substituted "A cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use marijuana license, marijuana transporter license, or any other license authorized under this chapter" for "An adult-use provider license, adult-use marijuana-infused products provider license, adult-use dispensary license, or endorsement for manufacturing"; in (1)(b) after "the suitability of the proposed" substituted "licensed premises" for "registered premises" and at end inserted "including but not limited to cultivation centers, dispensaries, and manufacturing facilities"; in (2) before "false statement" deleted "knowing and material"; in (3)(a) after "The department" substituted "shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed licensed premises" for "may deny an adult-use provider license, adult-use marijuana-infused products provider license, adult-use dispensary license, or endorsement for manufacturing if the applicant's proposed registered premises"; in (3)(a)(ii) after "building, health, or fire officials" inserted "as provided for in this chapter"; in (3)(a)(iii) after "unless the locality" substituted "requires a greater distance" for "allows for a reduced distance" and at end inserted grandfather clause for a licensed premises that existed before the church, synagogue, or other place of worship or school or postsecondary school existed on the same street; deleted former (4)(a) that read: "(4) (a) The department may deny a license for an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary or an endorsement for manufacturing if the applicant's proposed registered premises"; inserted (4) concerning prohibition on sale or transfer of marijuana or marijuana products through a drive-up window except for hand-delivery of marijuana or marijuana-products to a registered cardholder in a parked vehicle; deleted former (5) that read: "(5) An adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary licensee may operate at a shared location with a provider, marijuana-infused products provider, or dispensary as defined in 50-46-302 if the provider, marijuana-infused products provider, or dispensary is owned by the same person"; inserted (5) concerning sale or dispensation of marijuana or marijuana products from a vending machine; inserted (6) concerning utilization of the United States postal service or an alternative carrier other than a licensed marijuana transporter; inserted (7) concerning providing free marijuana or marijuana products or offering samples of marijuana or marijuana products; inserted (8) concerning giving marijuana or a marijuana product as a prize, premium, or consideration for a lottery, contest, game of chance, game of skill, or competition of any kind; inserted (9) concerning the maximum number of entrances in an adult-use dispensary or medical marijuana dispensary and providing an exception if additional entrances are required by state or local safety regulations and concerning security measures that must be implemented by all marijuana businesses; inserted (10) concerning installation of and requirements for a video monitoring system in each marijuana business; inserted (11) concerning the maximum hours of operation for an adult-use dispensary or medical marijuana dispensary; inserted (12) concerning the prohibition on a person under 21 years of age to enter a marijuana business unless the person is a registered cardholder; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-208. Restrictions.

Compiler's Comments

2023 Amendments — Composite Section: Section 16, Ch. 712, L. 2023, in (7) after "or otherwise transfer hemp" inserted "flower, hemp plants"; and made minor changes in style. Amendment effective October 1, 2023.

Section 8, Ch. 746, L. 2023, in (7) after "or otherwise transfer hemp" inserted "flower, hemp plants, synthetic cannabinoids"; and made minor changes in style. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

2021 Amendment: Chapter 576 in (1) at beginning substituted "A cultivator or manufacturer" for "An adult-use provider or adult-use marijuana-infused products provider" and after "manufacture marijuana" deleted "concentrates or marijuana-infused"; in (2) at beginning substituted "A cultivator or manufacturer" for "An adult-use provider or adult-use marijuana-infused products provider" and substituted "license premises" for "registered premises"; deleted former (3) that read: "(3) An adult-use provider or adult-use marijuana-infused products provider shall secure the provider's inventory and equipment during and after operating hours to deter and prevent theft of marijuana"; in (3) at beginning substituted "A licensee shall make the licensed premises" for "An adult-use provider or adult-use marijuana-infused products provider shall make the registered premises"; in (4) at beginning substituted "A licensee" for "An adult-use provider or adult-use marijuana-infused products provider"; in (5) at beginning substituted "Edible marijuana products manufactured as candy" for "Edible marijuana-infused candy"; in (6)(a) near beginning substituted "marijuana products" for "a marijuana-infused product" and after "resealable" substituted "child-resistant exit packaging that complies with federal child resistance standards and is designed" for "child-resistant packaging designed"; deleted former (6)(b) that read: "(b) Subsection (7)(a) does not apply to marijuana consumed on the premises where it is sold, if permitted by department rule"; inserted (6)(b) concerning packaging of individual products; in (7) substituted "An adult-use dispensary or medical marijuana dispensary may not sell or otherwise transfer hemp or alcohol from a licensed premises" for "An adult-use provider or adult-use marijuana-infused products provider may not sell or otherwise transfer tobacco or alcohol from a registered premises"; inserted (8) concerning department approval of packaging and labels; inserted (9) defining exit packaging; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-209. Testing of marijuana and marijuana products.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 17, Ch. 712, L. 2023. Amendment effective July 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products"; in (1) at beginning substituted "A cultivator, manufacturer, adult-use dispensary, or medical marijuana dispensary" for "An adult-use provider or adult-use marijuana-infused products provider", after "the marijuana or" inserted "marijuana", after "tested by a testing laboratory" deleted "or the department of agriculture", after "the requirements of" substituted "this section" for "50-46-326", and at end

inserted "The licensee shall pay for the testing"; in (2) at beginning substituted "A licensee" for "An adult-use provider or adult-use marijuana-infused products provider" and at end deleted former text that read: "Each batch must be tested in the following categories:
(a) flower;
(b) concentrate; and
(c) marijuana-infused product"; in (3) substituted current text concerning rules regarding the types of tests that must be performed for former text that read: "The state laboratory shall apply the same rules adopted pursuant to Title 50, chapter 46, part 3, regarding the types of tests, inspections, analysis, and certification that must be performed to ensure product safety and consumer protection to marijuana and marijuana products tested pursuant to this chapter"; inserted (4) concerning visual inspection of each batch; inserted (5) concerning rules regarding the acceptable levels of moisture, pesticides, residual solvents, mold, mildew, foreign matter, debris, insects, and other contaminants; inserted (6) concerning certificates of analysis and reporting to the see-to-sale tracking system; in (7) at beginning substituted "A licensee" for "An adult-use provider or adult-use marijuana-infused products provider"; inserted (9) concerning the destruction of samples that fail to meet the acceptable levels; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-210. Inspections — procedures — prohibition on inspector affiliation with licensees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 712, L. 2023. Amendment effective July 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products", substituted references to "licensed premises" for references to "registered premises", and substituted references to "a licensee" for references to "an adult-use provider and adult-use marijuana-infused products provider"; inserted (1)(b) concerning a limitation on unannounced inspections; in (2)(a) at end substituted "premises operated by a licensee" for "registered premises"; in (2)(b) after "and submit the samples to" substituted "a testing laboratory or the state laboratory" for "all registered testing laboratories"; in (3)(a) after "transactions with consumers" inserted "and registered cardholders"; in (3)(a), (3)(c), and (4)(a) at end deleted "during normal business hours"; deleted former (5) that read: "(5) If the department conducts an inspection because of a complaint against a licensee or registered premises and does not find a violation of this chapter, the department shall give the licensee a copy of the complaint with the name of the complainant redacted"; in (5) at end substituted "if the person, during the previous 4 years, was or worked for a Montana business or facility operating under this chapter or a former medical marijuana licensee" for "if the person has worked during the previous 4 years for a Montana business or facility operating under this chapter or Title 50, chapter 46, part 3"; in (7) inserted last sentence concerning rules for securing or disposing of the inventory in certain circumstances; in (8)(a) after "as a contested case hearing" inserted "before the department's office of dispute resolution"; inserted (8)(b) concerning the ability to appeal an administrative decision of the department to the district court; inserted (8)(c) concerning the process and timing for filing an appeal; in (10) after "shall report biennially to the" substituted "economic affairs interim committee" for "revenue interim committee"; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-211. Limitations on advertising — rulemaking.

Compiler's Comments

2021 Amendments — Composite Section — Code Commissioner Correction: Chapter 505 in (1) at beginning added "Except as provided in subsection (3)" and at end deleted "in any medium, including electronic media"; deleted former (3) that read "(3) A licensee may have a website but may not:

(a) include prices on the website; or

(b) actively solicit consumers or out-of-state consumers through the website"; inserted (3) concerning electronic advertising, prohibited forms of electronic advertising, and restrictions related to electronic advertising on mobile devices; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 576 in (1) after "may not advertise marijuana or" substituted "marijuana products" for "marijuana-related products". Amendment effective January 1, 2022.

In (3) in six places the Code Commissioner changed "marijuana-related products" to "marijuana products" for consistency with Ch. 576, L. 2021, which used the term "marijuana product" throughout.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-215. Required warning labels.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-221. Manufacturer — requirements — limitations — fees.

Compiler's Comments

2021 Amendment: Chapter 576 throughout section substituted references to "marijuana products" for references to "marijuana-infused products" and substituted references to "licensed premises" for references to "registered premises"; in (1) in introductory clause near end substituted "a manufacturer" for "an adult-use marijuana-infused products provider"; in (1)(a) after "premises" inserted "exclusively"; deleted former (2) that read: "(2) An adult-use marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a consumer with marijuana in a form that may be used for smoking unless the adult-use marijuana-infused products provider is also a licensed adult-use provider"; inserted (3) concerning requirement that an applicant for a manufacturer license demonstrate that the local government approval provisions contained in 16-12-301 have been satisfied in the jurisdiction where each proposed manufacturing facility is located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election; inserted (4) concerning the department's responsibility to evaluate each proposed manufacturing facility for compliance with the provisions of 16-12-207 and 16-12-210;" inserted (6) concerning the fee levels for a manufacturer license based on the amount of concentrate produced, the department's ability to create additional fee levels if necessary, and the process for a licensed manufacturer to advance to the next licensing level; inserted (7) concerning adoption of rules by the department related to manufacturing facilities and licenses; and made minor changes in style. Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-222. Licensing of marijuana transporters.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 19, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-223. Licensing of cultivators.

Compiler's Comments

2023 Amendment — Coordination: Section 10, Ch. 743, L. 2023, in (1)(e)(iii) substituted current text concerning increasing licensure level for former text (see sec. 10, Ch. 743, L. 2023, for former text); in (1)(f) near middle substituted "July 1, 2025" for "July 1, 2023"; and made minor changes in style. Amendment effective May 22, 2023.

The amendment to this section made by sec. 20, Ch. 712, L. 2023, was rendered void by sec. 10, Ch. 743, L. 2023, a coordination section.

The amendment to this section made by sec. 4, Ch. 743, L. 2023, was replaced by sec. 10, Ch. 743, a coordination section.

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-224. Licensing of dispensaries.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 714, L. 2023, inserted (8)(c) concerning deviation from allowed amounts of THC; and made minor changes in style. Amendment effective October 1, 2023.

Section 5, Ch. 743, L. 2023, in (6)(b) in first sentence substituted "the first location" for "each location" and inserted second sentence concerning fee increases for additional locations; and made minor changes in style. Amendment effective May 22, 2023.

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-225. Combined-use marijuana licensing — requirements.

Compiler's Comments

2023 Amendments — Composite Section: Section 21, Ch. 712, L. 2023, in (2) after "consists of one" deleted "tier 1" and deleted former second sentence that read: "Cultivation and dispensary facilities must be located at the same licensed premises"; deleted former (3)(a) that read: "(a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little

Shell Chippewa tribe only, within 150 air-miles of the tribal service area"; and made minor changes in style. Amendment effective May 22, 2023.

Section 6, Ch. 743, L. 2023, in (2) substituted "cultivator" for "tier 1 canopy"; inserted (3) establishing fee for combined-use license; and made minor changes in style. Amendment effective May 22, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-226. Marijuana worker permit — requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 22, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Part 3

Local Government and Law Enforcement Authority

Part Administrative Rules

Title 42, chapter 39, ARM Cannabis control.

16-12-301. Local government authority to regulate — opt-in requirement in certain counties — exemption for existing licensees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 23, Ch. 712, L. 2023. Amendment effective July 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 inserted (1) concerning operation of a marijuana business in a county in which the majority of voters voted against approval of Initiative Measure No. 190; deleted former (1)(b) that read: "(b) A local government may not adopt ordinances or regulations that are unduly burdensome"; deleted former (2) that read: "(2) The qualified electors of an incorporated municipality, county, or consolidated city-county may request an election on whether to prohibit by ordinance adult-use dispensaries from being located within the jurisdiction of the local government by filing a petition in accordance with 7-5-131 through 7-1-135 and 7-1-137"; in (2)(a) in first sentence after "government may by ordinance or" substituted "otherwise regulate a marijuana business that operates" for "resolution regulate an adult-use provider or adult-use marijuana-infused products provider that operates" and in second sentence after "not limited to inspections of" substituted "licensed premises, including but not limited to indoor cultivation facilities, dispensaries, manufacturing facilities" for "registered premises"; inserted (2)(b) concerning the exemption from compliance with any local governmental regulations that are adopted under this subsection between January 1, 2022, and its first license renewal date occurring after January 1, 2022, or the expiration of any grace period granted by the locality for a former medical marijuana licensee that does not apply for licensure as an adult-use dispensary; inserted (3) concerning procedure for requesting an election regarding whether to approve any or all of the marijuana business categories; deleted former (3)(b) that read: "(b) Except as provided in subsection (3)(c), an election held pursuant to this section may not be held within 70 days before or after a primary, general, or regular local election"; in (5) after "If the qualified electors of" substituted "a county vote to approve a type of marijuana business to be" for "an incorporated municipality, county, or consolidated city-county vote to prohibit adult-use dispensaries from being" and after "governing body shall enter the" substituted "approval " for "prohibition"; in (6)(a)(i) after "the question of whether to" substituted "prohibit a category of marijuana business" for "prohibit adult-use dispensaries"; in (6)(b) near middle after "vote to" substituted "approve a category of marijuana business to be" for "prohibit adult-use dispensaries from being" and at end substituted "the county may allow that category of marijuana business to operate in the county" for "the county may not allow adult-use dispensaries to operate in the county"; in (6)(c)(i) after "in the municipality vote to" substituted "approve a category of marijuana business to be" for "prohibit adult-use dispensaries from being" and at end substituted "the municipality may allow that category of marijuana business to operate in the municipality" for "the municipality may not allow adult-use dispensaries to operate in the municipality"; inserted (6)(c)(ii) concerning the effect of a majority of the qualified electors in the municipality voting to prohibit a category of marijuana business from being located in the municipality; deleted former (7) that read: "(7) A local government may temporarily prohibit retail sales regulated under this chapter from being located within its jurisdiction through local ordinance until an election can be held pursuant to this section"; in (7)(a) substituted "A county or municipality that has voted to approve a category of marijuana business to be located in the jurisdiction or a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election may vote to prohibit the previously approved or allowed operations within the jurisdiction" for "An incorporated municipality, county, or consolidated city-county that has voted to prohibit adult-use dispensaries from being located in the jurisdiction may vote to discontinue the prohibition and to allow the previously prohibited operations within the incorporated municipality, county, or consolidated city-county"; in (7)(b) after "A vote overturning" substituted "the approval of a category of marijuana business or prohibiting the previously permitted operation of marijuana businesses" for "a prohibition on operation of adult-use dispensaries"; and made minor changes in style. Amendment effective July 1, 2021.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by amending the effective date of this section imposed by I.M. No. 190 to July 1, 2021. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-302. Fraudulent representation — penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 24, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2021 Amendment: Chapter 576 in (1) after "the individual is" substituted "a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, testing laboratory, or marijuana transporter or has a marijuana worker permit" for "an adult-use provider or an adult-use marijuana-infused products provider"; and in (2) after "may not be licensed" substituted "under this chapter" for "as an adult-use provider or adult-use marijuana-infused products provider under 16-12-203". Amendment effective January 1, 2022.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-303. Law enforcement authority.

Compiler's Comments

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective October 1, 2021. Approved November 3, 2020.

16-12-304. Forfeiture.

Compiler's Comments

Effective Date: Section 56, Initiative Measure No. 190, provided that this section is effective January 1, 2021. Approved November 3, 2020.

16-12-305. Enforcement — ordinances — investigations — injunctions — violation.

Compiler's Comments

Effective Date: Section 16, Ch. 746, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 22, 2023.

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

16-12-309. Local government taxing authority — specific delegation.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-310. Limit on local-option marijuana excise tax rate — goods subject to tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 25, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-311. Local government excise tax— election required — procedure — notice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-312. Tax administration.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-317. Use of local-option marijuana excise tax revenue.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Part 5
Medical Marijuana

Part Administrative Rules

Title 42, chapter 39, ARM Cannabis control.

Part Case Notes

DUI Conviction — Sentence to Surrender Medical Marijuana Card Supported by Sufficient Evidence in Record: The defendant was convicted of felony DUI. In his sentence, the District Court ordered the defendant to surrender his medical marijuana card, citing a nexus between the defendant's use of alcohol and marijuana and the crime. The defendant objected, claiming that the condition deprived him of his right to "seek health" and was unrelated to his crime. On appeal, the Supreme Court affirmed, noting that there is no affirmative right to access medical marijuana and holding that substantial evidence in the record established a sufficient nexus to support the sentence. St. v. Corriher, 2021 MT 275, 406 Mont. 120, 497 P.3d 579.

Burden of Proof — Individual Must Show Medical Marijuana Card — Burden Not on City or State: The Municipal Court and District Court did not err in determining that the defendant had the burden of proving she fit under a statutory exception for criminal possession of drug paraphernalia for individuals in compliance with the Medical Marijuana Act (MMA) (now repealed and terminated). Through the MMA, the Legislature created an exception from arrest and prosecution for marijuana-related crimes for individuals who comply with the MMA's regulatory system. In any criminal case, "a defendant who relies upon an exception to a statute made by a proviso or distinct clause, whether in the same section of the statute or elsewhere, has the burden of establishing and showing that he comes within the exception" (U.S. v. Freter, 31 F.3d 783 (9th Cir. 1994), quoted in U.S. v. Guzman-Mata, 579 F.3d 1065 (9th Cir. 2009)). Therefore, to avail herself of the MMA exception the defendant bore the burden of establishing and showing she came within the exception. Unlike St. v. Johnson, 2012 MT 101, 365 Mont. 56, 277 P.3d 1232, the defendant never provided any evidence she had a valid registry card. Therefore, she was not entitled to a rebuttable presumption that she possessed marijuana-related drug paraphernalia in compliance with the MMA, and the city had no presumption to rebut. Consequently, to convict the defendant, the city only needed to prove that the defendant purposely or knowingly possessed with intent to use drug paraphernalia to inhale a dangerous drug. The Municipal Court correctly held that the defendant bore the burden of establishing and showing she came within the MMA exception, and the District Court did not err by affirming the Municipal Court's holding. Missoula v. Shumway, 2019 MT 38, 394 Mont. 302, 434 P.3d 918, citing U.S. v. Guzman-Mata, 579 F.3d 1065 (9th Cir. 2009).

Noncardholder Not Exempt from Prosecution for Possession or Cultivation of Marijuana Under Exemption for Being in Vicinity of Registered Medical Marijuana Cardholder's Authorized Use: The defendant was not exempted from prosecution for possession of marijuana solely because she was in the vicinity of authorized use of marijuana by a registered medical marijuana cardholder. On appeal to the Supreme Court, the defendant argued she was protected from prosecution under the Montana Medical Marijuana Act (now repealed and terminated) because her partner was a registered medical marijuana cardholder and she could not be prosecuted for constructive possession under 50-46-319(5)(a) (now repealed). The Supreme Court disagreed. Even if she was protected from being found in constructive possession of marijuana, the charges against her were not based only on that constructive possession. Because the defendant engaged in activities related to the production and cultivation of marijuana plants and exercised control over both the plants and the house the plants were found in, the defendant was still subject to prosecution for criminal production or manufacture of dangerous drugs. St. v. Sutton, 2018 MT 143, 391 Mont. 485, 419 P.3d 1201.

2011 Montana Marijuana Act — Numerous Provisions Upheld — Prohibition on Remuneration Unreasonable: After the Supreme Court's decision in Mont. Cannabis Indus. Ass'n v. St., 2012 MT 201, 366 Mont. 224, 286 P.3d 1161, which remanded challenges to the 2011 Montana Marijuana Act to the District Court to apply rational basis review, the District Court determined the following: (1) that the Act's provision requiring the Department of Public Health and Human Services to notify the Board of Medical Examiners of any physician who certified 25 or more patients in a year for medical marijuana failed rational basis review; (2) that the Act's commercial prohibitions, including the limits on the number of patients a provider can have and the restrictions against accepting remuneration for products or services provided to registered cardholders, failed rational basis review; (3) that the Act's provision prohibiting advertising by providers failed strict scrutiny and unconstitutionally infringed free speech; (4) that the Act's provision prohibiting probationers from becoming registered cardholders withstood rational basis review; and (5) that the Act's provision allowing warrantless inspections of providers' businesses comported with constitutional guarantees against unreasonable searches. On appeal, the Supreme Court upheld all of the challenged provisions of the Act except for the remuneration restrictions, concluding that: (1) the 25-patient review trigger is not arbitrary in light of the problems with overcertification under the repealed 2004 Medical Marijuana Act and is rationally related to the legitimate state interest of carefully regulating the distribution of medical marijuana while allowing its limited use for people with debilitating medical conditions; (2) the patient limit is reasonably related to the legitimate governmental concern of affording a means of treatment while avoiding large-scale commercial marijuana production, but the remuneration restrictions are not reasonable when balanced against the purposes of the Act and violate the equal protection and due process of law clauses of the Montana Constitution; (3) the Act limits only commercial speech that is an unlawful activity under federal law and does not unconstitutionally infringe free speech rights; (4) the ban on probationers becoming registered cardholders is not facially invalid; and (5) allowing warrantless inspections of providers' businesses is not facially invalid. Mont. Cannabis Indus. Ass'n v. St., 2016 MT 44, 382 Mont. 256, 368 P.3d 1131. (See 2016 and 2017 amendments to the Montana Medical Marijuana Act.)

Right to Employment — Selling Medical Marijuana for Profit Not Fundamental Right: The District Court determined that medical marijuana is a legal product in Montana with an established licensing and distribution system and that consequently a statutory prohibition on accepting money for it implicates the fundamental right to pursue employment. On appeal, the Supreme Court reversed the District Court and determined the right to employment does not grant a right to or property interest in any particular job or employment. Moreover, the Legislature, in its exercise of the state's police powers, was permitted to circumscribe a right to protect the public health and welfare. Mont. Cannabis Indus. Ass'n v. St., 2012 MT 201, 366 Mont. 224, 286 P.3d 1161, following Wadsworth v. St., 275 Mont. 287, 911 P.2d 1165 (1996), and Wiser v. St., 2006 MT 20, 331 Mont. 28, 129 P.3d 133. See also Mont. Cannabis Indus. Ass'n v. St., 2016 MT 44, 382 Mont. 256, 368 P.3d 1131.

Right to Privacy — Access to Medical Marijuana Not Fundamental Right: The District Court determined that statutory restrictions on medical marijuana substantially implicated the fundamental right to privacy. On appeal, the Supreme Court reversed the District Court and determined that the right to privacy does not encompass the affirmative right of access to medical marijuana. The Supreme Court reasoned that while the right to privacy is certainly implicated when a statute infringes on a person's ability to obtain or reject a "lawful" medical treatment, it does not follow that the right to privacy is necessarily implicated when a statute regulates a particular medication. Mont. Cannabis Indus. Ass'n v. St., 2012 MT 201, 366 Mont. 224, 286 P.3d 1161, following Wiser v. St., 2006 MT 20, 331 Mont. 28, 129 P.3d 133, and distinguishing Armstrong v. St., 1999 MT 261, 296 Mont. 361, 989 P.2d 364. See also Mont. Cannabis Indus. Ass'n v. St., 2016 MT 44, 382 Mont. 256, 368 P.3d 1131.

Right to Seek Health — Access to Medical Marijuana Not Fundamental Right: The District Court determined that denying medical marijuana providers compensation and limiting the number of cardholders that each provider can serve substantially implicated the fundamental right to seek health in a lawful manner because such restrictions deny access to medical marijuana. On appeal, the Supreme Court reversed the District Court and determined that the right to obtain and reject medical treatment does not give an individual a fundamental affirmative right to access any drug, regardless of its legality. Moreover, the right to seek health is circumscribed by the state's police powers to protect the public's health and welfare. Mont. Cannabis Indus. Ass'n v. St., 2012 MT 201, 366 Mont. 224, 286 P.3d 1161, citing Wiser v. St., 2006 MT 20, 331 Mont. 28, 129 P.3d 133. See also Mont. Cannabis Indus. Ass'n v. St., 2016 MT 44, 382 Mont. 256, 368 P.3d 1131.

Possession of Valid Registry Identification Card at Time of Offense Required for Immunity: Stoner was charged with numerous drug offenses related to the possession and production of marijuana on July 22, 2009. On December 3, 2009, Stoner was issued a qualifying patient registry identification card. Stoner argued in a motion to dismiss at the District Court level that the Medical Marijuana Act (now repealed) did not require a person to possess a registry identification card at the time of the offense. The District Court denied the motion and Stoner appealed. The Supreme Court held that Stoner was required to obtain and be in possession of a valid registry identification card at the time of the offense for which he sought immunity from prosecution. St. v. Stoner, 2012 MT 162, 365 Mont. 465, 285 P.3d 402.

Hashish Not Marijuana — Definitions Harmonized: A medical marijuana card that was issued pursuant to the former Medical Marijuana Act as set forth in 50-46-101 through 50-46-210 (now repealed) did not entitle the defendant to possess hashish, which is specifically differentiated in 50-32-101. The Act was clear and unambiguous on its face, and the District Court's interpretation appropriately harmonized the statutes. St. v. Pirello, 2012 MT 155, 365 Mont. 399, 282 P.3d 662.

Rule of Lenity Not Applicable — Fair Notice That Hashish Not Medical Marijuana: The definitions of "marijuana" and "usable marijuana" were clear and unambiguous under the former Medical Marijuana Act as set forth in 50-46-101 through 50-46-210 (now repealed). Consequently, the defendant had fair notice that possession of hashish was prohibited under the Act and the rule of lenity did not apply. St. v. Pirello, 2012 MT 155, 365 Mont. 399, 282 P.3d 662.

2009 Medical Marijuana Act — Caregiver-to-Caregiver Exchanges Prohibited: Plaintiffs argued the 2009 Medical Marijuana Act (now repealed) allowed caregivers to either exchange marijuana with other caregivers or provide cultivation services to other caregivers for the purpose of supplying qualified patients with medical marijuana, but the plain language of the 2009 MMA authorized caregivers to provide marijuana only to qualifying patients and not to other caregivers. Medical Marijuana Growers Ass'n, Inc. v. Corrigan, 2012 MT 146, 365 Mont. 346, 281 P.3d 210.

Interpretation of Medical Marijuana Act — Medical Marijuana to Be Obtained From Care Provider Identified on Card — Denial of Motion to Dismiss Criminal Possession of Marijuana Affirmed: The defendant was charged with several counts, including criminal possession of marijuana. At the time of the offense, police found less than 1 ounce on the defendant, who had a valid medical marijuana card. After being found guilty of the offense in Justice's Court, the defendant appealed for a trial de novo in District Court. She also filed a motion to dismiss the possession charge, claiming that because she had a valid card, she could not be prosecuted for possessing less than 1 ounce, even if she did not obtain the marijuana from the provider identified on her card. The District Court denied the motion to dismiss and found her guilty of the charge. On appeal, the Supreme Court affirmed, ruling that the Medical Marijuana Act (now repealed) did not permit a cardholder to obtain marijuana from anyone other than the registered provider. St. v. Johnson, 2012 MT 101, 365 Mont. 56, 277 P.3d 1232.

Sentencing Conditions May Not Restrict Medical Treatment Authorized by State Law: Nelson was charged with seven drug-related crimes. Nelson suffers from a degenerative disc disorder and has had four surgeries on his back. Nelson had applied with the state to be a qualified patient in Montana's medical marijuana program and to be entitled to the lawful use of medical marijuana. On December 8, 2006, subsequent to being charged with the drug-related crimes, Nelson was accepted into the medical marijuana program, placed on the confidential registry, and issued an identification card indicating his participation in the program. On February 7, 2007, Nelson entered into a plea agreement with the state. In exchange for pleading nolo contendere to criminal possession or manufacture of dangerous drugs, Nelson received a 3-year deferred imposition of sentence, and the state agreed to dismiss the remaining six counts. On February 26, 2007, Nelson appeared before the District Court and formally pleaded no contest to the charge. The District Court asked Nelson's attorney how Nelson participated in the medical marijuana program. The state offered that it had spoken to officials at the Department of Corrections, who opined that they would not allow Nelson to smoke marijuana while under their supervision but would allow him to use the pill form of marijuana, dronabinol, as prescribed by a physician. Nelson's attorney argued that such a restriction on Nelson's use of medical marijuana would be cost-prohibitive for him due to the expense of dronabinol and was thus contrary to the intent behind the passage of the Medical Marijuana Act, which was to allow individuals to obtain medical relief through the use of medical marijuana in a manner that was cost-effective. Nelson was ultimately given a 3-year deferred imposition of sentence subject to 20 conditions. Nelson appealed the conditions requiring him to comply with federal law and restricting his use and possession of marijuana to the pill form. Under the Medical Marijuana Act, "medical use" specifically contemplates "cultivation" and the use of "paraphernalia relating to the consumption of marijuana". The Supreme Court concluded that the District Court exceeded its statutory authority in imposing the condition limiting use to the pill form. The District Court unlawfully denied Nelson the right and privilege to use a lawful medical treatment for relief from a debilitating condition under the Medical Marijuana Act. The District Court also exceeded its authority in imposing the condition requiring compliance with federal law, insofar as it could be invoked to support a revocation of his deferred sentence in the face of contrary state law. It is an axiom of federalism under the U.S. Constitution that Congress does not have the authority to commandeer the processes of states by directly compelling them to enact and enforce a federal regulatory program. St. v. Nelson, 2008 MT 359, 346 M 366, 195 P3d 826 (2008), distinguished in St. v. Fadness, 2012 MT 12, 363 Mont. 322, 268 P.3d 17.

Part Law Review Articles

Montana Cannabis Industry Association v. State of Montana and the Constitutionality of Medical Marijuana, Bourguignon, 75 Mont. L. Rev. 167 (2014).

Sex, Drugs and Guns: Gonzales v. Raich and the Expanding Scope of the Commerce Power, Curtin, 25 QLR 887 (2007).

The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines, Hill, 86 Tex. L. Rev. 277 (2007).

16-12-501. Purpose.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-502. Definitions.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-503. Medical marijuana registry — department responsibilities — issuance of cards — confidentiality.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-508. Individuals with debilitating medical conditions — requirements — minors — limitations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-509. Written certification — accompanying statements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 743, L. 2023. Amendment effective May 22, 2023.

Severability: Section 13, Ch. 743, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-513. Registry identification card to be exhibited on demand — photo identification required.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-514. Health care facility procedures for patients with marijuana for use.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-515. Legal protections — allowable amounts.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-520. Prohibitions on physician affiliation with licensees — sanctions.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-523. Unlawful conduct by cardholders — penalties.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-525. Confidentiality of registry information — penalty.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-526. Law enforcement authority.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-533. Rulemaking authority — fees.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-502. [illegible]

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section [illegible] was a severability clause.

16-12-503. Medical marijuana [illegible] cards — confidentiality.

[illegible]

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-505. Individuals with debilitating medical conditions — re[illegible] limitations.

Compiler's Comments

2023 Amendment: Se[illegible]23. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony [illegible] interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying "obtaining" cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discre[illegible]

WHEREAS, the committee disagreed with this interpretation and [illegible]

WHEREAS, this issue was [illegible]

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether [illegible] Legislature intended to allow a qualifying [illegible] to increase [illegible] tiers at their discretion."

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-509. Written certification — accompanying statements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 743, L. 2023. Amendment effective May 22, 2023.

Severability: Section 15, Ch. 743, L. 2023, was a severability clause.

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-512. Registry identification card to be exhibited on demand — photo identification required.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-514. Health care facility procedures for patients with marijuana for use.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

16-12-515. Legal protections — allowable amounts.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

TITLE 17
STATE FINANCE

CHAPTER 1
GENERAL ADMINISTRATION

Part 1
General Administration and Fiscal Officers

17-1-101. Definition of department.

Compiler's Comments

1995 Amendment: Chapter 325 near beginning of exception clause, after "part 3", deleted "and chapter 4, part 1"; and made minor changes in style. Amendment effective July 1, 1995.

17-1-102. Uniform accounting system and expenditure control.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 37, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2015 Amendment: Chapter 320 in (4)(a) at beginning inserted exception clause; inserted (4)(b) regarding reporting; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

2013 Amendment: Chapter 120 in (4)(a) in fourth sentence substituted "legislative fiscal analyst" for "legislative finance committee" and inserted last sentence requiring report to be provided in electronic format. Amendment effective July 1, 2013.

2001 Amendment: Chapter 569 in (4) at end of introductory clause inserted "in accordance with the following requirements"; inserted (4)(a) regarding encumbrance of goods and services, grants, and local assistance that are paid for with the general fund; and inserted (4)(b) requiring that nongeneral fund encumbrances have a valid extension plan. Amendment effective July 1, 2001.

Applicability: Section 15, Ch. 569, L. 2001, provided: "[Section 2] [17-1-102] applies to fiscal year 2002 and thereafter."

1997 Amendment: Chapter 48 in (2), near beginning after "reporting", inserted "system", before "the receipt" substituted "reporting" for "showing", and after "principles" deleted "and shall develop plans for improvements and economies in the organization and operation of state agencies and institutions, which must be submitted to the respective heads of agencies and institutions. Copies of all plans must be delivered to the governor, and additional copies must be retained in the office of the department for inspection by the members of the legislature"; deleted former (4) that read: "The department shall examine all financial affairs of each state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation of the agencies and institutions and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (1), before "eliminated", "improved", and "reduced", inserted "may be"; in (5), after "colleges", deleted "and the vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted (3) prescribing contents of uniform accounting and reporting system; and in (5) inserted language excluding community colleges. Amendment effective July 1, 1991.

1985 Amendment: In middle of first sentence of (2), after "property", inserted "in accordance with generally accepted accounting principles"; and inserted (4) referring to input of transactions before accounts are closed.

Attorney General's Opinions

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

17-1-103. Assistance to legislature.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-1-104. Definitions.

Compiler's Comments

Effective Date: Section 7, Ch. 121, L. 2005, provided: "[This act] is effective July 1, 2005."

17-1-105. Statewide cost allocation plan.

Compiler's Comments

2005 Amendment: Chapter 121 in (1) near beginning after "department" deleted "of administration", near middle after "among the" deleted "grantee", and near end after "established by" substituted "applicable" for "federal"; inserted (2) requiring payments in four equal installments by depositing the payments into the general fund; and made minor changes in style. Amendment effective July 1, 2005.

1983 Amendment: At beginning of section changed "The budget director" to "The director of the department of administration".

17-1-106. Agency recovery of indirect costs — exemption.

Compiler's Comments

Termination Provision Removed: Section 14, Ch. 356, L. 2019, amended sec. 21, Ch. 387, L. 2017, to remove the termination of the amendments made to this section by sec. 4, Ch. 387, L. 2017. Effective May 7, 2019.

2017 Amendment: Chapter 387 in (1) at beginning inserted exception clause. Amendment effective May 15, 2017, and terminates June 30, 2027.

Code Commissioner Note: Chapter 387, L. 2017, was not signed and approved until May 18, 2017.

2011 Amendment: Chapter 70 inserted (4) pertaining to recovery of indirect costs by department; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendments — Composite Section: Chapter 462 inserted (3) providing that department of transportation may not recover indirect costs from local governments for community transportation enhancement program; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 489 in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2005 Amendment: Chapter 121 in (1) at beginning substituted "An agency receiving nongeneral funds" for "Grantee agencies", after "accordance with" substituted "all applicable regulations, guidelines, or grant rules governing those funds" for "federal regulations and guidelines and with private grant rules, as appropriate", and near end after "methodologies" substituted "so that the agency may recover indirect costs" for "and recover indirect costs of federal assistance programs and private assistance programs"; in (4) inserted first sentence requiring submission of an indirect cost proposal to the appropriate federal agency and at end of second sentence after "build" substituted "an indirect cost proposal" for "indirect costs into a grant"; in (5) at beginning of first sentence inserted exception clause, after "recovered" substituted "by an agency to pay the agency's indirect costs under 17-1-105" for "from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system", and at end substituted "as provided in 17-1-105" for "in the general fund" and in second sentence after first "costs" deleted "except those costs recovered by a unit of the university system"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendment: Chapter 14 in (1) after "guidelines" inserted "and with private grant rules, as appropriate", after "indirect cost" substituted "reimbursement amounts and methodologies and" for "rates and endeavor, to the fullest extent possible, to", and at end inserted "and private assistance programs"; inserted (2) concerning written approval for accepting certain funds; inserted (3) concerning prohibition on waiving or forfeiting indirect cost recovery and establishing hierarchy for claiming costs; inserted (4) concerning technical assistance on building indirect costs into a grant; in (5) inserted last sentence concerning deposit of indirect costs; and made minor changes in style. Amendment effective August 16, 2002.

1993 Special Session Amendment: Chapter 37 inserted (2) requiring deposit of recovered indirect costs, except those recovered by the University System, in the general fund. Amendment effective January 5, 1994.

17-1-107. Agency recovery of costs for services rendered — invoice — payment deadline — interest.

Compiler's Comments

Effective Date: Section 3, Ch. 249, L. 2023, provided: "[This act] is effective July 1, 2023."

17-1-111. General fiscal duties of state treasurer.

Compiler's Comments

2003 Amendment: Chapter 607 inserted (2)(o) providing for state website information on how to donate to the state government; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 48 in (2)(c), before "the receipt", substituted "record" for "take upon the back of the warrant"; deleted former (2)(i) that read: "charge the outgoing state treasurer with the balance that was in the treasury when the outgoing treasurer came into office and with all money received and credit the outgoing treasurer with all warrants drawn on and paid"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 inserted (2)(f) through (2)(n) expanding fiscal duties of State Treasurer to include management plans of public revenue and registration and accounting of state warrants; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Public University Endowment Funds Not "Public Funds" — Not Required to be Invested Through Unified Investment Program: Article VIII, sec. 13, Mont. Const., does not require that endowments granted to Montana's public universities be invested through the unified investment program. 53 A.G. Op. 6 (2010).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

17-1-112. Access to offices.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-1-122. Discretionary authority of state treasurer.

Compiler's Comments

1995 Amendment: Chapter 325 at beginning substituted "state treasurer" for "state auditor"; in (2), near beginning, substituted "money" for "moneys or securities" and substituted "the department" for "his office"; in (4), after "established", deleted "under the joint control of the department of administration and the state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

17-1-124. Authority of state auditor concerning securities.

Compiler's Comments

Effective Date: Section 37, Ch. 325, L. 1995, provided that this section is effective July 1, 1995.

17-1-131. General duties of budget director.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-1-132. Access to information.

Compiler's Comments

2007 Amendment: Chapter 70 inserted (2) authorizing the budget director to examine the costs and revenue of state government activities; inserted (3) making the budget director subject to penalties for unauthorized disclosure of confidential information and requiring the adoption of policies for handling confidential information; inserted (4) designating when public disclosure of information not allowed; and made minor changes in style. Amendment effective March 27, 2007.

Part 2
Anticipation of Revenue

Part Compiler's Comments

Statement of Intent: The statement of intent attached to HB 915 (Ch. 658, L. 1979) provided: "Section 1. It is the intent of the Legislature that the amount of tax anticipation notes authorized in HB 915 should not exceed more than $50,000,000 in each of the 2 fiscal years of this biennium. Further, it is the intent of the Legislature that any notes issued in a fiscal year shall be fully paid before the end of the fiscal year.

Section 2. It is further the specific intent of the Legislature that the passage of this bill will reduce the need for borrowing from other state funds, such as the highway department [now department of transportation] earmarked revenue, or any of the coal tax trust funds, and that this practice will be curtailed.

Section 3. It is further the understanding of the Senate Taxation Committee of the Legislature that sufficient income will be obtained from investment of the unused portion of any revenues from the tax anticipation notes to offset the interest cost of these notes.

Section 4. It is further the specific intent of the Legislature that no tax anticipation notes shall be issued to refund or pay outstanding notes. In the event sufficient revenues are not available to pay the tax anticipation notes at the end of the 1981 fiscal year, it is the intent of this Legislature that this program shall not be continued."

17-1-204. Payment — pledge of taxes and revenue — costs of issuance.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by sec. 1, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

1995 Amendment: Chapter 47 in (2) inserted second and third sentences allowing the transfer of certain available funds, considered a loan to the general fund, to pay notes and interest; and made minor changes in style. Amendment effective February 9, 1995.

1985 Amendment: Inserted (3) referring to authority of Department to pay costs of issuing notes.

1981 Amendment: Substituted (2), referring to full faith and credit and taxing power of state, for "An amount of taxes and revenues as will be sufficient to pay the amount borrowed, with interest, is pledged to the payment of the notes."

Part 5
Dedication of Revenue to State Special Revenue Fund

Part Compiler's Comments

Effective Date: Section 10(1), Ch. 593, L. 1993, provided: "[Sections 1 through 6 [17-1-501 through 17-1-506] and this section] are effective on passage and approval." Approved April 29, 1993.

17-1-501. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 41 inserted (3) concerning legislative intent. Amendment effective July 1, 2003.

1999 Amendment: Chapter 8 deleted former (1) that read: "(1) The legislature finds that provisions for dedicating state revenue and statutorily appropriating funds have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication and statutory appropriation of funds result in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 509 in (1), in first sentence, inserted "and statutorily appropriating funds" and in second sentence inserted "and statutory appropriation"; in (2), near beginning, substituted "criteria" for "a system"; in (2)(b) inserted "as described in 17-1-507"; inserted (2)(d) concerning legislative scrutiny; inserted (3) concerning legislative intent that statutory appropriations reflect present circumstances, are terminated when no longer necessary, and are subject to legislative scrutiny; and made minor changes in style. Amendment effective July 1, 1995.

17-1-502. Definitions.

Compiler's Comments

2003 Amendment: Chapter 41 in definition of dedicated revenue provision at end inserted "or to a local government"; inserted definition of local government; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 509 inserted definitions of administrative costs, continuing and reliable source of revenue, and general revenue source; in definition of dedicated revenue provision, at end, inserted "as described in 17-2-102"; and made minor changes in style. Amendment effective July 1, 1995.

17-1-503. Transfer of fund balances to general fund.

Compiler's Comments

1999 Amendment: Chapter 8 deleted former (2) that read: "(2) If the legislative finance committee concurs, the department may transfer the unobligated balance in a special revenue account to the general fund based upon the survey conducted pursuant to 17-2-111"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments: Chapter 18 in (1), at beginning, deleted "On April 29, 1993".

Chapter 509 in (1), at beginning, deleted "On April 29, 1993"; and inserted (2) concerning the Department transferring the unobligated balance to the general fund. Amendment effective July 1, 1995.

17-1-504. Effect of termination.

Compiler's Comments

1995 Amendments: Chapter 252 in (1) and (2) deleted reference to 31-1-602; and made minor changes in style. Amendment effective March 27, 1995.

Chapter 509 in (1), after "appropriated", substituted "revenue from sources de-earmarked by the legislature" for "the revenue from an account provided for in 15-1-501, 20-9-343, and 31-1-602"; and in (2) substituted "by the legislature" for "by 15-1-501, 20-9-343, and 31-1-602". Amendment effective July 1, 1995.

17-1-505. Review of dedicated revenue provisions.

Compiler's Comments

2013 Amendment: Chapter 120 in (1)(e) after "17-2-106" deleted "and 17-2-111"; and in (2) deleted former third sentence that read: "The legislative fiscal analyst shall maintain a list of unjustified dedicated revenue provisions and shall report on the unjustified dedicated revenue provisions to the legislative finance committee no later than October 31 of the year preceding a regular legislative session." Amendment effective July 1, 2013.

2003 Amendment: Chapter 41 inserted (1)(f) concerning duties of department of revenue; in (2) near beginning of first sentence after "unnecessary" inserted "and unjustified" and inserted second and third sentences concerning determination of justification and report to legislative fiscal analyst and report to legislative finance committee; inserted (3) concerning basis for determining if dedicated revenue provision is justified; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review dedicated revenue provisions to ensure that legislative policy is clearly stated; deleted former (4) requiring the committee to establish procedures to facilitate a biennial review of dedicated revenue provisions; deleted former (5) requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of dedicated revenue provisions; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 8 in (1) near beginning after "review" deleted "each", after "dedicated revenue" substituted "provisions based upon procedures established" for "provision not exempted", and deleted former second sentence that read: "The committee shall also carry out the review prescribed by subsection (4)"; in (4) deleted former second sentence that read: "If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication may be exempt from future review"; and in (5) deleted former second and third sentences that read: "The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review." Amendment effective October 1, 1999.

Chapter 51 in (2)(b) after "legislative" substituted "fiscal" for "finance". Amendment effective March 15, 1999.

1995 Amendment: Chapter 509 in (1), after "under", substituted "subsection (4) and the principles of revenue dedication set forth in 17-1-507 to ensure that legislative policy is clearly stated. The committee shall also carry out the review prescribed by subsection (4)" for "subsection (3) and review statutory appropriations assigned by the legislature"; in (2), at beginning, substituted "The legislature recognizes that dedicated revenue provisions are subject to review by" for "The review conducted by the committee must include an evaluation of the dedicated revenue provision, based on whether it"; inserted (2)(a) through (2)(e) concerning review by various state entities; inserted (3) concerning avoiding the unnecessary use of dedicated revenue provisions; in (3)(a), at beginning, inserted "The program or activity funded" and at end inserted "and the tax, fee, or assessment is commensurate with the costs of the program or activity"; at beginning of (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), (3)(g), and (3)(h) inserted reference to the dedicated revenue provision; in (3)(d) inserted "and current priorities"; in (3)(e) inserted "does not impair"; in (3)(f) substituted "an appropriate projected ending" for "an inappropriate ending"; in (3)(h) inserted "does not result"; in (4), near beginning of first sentence, inserted "a biennial" and after "evaluation" substituted "of dedicated revenue provisions" for "required by this section", deleted former second sentence that read: "Each interim, the committee shall attempt to propose measures that will reduce dedicated revenue to an amount that is less than one third of all state revenue", and in last sentence, near end, substituted "may be exempt from future" for "does not need a future"; deleted former (5) that read: "(5) The committee shall review statutory appropriations to determine if the appropriation should be made by a legislative appropriation. During the 1995 biennium, the committee shall review the statutory appropriation of administrative costs in 75-11-313"; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Change: The Code Commissioner has substituted a reference to the Legislative Finance Division for a reference to the Office of the Legislative Fiscal Analyst to reflect the name change in 5-12-301.

The Code Commissioner has substituted references to the Legislative Services Division for references to the Legislative Council to reflect the amendment of 5-11-112.

17-1-507. Principles of revenue dedication.

Compiler's Comments

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

17-1-508. Review of statutory appropriations.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 360 in (2) in second sentence inserted "76-22-109, and". Amendment effective May 8, 2017.

Chapter 374 in (2) in second sentence inserted "76-17-103". Amendment effective July 1, 2017, and terminates June 30, 2027.

2013 Amendment: Chapter 17 in (2) in second sentence inserted "proposed or existing" and after "may" inserted "not"; deleted former (2)(a) that read: "(a) the fund or use requires an appropriation"; in (2)(a), (2)(b), and (2)(d) after "is" deleted "not"; in (2)(c) substituted "exists" for "does not exist"; in (2)(e) substituted current language for "other than for emergency purposes, it does not appropriate money from the state general fund"; in (2)(f) substituted "is used for general purposes" for "is dedicated for a specific use"; in (2)(g) substituted "to review expenditures and appropriation levels each biennium" for "the activity to be funded on a continual basis"; in (2)(h) at beginning deleted "when feasible" and at end substituted "excluded" for "included"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendment: Chapter 247 in (2) in second sentence at beginning inserted exception clause; and made minor changes in style. Amendment effective April 26, 2007.

2001 Amendment: Chapter 554 deleted former (1) requiring the legislative finance committee to, each interim, review statutory appropriations listed in 17-7-502 to eliminate those no longer needed and to ensure that legislative policy is clearly stated; in (1) before "identify" inserted "review and"; deleted former (5) requiring the committee to establish procedures to facilitate a biennial review of statutory appropriations and requiring the committee to summarize its review findings and report them to the legislature, including recommendations for termination or extension of statutory appropriations; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 8 in (1) near beginning after "shall" inserted "based upon procedures established pursuant to subsection (5)", after "review" substituted "statutory appropriations" for "each statutory appropriation", and after "17-7-502" deleted "and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4)"; deleted former (3) that read: "(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the guidelines set forth in subsection (4)"; in (5) substituted second sentence concerning the committee's postreview summary to the legislature for former sentence that read: "If the review determines that continual review of a statutory appropriation is not necessary, the statutory appropriation may be exempt from future review"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 51 in (3) at end of first sentence substituted "17-7-502" for "17-7-501". Amendment effective March 15, 1999.

1997 Amendment: Chapter 422 in (1) substituted "review each statutory appropriation that is contained in a section listed in 17-7-502 and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4) to eliminate statutory appropriations that no longer fulfill a legislative need and to ensure" for "review the criteria set forth in subsection (4) to ensure"; in (2) after "office of budget and program planning", deleted "and the legislative fiscal analyst", after "in development" deleted "and analysis", and near end substituted "guidelines" for "criteria"; in (3), near end, substituted "guidelines" for "criteria"; in (4) substituted "17-7-501" for "17-1-505" and inserted last two sentences and (4)(a) through (4)(i) relating guidelines for appropriate statutory appropriations; in (5), in first sentence, inserted "shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It" and in second sentence substituted "guidelines" for "review provisions"; inserted (6) relating to a biennial review of statutory appropriations; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 84, Ch. 509, L. 1995, provided that this section is effective July 1, 1995.

17-1-511. General fund transfer.

Compiler's Comments

2011 Amendment: Chapter 19 deleted former (1) and (2)(a) through (2)(c) that read: "(1) By November 1, 2008, the department of revenue shall determine the total amount of the tax credit claimed under 15-30-2369 through 15-30-2372 that was taken by physicians practicing in rural areas for tax years 2006 and 2007 and calculate the average of those amounts. The department of revenue shall report the average amount determined under this subsection to the state treasurer.

(2) (a) For the fiscal year beginning July 1, 2008, the state treasurer shall transfer 25% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501. The transfer under this subsection (2)(a) may not occur until after the amount is reported by the department of revenue under subsection (1).

(b) For the fiscal year beginning July 1, 2009, the state treasurer shall transfer 50% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

(c) For the fiscal year beginning July 1, 2010, the state treasurer shall transfer 75% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501"; after "transfer" deleted "100% of"; after "under" substituted "section 2(1), Chapter 361, Laws of 2007" for "subsection (1)"; and made minor changes in style. Amendment effective October 1, 2011.

Effective Date: Section 8(1), Ch. 361, L. 2007, provided that this section is effective July 1, 2008.

Part 7
Tribal Government Loans

17-1-701. Loans with Indian tribal governments.

Compiler's Comments

Effective Date: Section 7, Ch. 359, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

17-1-702. Incurrence of certain general obligations related to Indian tribal governments.

Compiler's Comments

Effective Date: Section 7, Ch. 359, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

CHAPTER 2
ACCOUNTING

Chapter Law Review Articles

The Basic Concepts of Accounting, Kempner, 30 Mont. L. Rev. 1 (1968).

Part 1
Treasury Funds and Accounts

17-2-101. Title and purpose.

Compiler's Comments

1997 Amendment: Chapter 532 inserted (2)(a) regarding compliance with the Montana Constitution; and made minor changes in style. Amendment effective July 1, 1997.

1981 Amendment: Substituted "the state's revenues, expenditures, expenses, and financial position in accordance with generally accepted accounting principles" for "governmental costs and revenues" at the end of the section.

Attorney General's Opinions

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

17-2-102. Fund structure.

Compiler's Comments

2019 Amendment: Chapter 185 in (3) in two places and in (4)(f) substituted "custodial fund" for "agency fund". Amendment effective July 1, 2019.

2001 Amendments — Composite Section: Chapter 34 in (1)(b) near beginning after "other than" substituted "private purpose trusts" for "expendable trusts"; inserted (1)(e) regarding the permanent fund type; in (3)(a) substituted "private purpose" for "expendable"; deleted former (1)(c)(ii) that read: "(ii) nonexpendable trust fund type"; in (3)(c) after "pension" inserted "and other employee benefit"; in (4)(c) at end of first sentence after "investment" deleted "thus producing consumable income"; deleted former (2) that read: "(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 305 in (1)(b)(i) near beginning and near middle after "money" inserted "and other proceeds". Amendment effective April 21, 2001.

1999 Amendment: Chapter 291 inserted (1)(c)(iii) concerning investment trust fund type; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 532 in (1), at beginning, inserted "For the purpose of ensuring strict accountability for all revenue received and spent". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (1)(d)(i), (1)(d)(ii), (1)(d)(iii), (1)(d)(iv), in two places, (1)(d)(v), and (1)(d)(vi), after "system", deleted reference to vocational-technical centers; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 433 at end of (1)(a)(ii)(A), after "government", inserted "and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation" and deleted former second sentence that read: "Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (1)(a)(ii)(A) inserted "and other nonfederal" and inserted second sentence eliminating nonstate and nonfederal revenue in state special revenue account from emergency budget amendment provisions of statutorily required budget amendment certification; and deleted (1)(a)(ii)(C) providing that other special revenue funds in state treasury include money from private sources used for state government operation and reimbursable expenditures. Amendment effective July 1, 1989.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

1985 Amendment: In (1) at beginning of (1)(d), substituted "higher education funds" for "university funds"; throughout (1)(d) following "the Montana university system", inserted references to postsecondary vocational-technical centers; throughout (1)(d)(i), substituted references to current fund for references to university current fund; at beginning of (1)(d)(ii) substituted "student loan fund" for "university student loan fund"; at beginning of (1)(d)(iii) substituted "endowment fund" for "university endowment fund"; at beginning of (1)(d)(iv) substituted "annuity and life income fund" for "university annuity and life income fund"; at beginning of (1)(d)(v) substituted "plant fund" for "university plant fund"; at beginning of (1)(d)(vi) substituted "agency fund" for "university agency fund"; and near end of (2)(a) and (2)(b) substituted "higher education funds" for "university funds".

1983 Amendment: In (1), introductory clause, changed "funds" to "fund categories and types"; in (1)(a), substituted "fund category, which includes" for "funds, which include"; in (1)(a)(ii), near beginning, substituted "special revenue fund type, which accounts" for "special revenue funds, which account" and inserted second sentence referring to subdivision of financial activities of special revenue fund type; inserted (1)(a)(ii)(A) referring to state special revenue fund; inserted (1)(a)(ii)(B) referring to federal special revenue fund; inserted (1)(a)(ii)(C) referring to other special revenue funds; in (1)(a)(iii), substituted "capital projects fund type, which account" for "capital projects funds, which account"; in (1)(a)(iv), substituted "debt service fund type, which accounts" for "debt service funds, which account"; at beginning of (1)(b), substituted "proprietary fund category, which includes" for "proprietary funds, which include"; at beginning of (1)(b)(i), substituted "enterprise fund type, which accounts" for "enterprise funds, which account"; in (1)(b)(ii), substituted "internal service fund type, which accounts" for "internal service funds, which account"; near beginning of (1)(c), substituted "fiduciary fund category, which includes trust and agency fund types" for "fiduciary funds, which include trust and legacy funds"; and in (1)(c)(i) through (1)(c)(iv), changed "funds" to "fund type".

1981 Amendments — Sunset Provision Removed — Effective Date: Section 2, Ch. 438, L. 1977, read: "The additional funds established by subsections (10) through (15) of 79-410 [17-2-102] are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure." The title to Ch. 28, L. 1981 (HB 341), read in part: "An act to rename and define treasury funds to be in accordance with current authoritative literature and generally accepted accounting principles; removing the sunset provision on the university funds; ... and providing effective dates." Chapter 28, L. 1981, made no amendments to Sec. 2, Ch. 438, L. 1977, which terminated subsections (10) through (15) of this section. However, the Code Commissioner did not remove those subsections because the testimony of witnesses on HB 341, as well as the title to HB 341, indicates an apparent intent to remove the sunset provisions.

Section 2, Ch. 28, L. 1981, rewrote subsection (1) establishing fund structure of state treasury by inserting all new language in (a) dealing with governmental funds, (b) dealing with proprietary funds, and (c) dealing with fiduciary funds and by making minor changes in (d) which deals with university funds; added subsection (2) establishing fixed assets account group and long-term debt account group.

Section 6, Ch. 28, L. 1981, provided that the amendments to this section will be effective July 1, 1983.

Attorney General's Opinions

Public University Endowment Funds Not "Public Funds" — Not Required to be Invested Through Unified Investment Program: Article VIII, sec. 13, Mont. Const., does not require that endowments granted to Montana's public universities be invested through the unified investment program. 53 A.G. Op. 6 (2010).

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

17-2-103. Previous definitions of funds — identification or segregation of money and funds.

Compiler's Comments

2001 Amendment: Chapter 34 in (2) near beginning after "enacted" deleted "in the future" and after "entered into" deleted "in the future"; in (3) after "created by" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 532 in (4), near end before "fund", substituted "state special revenue" for "fiduciary"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 556 in (4), after "are to be", deleted "wholly or partially", substituted "a fiduciary" for "the state special revenue", and inserted final clause regarding generally accepted accounting principles; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment — Applicability: Inserted (3) referring to accounting of federal grants or other federal money; and inserted (4) referring to accounting of taxes to be distributed to local government entities.

Section 2(1), Ch. 515, L. 1985, provided: "The provisions of 17-2-103(3) are not applicable to federal funds received by the department of highways [now department of transportation] for or on behalf of the state for the construction, reconstruction, repair, and maintenance of highways in the state until July 1, 1987."

1981 Amendment: Deleted former (3) that read: "The additional funds established by subsections (10) through (15) of 17-2-102 are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure."

17-2-105. Maintenance of fund and account records and interfund loans.

Compiler's Comments

2019 Amendment: Chapter 185 in (1) in second sentence substituted "custodial" for "agency". Amendment effective July 1, 2019.

1999 Amendment: Chapter 11 near beginning of (2)(b) inserted "to the general fund". Amendment effective July 1, 1999.

1995 Amendment: Chapter 47 in (2)(a), in first sentence after "treasury funds", inserted "excluding pension trust funds" and at beginning of second sentence inserted exception clause; inserted (2)(b) regarding repayment of interest on a loan made from a fund that retains its own interest; and made minor changes in style. Amendment effective February 9, 1995.

1983 Amendment: In second sentence of (1), after "individual", substituted "funds within the debt service, agency, capital projects, and trust fund types" for "subfunds within the sinking fund, bond proceeds and insurance clearance fund, and trust and legacy fund" and at end of sentence changed "subfund" to "fund"; and in last sentence of (1) after "establish", substituted "accounts, funds, or subfunds within any fund type" for "subfunds within any fund".

17-2-106. Creation and abolition of new accounts.

Attorney General's Opinions

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127 (1978).

17-2-107. Accurate accounting records and interentity loans.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 38, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 3 in (7)(b)(ii) substituted "statewide accounting, budgeting, and human resource system" for "statewide accounting system". Amendment effective October 1, 2019.

2013 Amendment: Chapter 120 in (5) and (6) substituted "legislative fiscal analyst" for "legislative finance committee" and inserted last sentences requiring report to be provided in electronic format. Amendment effective July 1, 2013.

2009 Amendment: Chapter 465 in (2)(a) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2009.

2002 Amendment: Chapter 8 inserted (9) prohibiting loan to fund or accounting entity owed federal or third-party funds unless requesting agency bills federal government or third party on earliest date allowable for agency share of costs incurred and requiring borrowing agency to bill federal government or third party and to recertify timely billing to approving agency. Amendment effective August 13, 2002.

2001 Amendment: Chapter 34 in (2)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (2)(b)(i) and (2)(b)(ii) near beginning after "designated in" substituted "17-2-102(4)" for "17-2-102(1)(d)"; in (4) near beginning after "designated in" substituted "17-2-102(4)(a)(iv) and (4)(b) through (4)(f)" for "17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)"; in (6) near beginning after "designated in" substituted "71-2-102(4)" for "17-2-102(1)(d)"; in (7)(a) near beginning after "designated in" substituted "17-2-102(1) through (3)" for "17-2-102(1)(a) through (1)(c)"; in (7)(b)(i) at end substituted "17-2-102(4) for "17-2-102(1)(d)"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 11 at beginning of (2)(a) inserted "Subject to 17-2-105"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 291 in (7)(a) in second sentence substituted "a fund type within each agency" for "an accounting entity"; and in (8) inserted second sentence concerning loans from funds other than the general fund. Amendment effective July 1, 1999.

1997 Amendments: Chapter 42 in (2)(b)(i), in first sentence, and in (2)(b)(ii) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i)(A) through (1)(d)(vi)"; in (6) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i) through (1)(d)(vi)"; in (7)(b)(i) substituted "17-2-102(1)(d)" for "17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 547 in (4) deleted last sentence that read: "Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 547, L. 1997, provided: "WHEREAS, Article X, section 10, of the Montana Constitution provides in part that the interest from university funds must be devoted to the maintenance and perpetuation of the respective University System institutions; and

WHEREAS, section 17-2-107, MCA, currently requires some of the investment earnings from some university funds to be credited to the state general fund."

1995 Amendment: Chapter 308 in (7)(b)(i), after "system", deleted "or vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (8), after introductory clause, substituted "the department of administration may authorize loans to accounting entities" for "the department of social and rehabilitation services may maintain positive cash balances", at end of first sentence, after "timing", substituted "of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made" for "for transmittal of obligated matching funds", and in second sentence, after "federal", substituted "private, or other governmental entity sources" for "and county governments"; and made minor changes in style. Amendment effective July 1, 1991.

Severability: Section 2, Ch. 628, L. 1991, was a severability clause.

1989 Amendments: Pursuant to coordination instruction in sec. 3, Ch. 151, L. 1989, in (8) substituted "federal and state special revenue funds" for "federal special revenue fund". Amendment effective March 18, 1989.

Chapter 622 throughout section substituted reference to accounting entity for reference to account; in (1), near end, inserted "or loans"; in (2)(a) inserted reference to fund designated in 17-2-102(1)(a) through (1)(c), after "authorize" deleted "a transfer, as", after "sufficient to" substituted "repay the loan" for "restore the amount so transferred", and inserted last sentence prohibiting impairment of account; inserted (2)(b) relating to higher education funds; near beginning of (2)(c) inserted reference to subsections (2)(a) and (2)(b) and at end deleted "No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended"; in first sentence of (3) inserted reference to Board of Regents and reference to subsections (2)(a) and (2)(b) and near beginning of second sentence substituted "director or board" for "department of administration"; in (4), after "Any loan from", deleted "the general fund or" and deleted reference to subsection (1)(d)(i)(C); inserted (5) relating to a report, analysis, and repayment plan when a loan or loan extension is made to the same entity 2 years in a row; inserted (6) relating to a report on the reason for a negative cash balance 2 years in a row in a higher education fund and providing for a solvency analysis and problem-solving plan; at beginning of (7)(b)(i) inserted exception clause; inserted (7)(b)(ii) relating to inadvertent negative balance; and made minor changes in form and phraseology. Amendment effective April 24, 1989.

Coordination Instruction: Section 3, Ch. 151, L. 1989, provided that if Senate Bill No. 80 is passed and approved to eliminate the other special revenue funds category, then the language "and other" inserted in 17-2-107 is deleted and the language "and state" is inserted in 17-2-107 in place of the language "and other". Senate Bill 80 was enacted as Ch. 700, L. 1989.

1987 Amendments: Chapter 170 inserted (6) allowing Department of Social and Rehabilitation Services to maintain positive cash balances in federal special revenue fund in certain cases.

Chapter 341 in (4) inserted reference to (1)(d)(i)(C); and near end of (4) inserted "other than investment earnings on student activity fees used to support student governments at units of the university system".

Chapter 658 before "vocational-technical" deleted "postsecondary".

1986 Amendment: Chapter 1, Sp. L. June 1986, in (2) near end of first sentence after "income" deleted "provided for the remainder of the fiscal year", after "transferred" inserted "within 1 calendar year", near beginning of second sentence after "repaid" substituted "within 1 calendar year of the date the loan is approved" for "before the end of the fiscal year", and before "subsection (3)" deleted "the criteria of"; deleted former (3) that read: "(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds;
(iii) receipts due to the loan fund; or
(iv) receipts from the sale of state prison ranch products"; and in present (3) deleted the first two sentences that read: "These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved."

Applicability: Chapter 1, Sp. L. June 1986, applies retroactively, within the meaning of 1-2-109, to loans processed on or after July 1, 1985 (sec. 2, Ch. 1, Sp. L. June 1986).

1985 Amendments: Chapter 136 in (5) substituted "current unrestricted subfund" for "university current unrestricted subfund"; and in (6)(b) after "university system", inserted "and postsecondary vocational-technical centers".

Chapter 354 inserted (3)(b)(iv) relating to receipts from sale of state prison ranch products.

1983 Amendment: In (2), inserted second sentence requiring repayment within 1 calendar year, and at end of third sentence after "met" inserted "even if the loan is extended"; inserted (3) relating to extension; and inserted (4) allowing extension of loan for up to 1 year.

1981 Amendment: Changed internal references to subsections of 17-2-102 to be consistent with amendments in sec. 2, Ch. 28, L. 1981.

Attorney General's Opinions

Disaster and Emergency Expenditures: An interaccount loan was not appropriate to provide a loan of $11.4 million to the Department of State Lands (now Department of Natural Resources and Conservation) from the state's general fund to be repaid by a subsequent appropriation of the same amount from the general fund. An interaccount loan may not be made to a special revenue account when the borrower anticipates no income, other than the possibility of a supplemental appropriation sometime in the future, with which to repay the loan. The reliance on the possibility of a supplemental appropriation does not meet the requirement of reasonable evidence of future income under the interaccount loan statute. 42 A.G. Op. 123 (1988).

17-2-108. Expenditure of nongeneral fund money first.

Compiler's Comments

2005 Amendment: Chapter 151 in (1) near beginning after "22-1-226(5)" inserted "the Montana school for the deaf and blind in 20-8-107(5)"; and made minor changes in style. Amendment effective April 8, 2005.

2003 Amendments — Composite Section: Chapter 332 inserted (3) relating to federal and state fund switching. Amendment effective July 1, 2003.

Chapter 576 in (1) near middle after "22-1-226(5)" inserted "and the department of public health and human services in 53-1-612"; and at beginning of (2) inserted exception clause. Amendment effective July 1, 2003.

1995 Amendment: Chapter 339 at beginning of (1), in exception clause, inserted reference to Montana State Library; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 4 at beginning of (1) inserted exception language regarding the Montana Historical Society. Amendment effective July 1, 1993.

1991 Amendment: In (1), before "nongeneral fund money", inserted "appropriated"; and inserted (2) requiring approving authority to authorize decrease in general fund appropriation. Amendment effective July 1, 1991.

1989 Amendment: At beginning substituted "An office or entity of the executive, legislative, or judicial branch of state government" for "The department" and made minor changes in phraseology.

Attorney General's Opinions

University System — Unanticipated Nongeneral Funds — Carryover: When the Montana University System received unanticipated nongeneral funds which were not used to offset the general fund appropriation or expended prior to expenditure of the general fund appropriation, it must carry over the balances to the next biennium. The Board of Regents may expend these funds by approved budget amendment. 36 A.G. Op. 76 (1976).

17-2-110. Fiscal year and financial reports.

Compiler's Comments

2015 Amendment: Chapter 320 in (1) at beginning inserted exception clause and inserted last sentence regarding fiscal year dates; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 25, Ch. 320, L. 2015, provided that this section applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

1997 Amendment: Chapter 48 in (2), in first and third sentences, substituted "end of each fiscal year" for "close of each fiscal year", at end of first sentence deleted "as of the end of the fiscal year", in second sentence, after "financial", substituted "records" for "statements", and in third sentence, after "reports", inserted "of the uniform accounting and reporting system prescribed in 17-1-102(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (2), in first sentence after "unit", deleted "vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment: Near middle of first sentence of (2), after "university unit", inserted "vocational-technical center"; and near middle of second sentence of (3), after "agency", inserted "in accordance with generally accepted accounting principles".

Compiler's Comments

1999 Amendment: Chapter 8 in first sentence after "shall" substituted "provide information on" for "conduct a survey of", after "accounts" substituted "as requested by" for "not exempt under 17-1-505 and coordinate with", and at end deleted "to provide information necessary to complete the review required by 17-1-505" and in second sentence after "provide the" deleted "survey". Amendment effective October 1, 1999.

1995 Amendment: Chapter 509 near beginning, after "shall", substituted "conduct a survey of" for "examine", after "accounts" substituted "not exempt under 17-1-505 and coordinate with the legislative finance committee to provide information necessary to complete the review required by 17-1-505. The department shall provide the survey information to the legislative finance committee" for "and proprietary accounts as required by this section and report the findings and recommendations to the legislative finance committee", and substituted "February 1" for "June 1"; deleted (2) that read: "(2) The department shall examine restrictions against the transfer of unobligated balances in state special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action"; deleted (3) that read: "(3) The department shall examine all state special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program operation or fiscal control. In conducting the examination, the department shall consider whether an account:

(a) is accurately classified as a state special revenue account or proprietary account;

(b) is required by the Montana constitution or by statute;

(c) operates in compliance with the statutes that established the program;

(d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;

(e) allows the funded program to operate without supplemental general funds; and

(f) has any restrictions against the transfer of unobligated balances in the account to the general fund"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In first sentence of (1), (2), and (3), after "state", deleted "and other"; and in (3)(a), after "account", deleted "other special revenue account". Amendment effective July 1, 1989.

17-2-124. Disposition of money from certain designated license and other taxes.

Compiler's Comments

2009 Amendment: Chapter 489 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

Effective Date: Section 30, Ch. 475, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

17-2-131. Genetic engineering technology research and development account created.

Compiler's Comments

2005 Amendment: Chapter 130 at beginning of second sentence deleted "Funds appropriated under section 2, Chapter 686, Laws of 1989, and"; and made minor changes in style. Amendment effective October 1, 2005.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Part 2
Special Accounts

17-2-201. Contingent revolving accounts — when established.

Compiler's Comments

1997 Amendment: Chapter 48 in (1) and (2), in first sentence, substituted reference to state agency for reference to state institution; in (2), near middle of first sentence after "administration", substituted "upon request" for "monthly"; and made minor changes in style. Amendment effective July 1, 1997.

Case Notes

Change in Method of Handling Funds: This section, authorizing the state Board of Examiners (Department of Administration) to establish revolving accounts for state institutions, departments, or commissions, does not vest in the Veterans' Welfare Commission any power that may not be modified or repealed by subsequent legislation; hence the only remedy available to the Commission to correct the method of handling and accounting for the funds allotted to it by the general appropriation bill lies with the Legislature and not with the courts. State ex rel. Davidson v. Ford, 115 M 165, 141 P2d 373 (1943).

Attorney General's Opinions

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

17-2-202. Retention of agency money.

Compiler's Comments

2019 Amendment: Chapter 185 in (1) in three places substituted "money" for "moneys" and in first sentence substituted "custodial fund" for "agency fund". Amendment effective July 1, 2019.

Case Notes

State Board of Education: Nothing contained in 17-3-1003 and 17-6-105 or in this section, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Part 3
State and Local Charges for Services — Limit on Fund Balance

Part Compiler's Comments

Preamble: The preamble attached to Ch. 270, L. 1997, provided: "WHEREAS, some state agencies and local government entities set and collect charges for all or part of the cost of some public services; and

WHEREAS, there is a growing concern that some state agencies and local government entities are building large reserves in operating revenue due to the amount of charges for services; and

WHEREAS, governments must be responsible to the people they serve and always be vigilant not to charge or retain more in charges for services than is justified by the operating expenses of the government programs supported by the charges."

Retroactive Applicability: Section 5, Ch. 270, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to charges for services, as defined in [section 1] [17-2-301], collected prior to [the effective date of this act]." Effective July 1, 1998.

Effective Date: Section 6, Ch. 270, L. 1997, provided: "[This act] is effective July 1, 1998."

17-2-304. Reports required.

Compiler's Comments

2013 Amendment: Chapter 120 in (1)(a) substituted "legislative fiscal analyst" for "legislative finance committee"; inserted (1)(b) requiring report to be provided in electronic format; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 386 inserted (1)(e) relating to expenditures for public service announcements; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 332 in (1) substituted "September 15" for "August 1". Amendment effective July 1, 2003.

2001 Amendment: Chapter 483 in (2) near beginning after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

CHAPTER 3
FEDERAL REVENUES AND ENDOWMENTS

Part 1
Federal Assistance Management

17-3-102. Definitions.

Compiler's Comments

1997 Amendment: Chapter 48 in definition of application substituted present text for former text that read: "means a written request to a federal agency for federal assistance program funds"; and made minor changes in style. Amendment effective July 1, 1997.

17-3-105. Governor authorized to accept funds — designation of state agency.

Attorney General's Opinions

Department of Commerce Authorized to Administer Housing Assistance Payments Program — No Restriction in Area Served by Municipal Housing Authority: The Montana Department of Commerce fits the description of a public housing authority under regulations of the United States Department of Housing and Urban Development (HUD) and is authorized to contract with HUD to administer HUD's Housing Assistance Payments Program, including federal Section 8 certificate and voucher programs. The restriction in 7-15-4414 applies only to municipal housing authorities operating in the same geographic location and therefore does not restrict the administration of federal Section 8 housing programs in the same area by an authorized state agency. 44 A.G. Op. 23 (1992).

17-3-106. Fiscal officer for receipt of federal grants.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), at beginning, substituted "A state agency may return from the state treasury, through the state treasurer" for "The state treasurer may return to the federal government". Amendment effective July 1, 1997.

1993 Amendment: Chapter 107 inserted (2) allowing the State Treasurer to return to the federal government any federal funds plus interest that may not be retained by the state and statutorily appropriating those funds to the State Treasurer for the purpose of returning the funds; and made minor changes in style. Amendment effective July 1, 1993.

17-3-108. Approved budget amendment.

Compiler's Comments

1993 Amendment: Chapter 109 deleted former first sentence that read: "Approval of a state agency application under 17-3-104 shall not constitute authority to expend any federal assistance program funds subsequently granted." Amendment effective March 18, 1993.

Compiler's Comments

Repealer — Contingent Effective Date: Section 11(2), Ch. 17, L. 2013, provided that the repeal of this section is effective on the date that the governor certifies to the code commissioner that federal funds and interest earnings received under 17-3-112 have been spent. In a letter dated June 26, 2020, the governor's office certified that the funds and interest earnings have been spent.

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

Part 2

Distribution of Federal Return on State Resources

17-3-202. Special districts — authority to receive federal funds.

Compiler's Comments

Effective Date: Section 4, Ch. 133, L. 2021, provided: "[This act] is effective July 1, 2021."

17-3-211. Forest reserve money and other federal funds.

Compiler's Comments

2017 Amendment: Chapter 283 in (1) in middle after "by the state" deleted "plus interest earned" and after "within" substituted "5 business days" for "30 days"; in (2) after "Public Law 110-343 money" substituted "are not distributed within 5 business days of receipt by the state, all interest earnings must be credited to the appropriate counties" for "must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 and Public Law 110-343 account, as appropriate"; and made minor changes in style. Amendment effective May 4, 2017.

2009 Amendment: Chapter 105 in (1) in two places and in (2) in two places inserted reference to Public Law 110-343; and made minor changes in style. Amendment effective April 1, 2009.

2007 Amendment: Chapter 74 in (1) at end after "directed by the" substituted "department" for "state auditor". Amendment effective July 1, 2007.

2001 Amendment: Chapter 334 in (1) in two places inserted references to Public Law 106-393; near beginning of (2) after "money" inserted "and the Public Law 106-393 money" and at end inserted "or the Public Law 106-393 account, as appropriate"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1), near beginning substituted "16 U.S.C. 500" for "an act of congress of May 23, 1908, 35 United States Statutes at Large, p. 260", near middle after "thereunder", inserted "plus interest earned", and near end after "receiving", inserted "full payment of the"; and inserted (2) requiring investment of forest reserve money.

17-3-212. Apportionment of forest reserve funds and other federal funds among counties.

Compiler's Comments

2017 Amendment: Chapter 283 in (1) in first sentence after "Public Law 110-343 funds" inserted "funds received pursuant to a similar subsequent act" and in second sentence after "earned interest" inserted "as provided in 17-3-211"; and made minor changes in style. Amendment effective May 4, 2017.

2009 Amendment: Chapter 105 in (1) in two places inserted reference to all Public Law 110-343 funds. Amendment effective April 1, 2009.

2007 Amendment: Chapter 74 in (1) at end of first sentence after "fund to the" and at beginning of second sentence after "The" substituted "department" for "state auditor". Amendment effective July 1, 2007.

2001 Amendment: Chapter 334 in (1) in first and second sentences after "funds" inserted "all Public Law 106-393 funds" and at end of second sentence substituted "based upon federal law and this section" for "in proportion to the acreage of the forest reserve in each county". Amendment effective July 1, 2001.

1999 Amendment: Chapter 389 in (1) near end of first sentence inserted "from the federal special revenue fund" and in second sentence after "allocation" deleted "between the several counties as follows: all funds received from each forest reserve shall be apportioned between"; and made minor changes in style. Amendment effective July 1, 1999.

1985 Amendments: Chapter 703 substituted present language in lead-in before "all funds" for "The state auditor shall apportion said forest reserve funds between the several counties as follows".

Chapter 712 near end inserted "plus interest thereon, as provided in 17-3-211".

17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law.

Compiler's Comments

2017 Amendment: Chapter 283 in (1) after the first "Public Law 110-343" inserted "and any similar subsequent act" and after "Public Law 110-343 funds" inserted "and funds received pursuant to a similar subsequent act"; in (2) after "16 U.S.C. 500" inserted "or any similar subsequent act"; in (3)(a), (3)(b), and (4) after "Public Law 106-393" inserted "or any similar subsequent act"; in (8) in first sentence, (8)(a), and (9)(a) after "Public Law 110-343" inserted "or any similar subsequent act"; and made minor changes in style. Amendment effective May 4, 2017.

2009 Amendment: Chapter 105 in (1) in two places inserted reference to Public Law 110-343; in (4) inserted "under Public Law 106-393"; inserted (8) regarding county expenditure of Public Law 110-343 funds; inserted (9) regarding a county's disposition of funds; and made minor changes in style. Amendment effective April 1, 2009.

2001 Amendment: Chapter 334 substituted (1) concerning determination of payment options and distribution of forest reserve and Public Law 106-393 funds for "The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows"; inserted (2) concerning 25% payment distributed pursuant to subsection (5); inserted (3) concerning 80% to 85% of full payment being used pursuant to subsection (5) and the remainder allocated by the county pursuant to Public Law 106-393; inserted (4) concerning full payment of less than $100,000; inserted introductory clause of (5); in (5)(a) at end substituted "amount designated" for "total amount received"; in (5)(b) at end substituted "amount designated" for "total sum received"; in (6) near beginning of second sentence substituted "subsection (5)(b)" for "this section"; near middle of (7) after "66 2/3%" substituted "distributed under subsection (5)(b)" for "of the total amount received"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In (1)(b)(iii) substituted "county transportation fund provided for in 20-10-146" for "high school transportation fund provided for in 20-10-143". Amendment effective July 1, 1991.

1989 Special Session Amendment: In (1), after "county", deleted "between the several funds"; in (1)(b)(i) substituted "county equalization" for "the annual basic tax levy"; in (1)(b)(ii) substituted "county equalization" for "the annual special tax"; substituted (1)(b)(iv) relating to elementary and high school district retirement fund obligations for former (1)(b)(iv) and (1)(b)(v) relating to elementary teacher retirement and Social Security fund and high school teacher retirement and Social Security fund; and made minor changes in phraseology. Amendment effective July 1, 1990.

1983 Amendment: In (1)(b), changed "common school fund" to "following countywide school levies" and inserted (1)(b)(i) through (1)(b)(v) detailing distribution between countywide school levies; and inserted (2) establishing formula for apportionment.

17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act.

Compiler's Comments

1997 Amendments: Chapter 42 near end, after "Taylor Grazing Act", substituted "43 U.S.C. 315i" for "approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where collected"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 532 inserted second sentence requiring deposit in the federal special revenue fund; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 79-703, R.C.M. 1947, dealing with the scope of the act disposing of funds from the Taylor Grazing Act, was not codified in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 2, Ch. 102, L. 1939.

17-3-222. Apportionment of money to counties.

Compiler's Comments

2005 Amendment: Chapter 53 in (1) after "apportion" substituted "the money received under 17-3-221 to the appropriate counties and then allocate the money due each county as follows" for "and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows"; in (1)(a) after "to the" inserted "county treasurer for deposit in the"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 41 in (1)(b) near beginning after "50% to" inserted "the state general fund to be used for". Amendment effective July 1, 2003.

1999 Amendment: Chapter 51 in (1)(b) at end substituted "BASE funding programs of the school districts in the county" for "county equalization fund". Amendment effective March 15, 1999.

1997 Amendments: Chapter 22 at end of (1)(b) substituted "elementary county equalization fund" for "common school fund of the county"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1), in introductory clause after "apportion and allocate", substituted "the money received pursuant to 17-3-221" for "these moneys"; inserted (2) statutorily appropriating payments from the state to the County Treasurers; and made minor changes in style. Amendment effective July 1, 1997.

Attorney General's Opinions

Allocation of County Share of Taylor Grazing Act Funds: Pursuant to 20-9-331 and this section, a county must allocate its share of funds provided by the federal government to the state under the Taylor Grazing Act, 43 U.S.C. 315i, in the proportion of 50% to the county general fund and 50% to the equalization account of the elementary BASE funding program (see 2003 and 2005 amendments). 46 A.G. Op. 27 (1996).

17-3-240. Federal mineral leasing funds.

Compiler's Comments

2005 Amendment: Chapter 568 in (1) at beginning inserted exception clause and at end after "fund" deleted "and must be distributed as provided in subsections (2) and (3)"; in (2) deleted former first three sentences that read: "At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of $21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of $21,671,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3)"; at beginning of (2) substituted "In" for "At the conclusion of", before "25%" deleted "the state treasurer shall distribute", and at end after "subsection" substituted "(1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments" for "(3)"; in (3) in first sentence after "distribute the" substituted "revenue dedicated" for "distributions" and after "(2)" deleted "to the mineral impact account established in 17-3-241" and in second sentence after "must be" deleted "allocated"; and made minor changes in style. Amendment effective July 1, 2005.

2002 Amendment: Chapter 5 in (2) substituted $21,671,000 for $20,474,000. Amendment effective August 13, 2002.

Preamble: The preamble attached to Ch. 594, L. 2001, provided: "WHEREAS, in Montana, the royalty revenue from federal Bureau of Land Management land currently accrues only to the state, while similar revenue from forest service land is shared between the state and the counties; and

WHEREAS, 30 U.S.C. 191 provides that money paid to any state is to be used by the state as the legislature of the state may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals; and

WHEREAS, county governments located within the counties that generate the money derived from federal mineral leasing are impacted by the development of the minerals; and

WHEREAS, the state does not have a mechanism to return federal mineral leasing funds to the impacted counties of the state as federal law requires."

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

17-3-241. Mineral impact account.

Compiler's Comments

Preamble: The preamble attached to Ch. 594, L. 2001, provided: "WHEREAS, in Montana, the royalty revenue from federal Bureau of Land Management land currently accrues only to the state, while similar revenue from forest service land is shared between the state and the counties; and

WHEREAS, 30 U.S.C. 191 provides that money paid to any state is to be used by the state as the legislature of the state may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals; and

WHEREAS, county governments located within the counties that generate the money derived from federal mineral leasing are impacted by the development of the minerals; and

WHEREAS, the state does not have a mechanism to return federal mineral leasing funds to the impacted counties of the state as federal law requires."

Effective Date — Applicability: Section 5(2), Ch. 594, L. 2001, provided that this section is effective January 1, 2002, and applies to mineral royalties received after December 31, 2001.

Part 10
Endowments

17-3-1001. State institutions which may take by gift, bequest, or grant — restriction.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 325, L. 2023. Amendment effective October 1, 2023.

Severability: Section 5, Ch. 325, L. 2023, was a severability clause.

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Attorney General's Opinions

Public University Endowment Funds Not "Public Funds" — Not Required to be Invested Through Unified Investment Program: Article VIII, sec. 13, Mont. Const., does not require that endowments granted to Montana's public universities be invested through the unified investment program. 53 A.G. Op. 6 (2010).

Gift to Private Nonprofit Corporation: Under 20-8-111, prior to the 1983 amendment, the Board of Public Education, in its discretion, could give money that had been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remained accountable for the money until it was used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. 38 A.G. Op. 111 (1980).

Conditional Bequests: The State Soldiers' Home (replaced in 1965 by the Montana Veterans' Home) is authorized to accept conditional bequests and the prescribed conditions must be fulfilled as far as possible. 28 A.G. Op. 36 (1959).

17-3-1002. Persons who may make gifts to state institutions.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

17-3-1003. Support of state institutions.

Compiler's Comments

2011 Amendment: Chapter 371 in (1) at beginning inserted exception clause; in (2) after "(3)" inserted "and (5)"; inserted (5) concerning income received from certain lands and riverbeds; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 465 in (1) in first sentence after "77-1-109" deleted "Title 77, chapter 1, part 6, and 77-2-362"; in (3) after "77-1-109" inserted "and subsection (4) of this section"; inserted (4) requiring board to designate distribution or placement of timber sale proceeds; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 355 in (1) in first sentence inserted reference to 77-2-362; and made minor changes in style. Amendment effective April 17, 2003.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

1999 Amendment: Chapter 122 in (1) near middle of first sentence inserted reference to 77-1-108; in (2) at beginning in exception clause inserted reference to subsection (1); in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1), near beginning after "appropriated", inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

1992 Special Session Amendment: Chapter 14 at beginning of (2) inserted exception clause; and inserted (3) requiring money received from timber sales from a state institution land grant to be deposited to the permanent trust fund for institution support. Amendment effective February 4, 1992.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1989 Amendment: At end of (2) substituted "state" for "other"; and made minor changes in grammar. Amendment effective July 1, 1989.

1983 Amendment: Substituted "other special revenue funds" for "federal and private revenue fund".

Case Notes

State Board of Education: Nothing contained in 17-2-202 and 17-6-105 or in this section, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

Public University Endowment Funds Not "Public Funds" — Not Required to be Invested Through Unified Investment Program: Article VIII, sec. 13, Mont. Const., does not require that endowments granted to Montana's public universities be invested through the unified investment program. 53 A.G. Op. 6 (2010).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

17-3-1004. Disbursement of funds.

Compiler's Comments

1995 Amendment: Chapter 325 in (1) changed "shall" to "may" and substituted "treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

CHAPTER 4
DEBT COLLECTION

Part 1
Debt Collection Service

Administrative Rules

Title 42, chapter 2, subchapter 5, ARM Partial payments, penalties, interest, and collection.
Title 42, chapter 15, subchapter 3, ARM Tax returns.

17-4-101. Definitions.

Compiler's Comments

1999 Amendment: Chapter 105 in introduction inserted "unless the context indicates otherwise"; in definition of agency in (a) before "offices" deleted "state", inserted "political subdivisions", and before "state government" inserted "this" and in (c) inserted "federal"; and in definition of department substituted "department of revenue provided for in 2-15-1301" for "department of administration". Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1997 Amendments: Chapter 17 in definition of agency, in (b), substituted "department" for "state auditor" and inserted (c) referencing the Internal Revenue Service; and made minor changes in style. Amendment effective February 11, 1997.

Chapter 48 in definition of agency, in (b), substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 325 in definition of Department substituted "department of administration" for "department of revenue"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 substituted "agency" for "state agency" as defined term and inserted (b) concerning taxes; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 7(1)(a), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(a) the definition of department in [section 11] [17-4-101] of House Bill No. 563 is effective and the striking of the definition in [section 1 of this act] [17-4-101] is void." House Bill No. 563 was approved as Ch. 325, L. 1995.

17-4-102. Accounts of persons indebted to state.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 325 in (1) substituted "The department may" for "In his discretion it is the duty of the state auditor to"; in (1)(a), after "amount", substituted "owed, and" for "to the treasurer and, upon presentation and filing of the treasurer's receipt therefor" and at end deleted "and charge the treasurer therewith"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 in (1)(a), after "indebted to", substituted "agencies" for "the state"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

17-4-103. Collection of claims by department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 39, L. 2023. Amendment effective March 2, 2023.

1995 Amendment — Composite Section: Chapter 325 throughout section substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1)(a), near end, substituted "an agency" for "the state"; in (1)(a)(iii), at end, substituted "agencies" for "state"; in (3)(a) inserted third sentence concerning cost of assistance in collecting personal property taxes; inserted (3)(b) concerning collection of personal property taxes; at end of (4) substituted "agencies" for "the state"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Coordination Instructions: Pursuant to sec. 16(2), Ch. 529, L. 1995, a coordination section, throughout section substituted Department of Administration for State Auditor. Amendment effective April 25, 1995.

Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1991 Amendment: At end of (3) inserted "and may separately charge the state agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: In (3) and (4) changed references to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

Case Notes

Change of Venue From Lewis and Clark County Based on Residence Denied: Subsection (1) does not necessarily grant exclusive jurisdiction to the Lewis and Clark County District Court. However, there can be no doubt that Courts in that county are a proper venue and the Courts are powerless, based upon the residence of the parties, to transfer the cause to another venue even though the other venue may also have been proper. The power to change the place of trial based on residence exists only when the county designated in the complaint is not the proper county. St. v. Sec. St. Bank, 184 M 461, 603 P2d 681, 36 St. Rep. 2166 (1979).

Attorney General's Opinions

Authority of Auditor to Recover Unauthorized Compensation: The State Auditor has the authority to compel an elected member of the Public Service Commission to repay unauthorized compensation received from the state for service in the Montana Army National Guard. 43 A.G. Op. 43 (1989).

17-4-104. Circumstances when department shall assist.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: Throughout section changed references to Department of Revenue to State Auditor; inserted (4) relating to debts resulting from a child support obligation; and made minor changes in phraseology. Amendment effective January 1, 1990.

Administrative Rules

Title 23, chapter 2, subchapter 4, ARM Referral of debt for recovery and offset.

Title 37, chapter 2, subchapter 3, ARM Recovery and offset of debts.

17-4-105. Authority to collect debt — offsets.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 39, L. 2023. Amendment effective March 2, 2023.

2015 Amendment: Chapter 338 in (3)(a) inserted last sentence regarding reciprocal agreement with federal government and providing exception; inserted (3)(b) and (3)(c) regarding priority of offsets or payments and exclusions; in (3)(d)(ii) in second sentence substituted "subsection (3)(a) or (3)(d)(i)" for "this subsection (3)(b)", in two places after "agency of the other state" inserted "or the federal government", and substituted "allows the offset" for "allows this state or an agency of this state to offset"; in (3)(e) near beginning after "agency of another state" inserted "or the federal government", substituted "subsection (3)(a) or (3)(d)(i)" for "subsection (3)(b)(ii)", and after "agency of the other state" inserted "or federal government"; and made minor changes in style. Amendment effective April 28, 2015.

2009 Amendment: Chapter 184 in (4)(b) at end inserted "or a distribution the recipient was not entitled to retain as described in 40-5-910"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 10, Ch. 184, L. 2009, was a saving clause.

2003 Amendment: Chapter 236 inserted (6) providing that a debt owed to a state agency by a local government may not be offset against a payment due to a local government. Amendment effective April 7, 2003.

1999 Amendment: Chapter 105 at end of second sentence in (2) inserted "pursuant to 15-1-211"; deleted former (3) that read: "(3) (a) The department of revenue retains the power to offset tax refunds due individuals against taxes owed the state. The department of revenue may not exercise this right of offset until the taxpayer has been notified by the department of revenue and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department of revenue shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department of revenue after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and a decision made as a result of that proceeding has become final"; and inserted (3) allowing the department to agree with the federal government to offset against tax refunds payable by the federal government and pay to Montana taxes or other debts owed Montana, allowing the department to agree with another state to offset against tax refunds payable by the other state and pay to Montana taxes or other debts owed Montana, allowing Montana to agree on a reciprocity basis to allow another state to offset against tax refunds payable by Montana the whole or part of an amount owed for taxes to the other state, and providing that another state cannot offset against tax refunds unless it has notified the taxpayer of the taxes due, given the taxpayer an opportunity for review or appeal, and given the department proof of notification and opportunity for review or appeal. Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1997 Amendment: Chapter 482 near beginning of fourth sentence in (4)(c), after "must", inserted "initially" and inserted fifth sentence requiring Department, following teleconferencing hearing, to grant de novo in-person hearing upon request or upon showing that party prejudiced by lack of in-person hearing. (See coordination instruction comments.) Amendment effective May 2, 1997.

Coordination Instruction: Section 100, Ch. 552, L. 1997, a coordination section, deleted the amendment in (4)(c), inserting the fifth sentence, that read: "At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a teleconferencing hearing, grant a de novo in-person hearing."

1995 Amendments — Composite Section: Chapter 325 throughout section substituted "department" for "state auditor"; in (3), (3)(a), in three places, (3)(b), and (3)(c), after "department", inserted "of revenue"; in (4)(a), after "department", inserted "of administration"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2), in second sentence, in (4)(a), in three places, and in (4)(c), in last sentence, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1), in second sentence after "collection", substituted "agents" for "agencies" and at end substituted "to agencies" for "the state"; in (2), near beginning of first sentence after "shall", inserted "when appropriate" and after "entity by" deleted "any state" and in fourth sentence, after "respective", deleted "state"; in (3)(a), at beginning, substituted "department of revenue" for "department"; in (4)(c) inserted second sentence concerning request in writing; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Coordination Instruction: Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1993 Amendment: Chapter 429 in (4)(a), after "A debt", deleted "resulting from or relating to a child support obligation"; deleted (4)(a)(ii) and (4)(a)(iii) that read: "(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or

(iii) the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services"; in (4)(c) inserted second sentence disallowing hearing to person owing valid debt; and made minor changes in style.

Severability: Section 5, Ch. 429, L. 1993, was a severability clause.

1989 Amendments: Chapter 419 in (1), in two places, changed references to Department of Revenue to State Auditor and in first sentence, after "authority to collect it", deleted "including the power to offset tax refunds due to individuals against the debt transferred by the state agency to the department provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing"; in (2), at beginning, deleted "upon notification by the department", after "any amount" inserted "including refunds or taxes", at end of first sentence, after "any state agency", inserted provisional clause relating to notification and opportunity for hearing, inserted second sentence relating to amounts collected as child support, and in last sentence inserted clause giving child support debts priority; inserted (3) relating to offset of individual tax refunds against taxes owed the state; inserted (4) relating to debts resulting from child support obligations; deleted former (4) that read: "(4) The department may establish and maintain a procedure to offset against a debtor's income tax refund any debt which is assigned to the state pursuant to 53-2-613 or which the department is attempting to collect on behalf of an individual who has applied for service under 40-5-203. Such debt must have accrued through written contract, court judgment, or administrative order and be in the form of a liquidated sum due and owing for the support of a minor child"; and made minor changes in phraseology.

Section 28, Ch. 702, L. 1989, in (2) and (4) changed references to Department of Revenue to references to Department of Social and Rehabilitation Services. The direction to the Code Commissioner erroneously provided that the change be made in 17-4-105(3)(d). The apparent intent was to change the reference in 17-4-105(4). The Code Commissioner also changed a similar reference in (2) to reflect the intent of sec. 28, Ch. 702, L. 1989. Amendment effective January 1, 1990.

1989 Statement of Intent: The statement of intent attached to Ch. 419, L. 1989, provided: "A statement of intent is required for this bill because 17-4-105 is being amended to require the department of revenue [now department of public health and human services, pursuant to sec. 28, Ch. 702, L. 1989] to adopt rules governing procedures to be used in conducting a hearing relating to tax offsets for the purpose of satisfying unpaid child support obligations."

1985 Amendments: Chapter 160 in (1) at end of last sentence, after "owed the state", deleted "by debtors residing outside the boundaries of the state"; and in (2) at beginning of first sentence, substituted introductory clause for "In his discretion it is the duty of the state auditor to" and in second sentence, made deductions mandatory rather than discretionary.

Chapter 679 inserted (4) authorizing offsetting of child support debts.

Case Notes

Child Support Enforcement Remedies Held Separate Remedies to Be Exercised Within Ten-Year Statute of Limitations — Due Process Requirements Applicable to Separate Remedies — Connell Distinguished: Emery was divorced from Keep in 1987, and Emery was ordered to pay child support. In exchange for Keep's receipt of payments under the Aid to Families With Dependent Children program, Keep assigned the Child Support Enforcement Division (CSED) of the Department of Public Health and Human Services her right to receive child support and her right to enforcement of support. In 1991, CSED served Emery with a Notice of Intent (NOI) to collect the child support payments by referral of his debt to the Internal Revenue Service (IRS) for collection by interception of any federal tax refund owed to Emery. In response to the NOI, Emery timely requested an administrative hearing before CSED, which was granted, but the hearing was indefinitely continued, and no interception was made by the IRS. In 1992, CSED sent a second NOI to Emery, but Emery made no response. In 1992, no interception was made by the IRS. Also in 1992, Emery and Keep executed a stipulated change of their children's custody. In that stipulation, Keep waived her ability to collect child support arrearages, and the District Court approved the stipulation in an order. In 1995, CSED sent a third NOI to Emery notifying him of CSED's intent to collect child support payments by interception of Emery's federal tax refund. In response to the 1995 NOI, Emery requested a hearing before the CSED. Within 8 months from service of the 1995 NOI upon Emery, the Administrative Law Judge (ALJ) held that CSED's assigned right to child support was not affected by the waiver because CSED was not a party to the stipulation. The District Court approved the decision of the ALJ. On a motion for alteration or amendment of the District Court's order, the District Court, relying upon In re Connell v. St., 280 M 491, 930 P2d 88 (1997), held that the delay between Emery's 1991 request for administrative review and the 1996 hearing before the ALJ violated Emery's right to due process of law and his right to the administration of justice without delay. The Supreme Court reviewed its decision in Connell and pointed out that in that case, 44 months elapsed before the ALJ made a decision in response to Connell's request for administrative review of a CSED NOI and that the 44-month lapse denied Connell his constitutional rights to due process and administration of justice without delay. In contrast, the Supreme Court held that the NOI served upon Emery in 1995 in the case before it was a separate proceeding from the NOI served upon him in 1991 and was not, as interpreted by the District Court, a continuation of the 1991 proceeding because the 1991 proceeding was discontinued once the IRS failed to make an interception of the federal tax refund owed to Emery. Further, the Supreme Court pointed out that the various administrative remedies, such as state debt offsets, license suspension, warrants for distraint, and state income withholding, are all separate remedies for the CSED to pursue, and election of one remedy does not preclude pursuit of another remedy after, or at the same time as, the remedy chosen by the CSED until the debt assigned to the CSED is fully paid. Any of the remedies, the Supreme Court held, were subject to the 10-year statute of limitations provided in 27-2-201. The Supreme Court therefore held that because the lapse of time in the case before it was between different proceedings and not within one proceeding and the lapse of time within the 1995 proceeding was reasonable, Emery's right of due process and right to administration of justice without delay were not violated. The Supreme Court also held that because Emery had no right under Montana law to a hearing when no action was being taken by the CSED against him, the failure of the CSED to grant a hearing did not implicate Emery's rights of due process and administration of justice. In response to Emery's argument that the CSED did not act soon enough in initiating its collection action, the Supreme Court held that Art. II, sec. 16, Mont. Const., imposes no requirement that the CSED act "speedily and without delay" within the 10-year statute of limitations provided in 27-2-201, noting that imposition of such a requirement would effectively eliminate that 10-year limitation period. For these reasons, the Supreme Court reversed the decision made by the District Court that Emery's constitutional rights were violated by the decision of the CSED. Emery v. St., 286 M 376, 950 P2d 764, 54 St. Rep. 1454 (1997).

17-4-106. Agency owed debt to receive all money collected.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) at beginning of second sentence deleted "Except as provided in subsection (3)"; and deleted (3) that read: "(3) The amount of $400,000 is transferred from the internal service fund referred to in subsection (2) to the general fund prior to June 30, 2003." Amendment effective October 1, 2003.

2002 Amendment: Chapter 7 in (2) at beginning of second sentence inserted exception clause; inserted (3) transferring $400,000 from the internal service fund to the general fund; and made minor changes in style. Amendment effective August 13, 2002.

1997 Amendment: Chapter 17 in (2) deleted former fourth sentence that read: "At the end of each biennium, any fund balance in excess of $10,000 must be transferred to the general fund"; and made minor changes in style. Amendment effective February 11, 1997.

1995 Amendments: Chapter 325 in three places substituted "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 589 throughout section substituted "department" for "state auditor"; in (1) inserted second sentence concerning delinquent personal property tax collection; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 7(1)(b), Ch. 589, L. 1995, provided: "(1) If [this act] and House Bill No. 563 are both passed and approved, then:

(b) the references to "state auditor" in 17-4-103, 17-4-105, and 17-4-106 of [this act] are changed to "department"." House Bill No. 563 was approved as Ch. 325, L. 1995.

1991 Amendment: In (1), after "state agencies", inserted "except funds collected under 17-4-103(3)"; inserted (2) establishing procedure for handling funds collected under 17-4-103(3); and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Changed reference to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

17-4-107. Writeoff procedures.

Compiler's Comments

1997 Amendments: Chapter 17 deleted second sentence that read: "The procedures must be established in accordance with subsection (2)"; deleted former (2) that read: "(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable"; and made minor changes in style. Amendment effective February 11, 1997.

Chapter 347 deleted second sentence that read: "The procedures must be established in accordance with subsection (2)"; deleted (2) that read: "(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 in (1), in two places, substituted reference to Department for reference to State Auditor; in (2), after "department", deleted "of administration"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 349 in second sentence of (2), after "reporting", substituted "to the budget director" for "as provided in 5-11-210"; and made minor changes in style.

1991 Amendment: In second sentence of (2) inserted reference to 5-11-210 and at end deleted "to the next session of the legislature". Amendment effective March 20, 1991.

1989 Amendment: Changed "department of revenue" to "state auditor"; and made minor change in phraseology. Amendment effective January 1, 1990.

17-4-108. Circumstances under which previously written-off debt may be collected.

Compiler's Comments

1997 Amendments: Chapter 17 near middle substituted "17-4-107" for "17-4-107(1)". Amendment effective February 11, 1997.

Chapter 347 near middle substituted "17-4-107" for "17-4-107(1)". Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 substituted "department" for "state auditor". Amendment effective July 1, 1995.

1989 Amendment: Changed reference to Department of Revenue to State Auditor. Amendment effective January 1, 1990.

17-4-110. State agencies to adopt rules.

Administrative Rules

Title 6, chapter 2, subchapter 2, ARM Debt collections.
Title 23, chapter 2, subchapter 4, ARM Referral of debt for recovery and offset.
Title 37, chapter 2, subchapter 3, ARM Recovery and offset of debts.
Title 42, chapter 15, subchapter 3, ARM Tax returns.

17-4-111. Right of hearing to aggrieved persons.

Compiler's Comments

1999 Amendment: Chapter 105 substituted "17-4-105(4)(c)" for "17-4-105(3)"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 4, Ch. 105, L. 1999, was a saving clause.

Applicability: Section 6, Ch. 105, L. 1999, provided: "[This act] applies to refunds or payments made after December 31, 1999."

1989 Amendment: Near end substituted reference to 17-4-105(3) and the Montana Administrative Procedure Act for "as provided by law for taxpayer appeals". Amendment effective January 1, 1990.

CHAPTER 5
PUBLIC BOND ISSUES

Chapter Law Review Articles

Public Bonds and Warrants, 22 Mont. L. Rev. 127 (1961).

Part 1
Rates of Interest — Notice

17-5-101. Definitions.

Compiler's Comments

1995 Amendments — Phrase Change — Code Commissioner Correction: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the definition of political subdivision. Amendment effective July 1, 1995.

Chapter 418 in definition of political subdivision, in (b), deleted reference to "division of water resources"; and made minor changes in style. Amendment effective July 1, 1995. The amendment also substituted "department of natural resource management" for "department of natural resources and conservation". As enacted, Ch. 418, L. 1995, no longer created a Department of Natural Resource Management but retained the Department of Natural Resources and Conservation. Pursuant to sec. 73, Ch. 18, L. 1995, the Code Commissioner has corrected the erroneous reference.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

17-5-102. Rate of interest on bonds to be determined by governing bodies.

Compiler's Comments

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Deleted "except that no such rate shall exceed 7% except revenue bonds issued under the terms of Title 7, chapter 7, parts 44 and 45, Title 7, chapter 13, part 43, and 90-5-101 through 90-5-113, which rate shall not exceed 9%" at the end of (1); added subsection (2) relating to superiority of interest rates established by this section.

Case Notes

Interest Rate on Special Assessment: A municipality or county acting in behalf of a legally formed special improvement district, under the provisions of Title 7, ch. 12, may issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum. State ex rel. Townsend v. D. A. Davidson, Inc., 166 M 104, 531 P2d 370 (1975).

Attorney General's Opinions

Payment Directly to Purchaser Not Considered Interest: A payment made directly to the purchaser of industrial development revenue bonds by the user-beneficiary of the bond proceeds from the user-beneficiary's own funds did not have to be considered in applying the interest limitation that was contained in 17-5-102 prior to 1981 amendment. 38 A.G. Op. 78 (1980).

Sale of Bonds at Less Than Face Value: Prior to 1981 amendment removing specific interest rate limitations, the sale of industrial revenue bonds issued pursuant to Title 90, ch. 5, part 1, at a price less than the face value of the bonds did not violate 17-5-102 if the yield of the bonds exceeded the 9% limitation. 38 A.G. Op. 78 (1980).

17-5-103. Rate of interest on special assessments determined by governing bodies — limitations.

Compiler's Comments

2005 Amendment: Chapter 451 at end after "interest on the bonds" inserted reference to additional rate of interest to pay principal and interest on bonds; and made minor changes in style. Amendment effective April 28, 2005.

Case Notes

Rate of Interest: In order to give the phrase "the rate of interest on said bonds" any meaning, a municipality or county acting on behalf of a special improvement district has the power to issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum (see 2005 amendment). State ex rel. Townsend v. D. A. Davidson, Inc., 166 M 104, 531 P2d 370 (1975).

17-5-104. Effect of revisions on bonds previously authorized.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

17-5-105. Redemption of bonds — optional method.

Compiler's Comments

1983 Amendment: Made section permanent. (Section was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

17-5-106. Notice of public bond sale.

Compiler's Comments

Codification: Chapter 173, L. 1987, did not contain a codification instruction for this section, but it clearly was intended to be codified in this part.

17-5-107. Public or private sale — procedure for public sale.

Compiler's Comments

Severability: Section 33, Ch. 253, L. 2011, was a severability clause.

Effective Date: Section 34, Ch. 253, L. 2011, provided that this section is effective on passage and approval. Chapter 253, L. 2011, was enacted into law without the governor's signature on April 22, 2011.

Applicability: Section 35, Ch. 253, L. 2011, provided: "[This act] applies to local government actions commencing on or after [the effective date of this act]." Effective April 22, 2011.

17-5-111. Electronic submission of bids.

Compiler's Comments

Effective Date: Section 24, Ch. 451, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

17-5-116. Allocation of bonding limits — American Recovery and Reinvestment Act of 2009.

Compiler's Comments

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

17-5-117. Tax credit bonds.

Compiler's Comments

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

Part 2
Bond Validating Act

17-5-202. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 in definition of public body substituted "department of natural resources and conservation" for "board of natural resources and conservation"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the definition of public body. Amendment effective July 1, 1995.

1981 Amendment: Inserted "or any commission, authority, or agency of a political or governmental subdivision" after "subdivision of the state" in (1).

17-5-203. Validation.

Case Notes

Constitutionality: Chapter 45, L. 1941, construed in connection with Ch. 55, L. 1941 (omitted), directing the state Board of Examiners to issue and sell bonds for the erection of necessary buildings at the state hospital for the insane, did not run counter to the provisions of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), prescribing the manner in which state indebtedness in excess of $100,000 may be created. Such provision did not require that a law creating a state debt in excess of $100,000 must be submitted to the people at a general election for their approval or rejection, but only a law authorizing the debt. Nordquist v. Ford, 112 M 278, 114 P2d 1071 (1941).

17-5-205. Application.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 58, L. 2023. Amendment effective March 16, 2023.

2021 Amendment: Chapter 157 substituted "April 8, 2021" for "April 18, 2019". Amendment effective April 8, 2021.

2019 Amendment: Chapter 176 substituted "April 18, 2019" for "March 27, 2017". Amendment effective April 18, 2019.

2017 Amendment: Chapter 108 substituted "March 27, 2017" for "February 13, 2015"; and made minor changes in style. Amendment effective March 27, 2017.

2015 Amendment: Chapter 6 substituted "February 13, 2015" for "February 18, 2013". Amendment effective February 13, 2015.

2013 Amendment: Chapter 18 substituted "February 18, 2013" for "March 16, 2011". Amendment effective February 18, 2013.

2011 Amendment: Chapter 8 substituted "March 16, 2011" for "May 5, 2009". Amendment effective March 16, 2011.

2009 Amendment: Chapter 438 at end substituted "May 5, 2009" for "February 1, 2007". Amendment effective May 5, 2009.

2007 Amendment: Chapter 3 at end substituted "February 1, 2007" for "March 15, 2005". Amendment effective February 1, 2007.

2005 Amendment: Chapter 9 at end substituted "March 15, 2005" for "March 27, 2003". Amendment effective March 15, 2005.

2003 Amendment: Chapter 139 at end extended the application of the Bond Validating Act from February 9, 2001, to March 27, 2003. Amendment effective March 27, 2003.

2001 Amendment: Chapter 8 substituted "February 9, 2001" for "February 12, 1999". Amendment effective February 9, 2001.

1999 Amendment: Chapter 9 at end substituted "February 12, 1999" for "February 24, 1997". Amendment effective February 12, 1999.

1997 Amendment: Chapter 31 at end substituted "February 24, 1997" for "March 22, 1995". Amendment effective February 24, 1997.

1995 Amendment: Chapter 190 at end substituted "March 22, 1995" for "February 8, 1993". Amendment effective March 22, 1995.

1993 Amendment: Chapter 19 at end substituted "February 8, 1993" for "March 26, 1991"; and made minor changes in style. Amendment effective February 8, 1993.

1991 Amendment: At end substituted "March 26, 1991" for "March 20, 1989". Amendment effective March 26, 1991.

1989 Amendment: Substituted "March 20, 1989" for "March 16, 1987". Amendment effective March 20, 1989.

1987 Amendment: Changed "March 26, 1985" to "March 16, 1987".

1985 Amendment: Changed "April 19, 1983" to "March 26, 1985".

1983 Amendment: Changed "April 6, 1981" to "April 19, 1983".

1981 Amendment: Substituted "April 6, 1981" for "January 15, 1979".

Part 3
Refunding Bonds

17-5-301. Refunding bonds or debentures authorized — interest rate.

Compiler's Comments

1983 Amendment: Deleted former (1) and (2), which read: "(1) when the amount of any such issue of bonds or debentures is less than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least 1/2 of 1% per annum less than the rate of interest on the bonds to be refunded;

(2) when the amount of any such issue of bonds or debentures is more than $500,000, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least 1/4 of 1% per annum less than the rate of interest on the bonds to be refunded; and"; made former (3) second sentence of section, in which was inserted "and interest" after "the principal" and "costs of issuance" before "plus any defaulted interest".

17-5-302. Character of bonds.

Compiler's Comments

2005 Amendment: Chapter 374 deleted former (1) that read: "(1) All refunding bonds or debentures issued by the board of examiners under the provisions of this part shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall bear the signature of each member of the board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semiannual payments due thereon, which coupons shall bear the signature of each member of the board of examiners"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

17-5-303. Application of refunding bond law.

Compiler's Comments

1983 Amendment: At end of section, inserted "or with the provisions of any law authorizing particular refunding bonds".

17-5-304. Cost and expense of refunding.

Compiler's Comments

2005 Amendment: Chapter 374 near beginning after "may" substituted "pay" for "require the purchaser to bear", after "debentures" deleted "in connection with the bid submitted, or the cost and expense may", and at end substituted "from the proceeds of the bonds or from the general fund" for "out of the sinking and interest fund when there is money in such fund"; deleted former second sentence that read: "The balance remaining in such sinking and interest fund shall be transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1983 Amendment: In last sentence, substituted "transferred in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law" for "transferred to and shall become the sinking and interest fund for such refunding bonds or debentures. Any and all moneys thereafter received by the state treasurer for such sinking and interest fund shall be placed in the sinking and interest fund of such refunding bonds or debentures".

17-5-305. Sale of bonds and debentures.

Compiler's Comments

2009 Amendment: Chapter 342 deleted former (1) that read: "(1) none thereof shall be sold at less than its par value"; and made minor changes in style. Amendment effective April 24, 2009.

1983 Amendment: Deleted from end of (2) "subject, however, to the provisions for reduced interest rates required by 17-5-301".

Part 4
Long-Range Building Program Bonds

Part Case Notes

Approval by Voters: Issuance of new bonds under 17-5-410 (now repealed) created a liability within the meaning of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), and must be approved by a vote of the people before the bonds are issued. State ex rel. Ward v. Anderson, 158 M 279, 491 P2d 868 (1971).

Part Attorney General's Opinions

Two-Thirds Majority Required: When a bill authorizing the Department of Administration to incur future lease and/or purchase payments did not pass by a two-thirds majority of each house as required by the Montana Constitution, no legal method or procedure existed for a lease-purchase plan for construction of the building. 35 A.G. Op. 41 (1973).

17-5-405. Debt service account.

Compiler's Comments

1997 Amendment: Chapter 422 deleted former (1), (2), and (3) that read: "(1) From and after the pledge and appropriation of any special tax to the debt service account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the debt service account.

(2) No special taxes pledged to the debt service account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.

(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the debt service account"; in (2), at end of second sentence, substituted "credit to the debt service account an amount sufficient to restore the balance from the general fund" for "credit to said account an amount sufficient to restore said balance from the next collections of the special

taxes appropriated to said account and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the debt service account to the general fund"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1983 Amendment: Throughout section, substituted "debt service account" for "sinking fund account".

Case Notes

Approval by Voters: Because portions of the proceeds of the income tax, corporation license tax, and tobacco tax are pledged for the security of bonds issued under this chapter, the issuance of new bonds would create a liability within the meaning of Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), and such bonds may not be issued without approval by a vote of the people. This holding does not have retroactive effect; bonds issued in good faith before November 23, 1971, but without approval by a vote of the electors pursuant to Art. XIII, sec. 2, 1889 Mont. Const. (now Art. VIII, sec. 8, 1972 Mont. Const.), are valid. State ex rel. Ward v. Anderson, 158 M 279, 491 P2d 868 (1971), distinguishing Cottingham v. St. Bd. of Examiners, 134 M 1, 328 P2d 907 (1958).

17-5-406. Use of debt service account.

Compiler's Comments

1983 Amendment: Substituted "debt service account" for "sinking fund account".

Part 7

Coal Severance Tax Bonds — Water Development

Part Compiler's Comments

Appropriation — Creation of Debt for Coal Severance Tax Bonds: Section 16, Ch. 613, L. 1993, provided: "(1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [sections 1 through 3] [not codified] to be issued pursuant to Title 17, chapter 5, part 7, pursuant to the provisions of [sections 1 through 3] [not codified], and pursuant to the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $3,855,242 for loans to political subdivisions and local government entities for water development projects approved in [sections 1 through 3] [not codified] and for funding a reserve for the coal severance tax bonds authorized to fund those projects.

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(c) [now repealed].

(5) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section." Effective May 5, 1993.

State Debt: Section 17, Ch. 613, L. 1993, required that [section 16] (not codified) receive a three-fourths vote of each house to create state debt and appropriate coal severance tax bond fund deposits. [Section 16] received the necessary three-fourths vote of each house.

Severability: Section 18, Ch. 613, L. 1993, was a severability clause.

Severability Clause: Section 51, Ch. 505, L. 1981, was a severability section.

Part Case Notes

Special Legislation — Permissible When General Act Cannot Be Provided: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that the appropriation of funds for favorable loans to a score of small municipalities, water districts, and portions of counties constituted special legislation and was unconstitutional. The court noted that Art. V, sec. 12, Mont. Const., is not absolutely prohibitory. The court noted that the Legislature cannot draft a general act of statewide application providing for the issuance and sale of revenue bonds and at the same time control the way the proceeds are to be spent or loaned except through its direct authorization of projects. The court held that the passage of Ch. 705, L. 1983, was an implementation of Title 85, ch. 1, part 6, and excluded no class of governmental entity. Therefore, those enactments were "general" legislation within the meaning of Art. V, sec. 12, Mont. Const. The court also held sections 5 and 6 of Ch. 705, L. 1983, were valid in any event because even though local in effect, these were provisions for which a general act could not be provided. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-701. State of Montana coal severance tax bonds.

Compiler's Comments

1993 Amendment: Chapter 478 at beginning of (1) substituted "finance renewable resource projects" for "finance water resource development projects and activities". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 3, Sp. L. January 1992, inserted (2) concerning infrastructure projects. Amendment effective October 1, 1992.

17-5-702. Purpose and intent.

Compiler's Comments

2007 Amendment: Chapter 432 in (2) at end substituted "the natural resources projects state special revenue account established in 15-38-302" for "the renewable resource grant and loan program state special revenue account established in 85-1-604"; and made minor changes in style. Amendment effective July 1, 2007.

1993 Amendment: Chapter 478 near middle of (1), after "specific", substituted "renewable resource projects" for "water resource development projects and activities"; in first sentence of (2), after "include", substituted "renewable resource projects" for "water resource development projects and activities" and before "program" deleted "water development" and near beginning of second sentence substituted "renewable resource projects" for "water resource development projects and activities" and before "state" substituted "renewable resource grant and loan program" for "water development"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Near end of section, substituted "state special revenue account" for "earmarked account".

17-5-703. Coal severance tax trust funds.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 636, L. 2023, in (6)(a) near beginning substituted "June 30, 2035" for "June 30, 2025". Amendment effective July 1, 2023.

Section 1, Ch. 717, L. 2023, inserted (1)(h) concerning a conservation district fund and (1)(i) concerning a coal board fund; in (4)(a) in first sentence substituted "July 1, 2023" for "July 1, 2017" and substituted "10%" for "75%", at end of second sentence substituted "$300 million" for "$200 million", and in middle of third sentence substituted "10%" for "75%"; inserted (5)(a) through (5)(c) related to the conservation district fund; and made minor changes in style. Amendment effective July 1, 2023.

2021 Amendment: (Temporary version) Chapter 330 in (1)(c) substituted "Montana coal endowment regional water system fund" for "treasure state endowment regional water system fund"; and in (3)(a) in four places and (3)(b) in four places substituted "Montana coal endowment" for "treasure state endowment". Amendment effective October 1, 2021.

(Version effective July 1, 2031) Chapter 330 in (3) in four places substituted "Montana coal endowment" for "treasure state endowment".

(Both versions) Chapter 330 in (1)(b) substituted "Montana coal endowment fund" for "treasure state endowment fund". Amendment effective October 1, 2021.

2017 Special Session Amendment: (Temporary version) Chapter 6 in (3)(a) inserted last sentence providing for legislative fund transfer. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2017 Amendment — Coordination: (Temporary version) Chapter 259 deleted former (3)(b) that read: "(b) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund."

(Both versions) Chapter 259 inserted (1)(g) regarding a school facilities fund; in (2)(b) substituted "subsections (4) and (5)" for "subsections (3) and (4)"; deleted former (3)(a) that read: "(a) Until June 30, 2016, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund"; inserted (4) regarding a quarterly transfer of funds to the school facilities fund provided for in 20-9-380 and a monthly transfer to the school facilities fund established in 20-9-525; and made minor changes in style. Amendment effective July 1, 2017.

The amendments to this section made by sec. 2, Ch. 377, L. 2017, were rendered void and replaced by sec. 3(2), Ch. 259, L. 2017, a coordination section.

Applicability: Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

Extension of Termination Date: Sections 1 through 3, Ch. 305, L. 2015, amended secs. 8 through 10, Ch. 390, L. 2013, by extending the termination date imposed by Ch. 390 to June 30, 2031. Effective July 1, 2015.

2013 Amendment: (Temporary version) Chapter 390 in (3)(a) and (3)(b) substituted "June 30, 2016" for "June 30, 2020". Amendment effective July 1, 2013.

(Version effective July 1, 2016) In (3)(a) substituted "June 30, 2016" for "June 30, 2020".

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Modification of Termination Date: Sections 8 through 10, Ch. 390, L. 2013, amended sec. 6, Ch. 495, L. 1999, sec. 1, Ch. 70, L. 2001, and secs. 15 and 16, Ch. 389, L. 2011, by modifying the termination dates imposed by those sections to June 30, 2016. Effective July 1, 2013.

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2011 Amendment: (Temporary version) Chapter 389 in (3)(a) and (3)(b) substituted "2020" for "2016". Amendment effective July 1, 2011.

(Version effective July 1, 2020) In (3)(a) substituted "2020" for "2016". Amendment effective July 1, 2011.

Extension of Termination Date: Sections 15 and 16, Ch. 389, L. 2011, amended sec. 6, Ch. 495, L. 1999, and sec. 1, Ch. 70, L. 2001, by extending the termination dates imposed by those sections to June 30, 2020. Effective July 1, 2011.

2007 Amendment: (Temporary version) Chapter 14 deleted former (1)(f) that read: "(f) a coal severance tax school bond contingency loan fund"; deleted former (3) that read: "(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months"; in (3)(a), (3)(b), and (4)(a) at end after "fund" deleted "and in excess of amounts that are transferred pursuant to subsection (3)"; and made minor changes in style. Amendment effective March 16, 2007.

(Version effective July 1, 2016) Deleted former (1)(e) that read: "(e) a coal severance tax school bond contingency loan fund"; deleted former (3) that read: "(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months"; in (3)(a) and (4)(a) at end deleted "and in excess of amounts that are transferred pursuant to subsection (3)"; and made minor changes in style.

2005 Amendment: (Temporary version) Chapter 588 inserted (1)(g) regarding big sky economic development fund; inserted (5) regarding transfers of money to and from big sky economic development fund; and made minor changes in style. Amendment effective July 1, 2005.

(Version effective July 1, 2016) Inserted (1)(f) regarding big sky economic development fund; inserted (5) regarding transfers of money to and from big sky economic development fund; and made minor changes in style.

2003 Amendment: Chapter 114 near beginning of (4)(a) and (4)(b) of temporary version and near beginning of (4)(a) of version effective July 1, 2016, substituted "2016" for "2013". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 61 in temporary version and in version effective July 1, 2003, in (4)(c) and (4)(d) in first sentence inserted "excluding unrealized gains and losses"; and in version effective July 1, 2016, in (4)(b) in first sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

(Version effective July 1, 2003) Chapter 380 at beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending" and near middle after "endowment fund" substituted "50%" for "75%"; at beginning of (4)(b) substituted "Until" for "Beginning July 1, 1999, and ending"; and made minor changes in style.

(Version effective July 1, 2016) At beginning of (3)(a) deleted "On January 21, 1992, and continuing"; at beginning of (4)(a) substituted "Until" for "Beginning July 1, 1993, and ending"; and made minor changes in style.

Extension of Termination Date: Section 1, Ch. 70, L. 2001, amended sec. 6, Ch. 495, L. 1999, by extending the termination date imposed by Ch. 495 to June 30, 2016. Effective June 30, 2013.

1999 Amendment: Section 4, Ch. 495, inserted (1)(c) creating treasure state endowment regional water system fund; in (4)(a) increased transferable amount from 50% to 75%; inserted

(4)(b) requiring quarterly transfer to treasure state endowment regional water system fund; inserted (4)(d) requiring monthly transfers to treasure state endowment regional water system special revenue account; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2013.

The amendments to this section made by sec. 1, Ch. 495, L. 1999, were rendered void by sec. 4, Ch. 495, L. 1999, a coordination section.

The amendments to this section made by Ch. 563, L. 1999, were rendered void by sec. 4, Ch. 495, L. 1999, a coordination section.

1997 Natural Resource Damage Litigation Program Extension of Previous Loans: Section 2, Ch. 154, L. 1997, provided: "Repayment of principal and interest on all loans authorized from the coal severance tax permanent fund under Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, is extended through the end of the 1999 biennium in accordance with 17-2-107(8)."

1997 Natural Resource Damage Litigation Program Contracts: Section 4, Ch. 154, L. 1997, provided: "(1) In order to extend the previous loans authorized in Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, the board of investments shall enter into a revised contract with the department of justice, pledging the amount recovered in the litigation to the repayment of the loans to the full extent allowable under law. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool.

(2) The appropriation in [section 1] [not codified, see 1997 compiler's comments] is not effective until the department of justice enters into a contract with the state treasurer implementing the redeposit provisions of [section 1]."

1993 Special Session Amendments: Chapter 8 near beginning of (2)(a), after "determine", inserted "on July 1 of each year" and near end, before "and retain", substituted "during the next 12 months" for "on the next two ensuing semiannual payment dates"; inserted (2)(b) requiring the transfer of excess tax bond fund amounts; in (4)(a), before "transfer", inserted "quarterly" and after "endowment fund" substituted "50% of the" for "any"; deleted former (6)(a) that read: "(6)(a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year"; in first sentence of (4)(b), after "shall", substituted "monthly transfer from the treasure state endowment fund" for "annually transfer" and before "earnings" deleted "interest" and at beginning of second sentence substituted "Earnings" for "Interest earnings"; inserted (5) requiring transfer of excess unallocated tax bond fund amounts into the permanent fund; and made minor changes in style. Amendment effective December 17, 1993.

Chapter 33 deleted former (1)(c) providing for a clean coal technology demonstration fund; deleted former (4) providing for transfers from the coal severance tax bond fund to the clean coal technology demonstration fund; adjusted subsection references; and made minor changes in style. Amendment effective January 3, 1994.

Required Fund Transfer: Section 2, Ch. 8, Sp. L. November 1993, provided: "The state treasurer shall on [the effective date of this act] [effective December 17, 1993] transfer from the coal severance tax bond fund to the coal severance tax permanent fund the cash balance of the bond fund as of July 1, 1993, that is in excess of the amount required by 17-5-703(2)(a), including the amount either held in the fund for the clean coal technology demonstration fund or required to be transferred to the clean coal technology demonstration fund. The provisions of this section do not affect the authorizations contained in section 10, Chapter 722, Laws of 1991." The section related to a temporary, one-time transfer of funds and therefore was not codified.

Funds Transfer Repealed: Section 3, Ch. 8, Sp. L. November 1993, repealed sec. 11, Ch. 722, L. 1991, which had transferred $25 million from the coal severance tax permanent fund to the clean coal technology demonstration fund. Repealer effective December 17, 1993.

1993 Amendment: Chapter 515 in (4), near end, substituted "department of revenue shall, upon request from the department of natural resources and conservation" for "state treasurer shall from time to time" and after "amount" substituted "up to" for "not exceeding". Amendment effective April 24, 1993.

Loan Authorization — Appropriation of Loan Proceeds: Section 3, Ch. 354, L. 1993, provided: "In addition to the litigation listed in [sections 1 and 2] [not codified, see 1993 Session Laws], loan proceeds are authorized for the purpose of conducting any other natural resource damage assessment, litigation, or administration as provided by Title 75, chapter 10, part 7."

Loan Contract: Section 5, Ch. 354, L. 1993, provided: "In order to make the loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws], the board of investments shall enter into an irrevocable contract with the department of health and environmental sciences [now department of environmental quality] pledging the amount recovered in the litigation to the repayment of the loans. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loans from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loans authorized in [sections 1 and 2] [not codified, see 1993 Session Laws] may not be made until the contract required by this section has been entered into by the board and the department."

Preamble: The preamble attached to Ch. 515, L. 1993, provided: "WHEREAS, the 52nd Legislature established and provided funds for a clean coal technology demonstration fund within the coal severance tax trust fund; and

WHEREAS, the Billings MHD demonstration project was designated by the 52nd Legislature as a clean coal technology demonstration project eligible to receive a clean coal technology demonstration loan in the amount of $25 million."

1992 Special Session Amendment: Section 7, Ch. 12, Sp. L. January 1992, inserted (1)(b) creating a treasure state endowment fund; inserted (1)(f) creating a coal severance tax school bond contingency loan fund; inserted (3) providing for transfer of funds necessary for yearly payment of principal and interest on school bonds secured by state loans to the coal severance tax school bond contingency loan fund; in (4), after "1997", inserted language requiring transfer of excess amounts in the coal severance tax bond fund and coal severance tax school bond contingency loan fund to the clean coal technology demonstration fund, after "transfer" substituted "an amount not exceeding $5 million" for "from the excess amount in the coal severance tax bond fund $5 million", after "million" substituted "per fiscal year" for "a year", and after "fund" deleted "and any remaining amount to the coal severance tax permanent fund"; inserted (5) providing for transfers to the treasure state endowment fund; and inserted (6) concerning transfer of funds from the treasure state endowment fund to the coal severance tax permanent fund and the deposit of earnings in the treasure state endowment special revenue account. Amendment effective June 2, 1992.

Effective on Occurrence of Contingency: Section 8(2), Ch. 12, Sp. L. January 1992, provided: "(2) If House Bill No. 19 is passed and is approved by the electorate, then [section 3 of this act] [amending 17-5-703] and [section 4 of House Bill No. 19] [amending 17-5-703] are void and [section 7 of this act] [amending 17-5-703] is effective on the date of approval by the electorate." House Bill No. 19 was approved by the electorate June 2, 1992.

1991 Amendment: Inserted (1)(b) creating clean coal technology demonstration fund; in (2), after "shall", deleted "from time to time transfer to the coal severance tax permanent fund all money in the coal severance tax bond fund except" and inserted "determine" and at end inserted "and retain that amount in the coal severance tax bond fund"; and inserted (3) providing for transfer of funds to clean coal technology demonstration fund and coal severance tax permanent fund. Amendment effective July 1, 1991.

1985 Amendment: At beginning of (2) substituted "The state treasurer shall from time to time" for "On each December 31 and June 30 the state treasurer shall", and at end of (2) substituted "next two ensuing semiannual payment dates" for "next ensuing semiannual payment date".

1983 Amendment: Throughout section, changed "subfund" to "fund".

Case Notes

1999 Coal Producer's License Tax Violative of Constitutional Coal Severance Tax Provisions: By simple majority vote, the 1999 Legislature passed House Bill No. 260, which created a license tax on the production of coal and allocated revenue from the tax to various state programs. Several legislators challenged the validity of the new tax, contending that by creating a license tax on the same taxable event for which the state coal severance tax is imposed and then providing a credit against the severance tax in an amount slightly greater than the amount of the license tax, the Legislature simply diverted what in substance and character are coal severance taxes to purposes other than the coal tax trust fund, in violation of Art. IX, sec. 5, Mont. Const. The Supreme Court agreed, noting that the only difference between the coal severance tax and the coal producer's license tax was the purpose for which each was allocated. A tax on the production of natural resources is characterized by the nature of the activity upon which the tax is imposed, and the effect of a legislative assessment is more important than its label in determining the character of the tax. Legislative imposition of a tax can become unlawful when done to accomplish an unlawful end, which was the case in this instance because the coal producer's license tax diverted production-based coal severance taxes for an unconstitutional purpose. Although the Legislature has the authority to determine the percentage of the coal severance tax, in this case, the Legislature simply gave a different name to the same tax and thereby diverted revenue to causes other than the coal tax trust fund. A coal severance tax by any other name is just as dedicated. By diverting and allocating coal severance tax revenue in a manner contrary to the requirement in Art. IX, sec. 5, and by doing so without the required three-fourths vote of each house of the Legislature, House Bill No. 260 violated the constitution; thus, the state was enjoined from enforcing House Bill No. 260. Montanans for the Coal Trust v. St., 2000 MT 13, 298 M 69, 996 P2d 856, 57 St. Rep. 73 (2000). See also Oliver Iron Co. v. Lord, 262 US 172, 67 L Ed 929, 43 S Ct 526 (1923), Gomillion v. Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960), and Dept. of Revenue v. Kurth Ranch, 511 US 767, 128 L Ed 2d 767, 114 S Ct 1937 (1994).

Law Review Articles

Reflections on Commonwealth Edison Co. v. Montana, Mcgrath & Hellerstein, 43 Mont. L. Rev. 165 (1982).

17-5-704. Investment of funds.

Compiler's Comments

2007 Amendment: Chapter 14 near middle of first sentence after "income fund" deleted "and the coal severance tax school bond contingency loan fund"; and made minor changes in style. Amendment effective March 16, 2007.

2001 Amendment: Chapter 61 in second sentence inserted "excluding unrealized gains and losses". Amendment effective March 16, 2001.

1995 Amendments — Composite Section: Chapter 442 at end substituted "are deposited in the state general fund" for "are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund". Amendment effective July 1, 1995.

Chapter 509 at end substituted "must be deposited in the state general fund" for "are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund". Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1992 Special Session Amendment: Chapter 12 in first sentence inserted "and the coal severance tax school bond contingency loan fund". Amendment effective January 21, 1992.

1991 Amendment: In first sentence of introductory clause, after "coal severance tax funds", deleted "except as provided in subsection (2)" and in second sentence, after "from all funds", deleted "must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature" and inserted statutory appropriation language; inserted (1) specifying an appropriation to the state equalization aid account; and in (2) deleted language requiring appropriation of 15% of income and earnings from all funds to be deposited in state equalization aid account each year and inserted "85% to the state general fund". Amendment effective July 1, 1991.

1989 Special Session Amendment: Near beginning of (2) substituted "1990" for "1989", near end substituted "state equalization aid account" for "coal severance tax permanent fund", and deleted former last sentence that read: "The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature." Amendment effective August 11, 1989.

1989 Amendments: Chapter 83 deleted former (2) that read: "(2) Beginning on July 1, 1987, the legislature shall appropriate 2% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year."

Chapter 634 at end of first sentence of (1) inserted reference to subsection (3) (now (2)); and at beginning of (2) inserted exception clause. Amendment effective July 1, 1989.

1987 Amendment: Inserted (2) authorizing appropriation of 2% of income and earnings from coal severance tax permanent fund each year; and in (3), after "July 1" changed "1983" to "1989". Amendment applicable to interest and income earned after June 30, 1986, and before July 1, 1989.

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

1983 Amendments: Chapter 149, at end of (1), inserted "until appropriated by the legislature".

Chapter 298 changed "subfund" to "fund" throughout section.

Attorney General's Opinions

Investment Earnings Not to Be Credited to Science and Technology Development Account: Investment earnings on funds earmarked to be loaned but not yet paid out to a loan recipient are not payback funds or loan repayments within the context of 17-6-201 or 90-3-305 (now repealed). Therefore, those earnings may not be credited to the science and technology development account to be used to cover costs of administering programs under the Montana Science and Technology Financing Act. 45 A.G. Op. 28 (1994).

Three-Fourths Vote Required to Appropriate Severance Tax Trust Fund Income: Income deposited in the coal severance tax permanent fund under this section becomes part of the principal of the trust. As such, the Legislature may not appropriate by a simple majority the income and interest earned on the trust fund since July 1, 1983; rather, a three-fourths vote of each house is required. (See 1989 amendment.) 42 A.G. Op. 110 (1988).

17-5-705. Pledge of coal severance tax bond fund.

Compiler's Comments

1983 Amendment: Throughout section, changed "subfund" to "fund".

Case Notes

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to "appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-706. Authority to issue coal severance tax bonds.

Compiler's Comments

1993 Amendment: Chapter 478 in first sentence substituted "renewable resource projects" for "water resource development projects and activities" and in second sentence, after "project", deleted "or activity"; and made minor changes in style. Amendment effective July 1, 1993.

Coordination: Subsections (1) and (2), sec. 53, Ch. 505, L. 1981, provided: "(1) The bonds authorized under section 29 [17-5-706] may not be issued unless:

(a) HB 851 [see Ch. 507, L. 1981] is passed and approved by a three-fourths vote of each house of the legislature; or

(b) another bill authorizing the debts and appropriating the funds pledged for their repayment is passed and approved by a three-fourths vote of each house of the legislature.

(2) In addition to the requirements of subsection (1), the legislature must specifically approve each project or activity before the bonds to finance that project or activity may be issued."

17-5-708. Special fund revenues.

Compiler's Comments

1983 Amendment: In (1), substituted "severance tax bond fund" for "severance tax bond subfund", "special bond fund" for "special bond account", and "a debt service fund" for "the sinking fund"; and in (2), substituted "severance tax bond fund" for "severance tax bond account" and "special bond fund" for "special account".

17-5-709. Continued tax deposit limit on additional bonds.

Compiler's Comments

2001 Amendment: Chapter 7 deleted former (1)(b) that read: "(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in 90-3-1004 of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds"; near middle of (2) after "coal severance tax bond fund" deleted "and coal producer's license tax bond account established in 90-3-1004"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 563 inserted (1)(b) requiring assessment, levy, collection, and deposit of coal producer's license tax into coal producer's license tax bond account; in (2) inserted reference to coal producer's license tax bond account; and made minor changes in style. Amendment effective July 1, 1999.

1983 Amendment: In (1) and (2), substituted "severance tax bond fund" for "severance tax bond subfund" and "special bond funds" for "special bond accounts".

Case Notes

Amount of Funding Indefinite — Certainty Upon Sale of Bonds: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The plaintiff contended that H.B. 846, L. 1981, whereby the Legislature authorized issuance of up to $10 million in coal severance tax bonds for the state's share of construction costs of Tongue River Dam rehabilitation, violated Art. VIII, sec. 14, and Art. IX, sec. 5, Mont. Const., in that the amount of money necessary to finance the project was not definite or certain. The court found that at the time of the bill's passage, it was impossible for the Legislature to determine the exact cost. The authorization is contingent on legislative approval of a detailed project plan. Sections 17-5-709 and 17-5-710 place limits on the bonds that may be issued. The court found that no Legislature can be expected to predict the interest rate which will meet the market for the issuance of state bonds. The court found that when the bonds are issued and sold, the interest rate to be paid by the state will become certain. The amounts necessary to service and repay the indebtedness will be definite. The court relied on State ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 P 316 (1925), which held "that is certain which can be made certain", to uphold the authorization for the project. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to "appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds.

Compiler's Comments

2015 Amendment: Chapter 74 in (5)(a) substituted "bond proceeds used to pay interest on the bonds" for "any premiums"; inserted (5)(b) authorizing premiums to be deposited in a debt service fund; inserted (5)(c) concerning bond proceeds used to pay issuance costs; and made minor changes in style. Amendment effective February 27, 2015.

Saving Clause: Section 5, Ch. 74, L. 2015, was a saving clause.

Severability: Section 6, Ch. 74, L. 2015, was a severability clause.

1983 Amendment: In (5), substituted "a capital projects fund or a state special revenue account" for "a bond proceeds and insurance clearance fund account" and substituted "debt service fund" for "sinking fund account".

Case Notes

Amount of Funding Indefinite — Certainty Upon Sale of Bonds: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The plaintiff contended that H.B. 846, L. 1981, whereby the Legislature authorized issuance of up to $10 million in coal severance tax bonds for the state's share of construction costs of Tongue River Dam rehabilitation, violated Art. VIII, sec. 14, and Art. IX, sec. 5, Mont. Const., in that the amount of money necessary to finance the project was not definite or certain. The court found that at the time of the bill's passage, it was impossible for the Legislature to determine the exact cost. The authorization is contingent on legislative approval of a detailed project plan. Sections 17-5-709 and 17-5-710 place limits on the bonds that may be issued. The court found that no legislative assembly can be expected to predict the interest rate which will meet the market for the issuance of state bonds. The court found that when the bonds are issued and sold, the interest rate to be paid by the state will become certain. The amounts necessary to service and repay the indebtedness will be definite. The court relied on State ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 P 316 (1925), which held "that is certain which can be made certain", to uphold the authorization for the project. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-711. Trust indenture.

Compiler's Comments

1985 Amendment: Near beginning substituted "bonds or notes issued under this part" for "coal severance tax bonds".

17-5-713. Personal liability — suit to compel performance.

Compiler's Comments

1985 Amendment: Near end of (1) after "severance tax bond" inserted "or bond anticipation note".

17-5-714. Negotiability of bonds.

Compiler's Comments

1985 Amendment: At beginning substituted "Bonds or notes issued under this part" for "Coal severance tax bonds issued".

17-5-715. Signatures of board members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Substituted "bonds, notes, or coupons issued under this part" for "coal severance tax bonds or coupons"; and after "delivery of the bonds" inserted "or notes".

17-5-718. Tax exemption of bonds — legal investments.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

1985 Amendment: At beginning of (1) and (2) substituted "bonds or notes issued under this part" for "coal severance tax bonds".

17-5-719. Limitation on amount of coal severance tax bonds issued.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Case Notes

Bonded Debt — Not Invalid as Continuing Appropriation: Plaintiff filed a complaint for declaratory judgment in the Supreme Court seeking to determine the validity of several acts of the Legislature allowing the issuance of state revenue bonds. The bonds would be financed by coal severance taxes to provide proceeds for development of state water resources. Plaintiff contended that this was an invalid "continuing appropriation". Plaintiff contended that the 48th Legislature by enacting the program could not constitutionally bind future Legislatures to "appropriate" the coal tax money necessary to service the bonds; that the principal of the coal severance tax trust funds had been invaded for years; and that each bond issue requires a separate appropriation of coal severance tax revenues by a three-fourths vote of each house of the Legislature. The Supreme Court harmonized the various constitutional provisions involved. The court held that the Legislature can authorize long-term borrowing by issuing and selling bonds and can provide for the servicing for such indebtedness by repayment or refunding. The court found nothing making the coal severance tax trust fund immune from use as a source of funding for long-term state bonds. When the Legislature validly acts to establish a debt, that indebtedness becomes a state obligation extending over the life of the indebtedness, and every succeeding Legislature has an unavoidable duty to provide for it in the manner required by the authorizing law. Grossman v. St., 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984).

17-5-720. Authorization to issue revenue bonds.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Severability: Section 10, Ch. 775, L. 1991, was a severability clause.

Effective Date: Section 12, Ch. 775, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

17-5-721. Authorization to issue revenue bonds.

Compiler's Comments

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Effective Date: Section 13, Ch. 497, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 24, 1993.

Part 8
General Obligation Bonds and Notes

17-5-801. Definitions.

Compiler's Comments

1985 Amendment: Inserted definition of costs.

17-5-802. Authority to authorize and issue general obligation bonds and notes.

Compiler's Comments

2019 Amendment: Chapter 469 inserted (3) through (8) regarding the limitation on legislatively authorized general obligations bonds. Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2005 Amendment: Chapter 374 deleted former (3) that read: "(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment Void: The amendment to this section made by sec. 5, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds.

Compiler's Comments

2015 Amendment: Chapter 74 in (5)(a) substituted "bond proceeds used to pay interest on the bonds" for "any premiums, unless used to pay the costs of issuance"; inserted (5)(b) authorizing premiums to be deposited in a debt service account; inserted (5)(c) concerning bond proceeds used to pay issuance costs; and made minor changes in style. Amendment effective February 27, 2015.

Saving Clause: Section 5, Ch. 74, L. 2015, was a saving clause.

Severability: Section 6, Ch. 74, L. 2015, was a severability clause.

2009 Amendments — Composite Section: Chapter 342 in (5) near beginning after "part" inserted "to pay the costs of a project", after "account" inserted "or in a separate general obligation bond or note account created in the state special revenue fund established in 17-2-102", after "premiums" inserted "unless used to pay the costs of issuance", and near end after "received" deleted "and the proceeds of refunding bonds or notes"; and made minor changes in style. Amendment effective April 24, 2009.

Chapter 485 in (5) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 10, 2009.

Chapter 489 inserted (6) concerning tax credit bonds. Amendment effective May 14, 2009.

Severability: Section 12, Ch. 485, L. 2009, was a severability clause.

2005 Amendment: Chapter 374 in (2) deleted former second and third sentences that read: "Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law"; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment Void: The amendment to this section made by sec. 6, Ch. 3, L. 1999, was rendered void by sec. 16, Ch. 3, L. 1999, a contingent voidness section, which provided that if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, was declared invalid, then [this act] was void. The initiative was declared invalid February 24, 1999.

17-5-804. Use of capital projects account.

Compiler's Comments

1997 Amendment: Chapter 422 at end deleted "and for such purposes the money is statutorily appropriated as provided in 17-7-502". Amendment effective July 1, 1997.

1985 Amendments: Chapters 372 and 703 at end of first sentence, after "accounts", deleted "upon order of the department acting within the limits of the authority conferred upon it by the legislature". Chapter 372 inserted second sentence, authorizing transfer of administrative expenditure money, through "special revenue fund", and Ch. 703 inserted entire second sentence authorizing transfer of administrative expenditure money and creating statutory appropriation.

17-5-805. Bond, grant, or revenue anticipation notes — when issued — payment of principal and interest.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 323 inserted (1)(b) relating to money to be received from the federal government; inserted (1)(c) relating to money for a specified program; in (2) at end of first sentence inserted references to grant anticipation notes and revenue anticipation notes, in second sentence near beginning after "sale of the" deleted "bond anticipation" and near middle inserted "grants, or revenue", in third sentence in first clause inserted "or receipt of the proceeds of the grants or revenue", near middle after "necessary to" inserted "pay or", and after "additional" deleted "bond anticipation", and near middle of last sentence inserted "or receipt of the proceeds of the grants or revenue"; in (3) at beginning of first sentence inserted "grant, or revenue", after "anticipation notes" deleted "or other short-term evidences of indebtedness", and near middle substituted "2 years" for "1 year"; and made minor changes in style. Amendment effective April 21, 2005.

Pursuant to sec. 6, Ch. 323, a coordination section, the code commissioner in (3) in first sentence substituted "3 years" for "2 years". Amendment effective April 21, 2005.

Chapter 374 in (2) near middle of first sentence increased time of maturity from 1 year to 3 years; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

17-5-807. Limitations on general obligation bonds and bond anticipation notes.

Compiler's Comments

Effective Date: Section 4, Ch. 92, L. 2003, provided that this section is effective July 1, 2003.

Part 9
Highway Revenue Bonds

17-5-903. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 123, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 299 in definition of highway projects substituted "commission-designated highway systems" for "federal-aid highways"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 267 in definition of highway revenues after "Montana constitution" inserted "and 15-70-126 and 15-70-127". Amendment effective July 1, 2017.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: At end of definition of highway revenues, substituted "credited to the department in the state special revenue fund and the federal special revenue fund" for "credited to the highway earmarked revenue fund and the highway trust federal and private revenue account".

17-5-911. Highway revenue bond debt service account — deposit of bond proceeds.

Compiler's Comments

2009 Amendment: Chapter 10 in (1) at beginning of second sentence deleted "Subject only to the prior pledge and appropriation made by 17-5-507"; and made minor changes in style. Amendment effective October 1, 2009.

1986 Amendment: Deleted former (4) that read: "Notwithstanding 17-6-202 and except as provided in subsection (3), interest and investment earnings on the highway state special revenue account shall be credited to the general fund until July 1, 1985, and thereafter shall be retained in the highway state special revenue account."

1983 Amendment: In (1), substituted language of first sentence creating highway revenue bond debt service account for "There is in the highway earmarked revenue fund a highway revenue bond sinking account", and near end of subsection, substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (2), in first sentence substituted "state special revenue fund" for "highway earmarked revenue fund", and after "separate account" inserted "in the debt service fund", in second sentence substituted "highway revenue bond debt service account" for "separate account", in third sentence substituted "separate accounts in the state special revenue fund" for "separate accounts" and substituted "highway revenue bond debt service account" for "highway revenue bond sinking account"; in (3), substituted "the separate accounts referred to in subsection (2)" for "the highway earmarked revenue fund"; and in (4), substituted "highway state special revenue account" for "highway earmarked revenue fund" in two places.

17-5-912. Pledge of highway revenues.

Compiler's Comments

2009 Amendment: Chapter 10 near end after "subject to" deleted "a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to"; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Substituted "highway revenue bond debt service account" for "highway revenue bond sinking account".

17-5-914. Continuation of taxes — limit on additional highway revenue bonds.

Compiler's Comments

1983 Amendment: Substituted "state special revenue fund for the credit of the department" for "highway earmarked revenue fund".

17-5-922. Form — principal and interest — fiscal agent — bonds authorized.

Compiler's Comments

2009 Amendment: Chapter 489 inserted (7) concerning tax credit bonds; and made minor changes in style. Amendment effective May 14, 2009.

17-5-927. Signatures of board members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-5-930. Tax exemption of bonds — legal investments.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 at end of (1) deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

Part 10
Actions

17-5-1001. Action to restrain bond issues.

Case Notes

Noncompliance With Statutes: This section has no application where there was not just a mere defect or irregularity in the proceedings but an entire absence of any attempt to comply with the statutes controlling such election. Weber v. Helena, 89 M 109, 297 P 455 (1931), distinguished in State ex rel. Wolff v. Geurkink, 111 M 417, 109 P2d 1094 (1941).

Part 11
Public Obligations Registration

Part Compiler's Comments

Preamble: The preamble attached to Ch. 364, L. 1983, provided: "WHEREAS, Congress has enacted the Tax Equity and Fiscal Responsibility Act of 1982 that requires, among other things, that all public obligations be issued in registered form if the interest earned on such obligations is to be exempt from the federal income tax; and

WHEREAS, Congress has extended from January 1, 1983, to July 1, 1983, the effective date of the Act insofar as it applies to the registration of public obligations for the purpose of allowing states, municipalities, and the commercial world to enact laws and ordinances and implement procedures to facilitate compliance with the law; and

WHEREAS, current Montana law does not provide for the issuance of most public obligations in a registered form; and

WHEREAS, the inability of the state, local governments, school districts, or other governmental entities to issue registered bonds results in an inability to issue public obligation bonds on which the interest earned is tax exempt; and

WHEREAS, the ability to finance public improvements through the issuance of tax-exempt bonds is critical to the conduct of the public business.

THEREFORE, it is the intent of the Legislature to authorize the state, local governments, school districts, and other governmental entities to issue in a registered form the public obligations they are now authorized to issue."

17-5-1102. Definitions.

Compiler's Comments

2003 Amendment: Chapter 114 deleted former definition of code that read: ""Code" means the Internal Revenue Code of 1954, as amended"; inserted definition of Internal Revenue Code; and made minor changes in style. Amendment effective October 1, 2003.

17-5-1103. Declarations of state interest — purposes.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) in two places substituted "Internal Revenue Code, 26 U.S.C. 103 and 103A" for "code"; and made minor changes in style. Amendment effective October 1, 2003.

17-5-1111. System of registration.

Compiler's Comments

2003 Amendment: Chapter 114 at end of (6) and near end of (7) substituted "Internal Revenue Code" for "code"; and made minor changes in style. Amendment effective October 1, 2003.

Part 13
Montana Unified Volume Cap Bond Allocation Plan Act

17-5-1302. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 58, L. 2023. Amendment effective January 1, 2024.

2009 Amendment: Chapter 341 in definition of state issuer near middle after "corporation" inserted "to the extent authorized under federal law to issue private activity bonds" and after "considered" substituted "a state issuer" for "an agency of the state"; and made minor changes in style. Amendment effective April 24, 2009.

2001 Amendments — Composite Section: Chapter 32 in definition of allocation before "volume" inserted "state's"; in definition of local portion before "volume" inserted "state's"; in definition of Montana higher education student assistance corporation after "established" inserted "to provide student loan capital to the student loan program established by the board of regents of higher education"; in definition of private activity bonds after "section" substituted "141 of the Internal Revenue Code" for "1301 of the tax act"; in definition of state portion before "volume" inserted "state's"; inserted definition of state's volume cap; in definition of tax act after "means the" substituted "latest limitation" for "Tax Reform Act of 1986" and at end inserted "on the amount of cap bonds that may be issued by a state or local issuer"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 substituted Montana facility finance authority (MFFA) for Montana health facility authority (MHFA) as defined term; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1991 Amendment: Deleted former definition of Montana Agricultural Loan Authority that read: ""Montana agricultural loan authority" (MALA) means the authority provided for in 2-15-3011." Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 168, L. 1991, provided: "WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source."

Function Transfer: Section 2, Ch. 581, L. 1987, abolished the Montana Economic Development Board and transferred its functions to the Montana Board of Investments. The Code Commissioner has changed the reference in (12) to correspond to this function transfer.

17-5-1311. State's volume cap and reservations — department to adopt rule.

Compiler's Comments

2001 Amendment: Chapter 32 in (1) at end of first sentence substituted "the amount specified by the department pursuant to subsection (2)" for "$150 million" and in second sentence after "17-5-1313" substituted "70%" for "$105 million", before "volume" inserted "state's", and after "portion and" substituted "30%" for "$45 million"; inserted (2) requiring adoption of a rule for the state's volume cap; and made minor changes in style. Amendment to subsection (1) effective October 1, 2001; amendment to subsection (2) effective March 13, 2001.

Administrative Rules

Title 2, chapter 4, subchapter 3, ARM Volume cap.

17-5-1312. Allocation to state issuers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 58, L. 2023. Amendment effective January 1, 2024.

2009 Amendment: Chapter 341 in (2)(a) increased from 30 cents to 35 cents per thousand the amount a state issuer must pay to receive an allocation; inserted (2)(b) requiring a state issuer to provide the legislative auditor access to financial records; inserted (3) establishing disclosure and contract access conditions for the Montana higher education student assistance corporation; and made minor changes in style. Amendment effective April 24, 2009.

2001 Amendments — Composite Section: Chapter 32 in (3) at beginning after "following" substituted "set-aside percentages of the state's volume cap" for "set-asides" and deleted former column entitled "Allocation Amount" (see 2001 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 137 in (3) near bottom of first column substituted “MFFA” for “MHFA”. Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1991 Amendment: In (3) deleted MALA as a state issuer and deleted percentage and allocation amount for MALA, increased MBH percentage from 40 to 41 and allocation amount from $42,000,000 to $43,050,000, and increased MHESAC percentage from 25 to 26 and allocation amount from $26,250,000 to $27,300,000. Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 168, L. 1991, provided: “WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source.”

Function Transfer: Section 2, Ch. 581, L. 1987, abolished the Montana Economic Development Board (MEDB) and transferred its functions to the Montana Board of Investments (MBI). The Code Commissioner has changed the reference in (3) to correspond to this function transfer.

Attorney General's Opinions

Montana Higher Education Student Assistance Corporation Not State Bond Issuer — Bond Fee Inapplicable: A reasonable interpretation of this section is that it governs application of the audit fee for entities issuing private activity bonds, while 17-5-2201 governs application of the fee for all other types of bond issuance. The Montana Higher Education Student Assistance Corporation is not a state bond issuer as that term is used in 17-5-2201; therefore, the fees in that section do not apply to bonds issued by the Corporation. 47 A.G. Op. 1 (1997).

17-5-1313. Allocation to local issuers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 58, L. 2023. Amendment effective January 1, 2024.

17-5-1315. Carryforward elections.

Compiler's Comments

2001 Amendment: Chapter 32 in three places before “volume cap” inserted “state's”. Amendment effective October 1, 2001.

17-5-1316. Allocations by the department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 58, L. 2023. Amendment effective January 1, 2024.

2001 Amendment: Chapter 32 near middle of first sentence of (1) and in (1)(b), (1)(e), (1)(f), and (1)(h) before “cap” inserted “state's volume”. Amendment effective October 1, 2001.

17-5-1318. Terms of allocations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 58, L. 2023. Amendment effective January 1, 2024.

2001 Amendment: Chapter 32 in two places before “cap” inserted “state's volume”. Amendment effective October 1, 2001.

17-5-1323. Recordkeeping.

Compiler's Comments

2001 Amendment: Chapter 32 at end before “are observed” inserted “and the requirements of the state's volume cap”; and made minor changes in style. Amendment effective October 1, 2001.

17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency.

Compiler's Comments

Preamble: The preamble attached to Ch. 168, L. 1991, provided: “WHEREAS, the Montana Agricultural Loan Authority Act and beginning farm loan program have been inactive since adoption of the federal Tax Reform Act of 1986 because of the loss of an effective funding source.”

Effective Date: Section 7, Ch. 168, L. 1991, provided: “[This act is effective on passage and approval.” Approved March 26, 1991.

Part 15
Economic Development Bonds

Part Compiler's Comments

Statement of Intent: The statements of intent attached to Ch. 68 and Ch. 701, L. 1983, were substantially identical and provided: "A statement of intent is required for House Bill 700 [Ch. 701, L. 1983] because it provides rulemaking authority for the Montana economic development board [now the Board of Investments] in Section 21 of the bill.

It is the intention of the legislature that in implementing the rulemaking provisions of the bill, the board will examine the procedures used in other states to take advantage of proven methods of soliciting and reviewing applications for loans. It is further the intention of the legislature that the board will maintain close contact and solicit the opinions of the investment businesses in Montana and the financial institutions of the state. It is further the intention of the legislature that in the examination of the rules provided for assessment of a collection of fees in connection with its programs, the board shall make a concerted effort to consider not only the needs of the board, but the needs of the potential borrowers of the state and the general need for capital investment in Montana. Where possible, the board shall use proven methods of operation which have been provided through the experience of other boards in the state and the experience of other states. The rules should also provide for a local hearing to be held to determine whether a proposed project is in the public interest."

Severability: Section 30, Ch. 686, L. 1983, and sec. 32, Ch. 701, L. 1983, were severability sections.

Part Law Review Articles

Financing Indian Tribal Projects Using Tax-Exempt Bonds, Garrison, 24 J. Tax'n Invest. 348 (2007).

17-5-1502. Legislative declaration.

Compiler's Comments

1987 Amendment: In (1), near middle, changed "economic development board" to "board of investments".

17-5-1503. Definitions.

Compiler's Comments

1989 Amendment: Inserted definition of finance; and in definition of project costs inserted (f) relating to working capital for agricultural enterprise projects. Amendment effective May 16, 1989.

1987 Amendments: Chapter 94 at end of (4) deleted "and maintaining an office in the state".

Chapter 581 substituted definition of Board for "the Montana economic development board created in 2-15-1805".

Administrative Rules

ARM 8.97.1301 Investments in mortgages and loans — definitions.

17-5-1504. Powers of the board.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-5-1505. Financing programs of the board.

Compiler's Comments

1985 Amendment: Inserted (1)(d) authorizing financing of in-state projects.

17-5-1506. Bonds and notes for projects and major projects.

Compiler's Comments

2009 Amendment: Chapter 489 in (4) inserted last sentence concerning tax credit bonds; and made minor changes in style. Amendment effective May 14, 2009.

2003 Amendment: Chapter 609 in (6) at end substituted "$100 million" for "$75 million". Amendment effective May 9, 2003.

1991 Amendment: In (6), near beginning before "outstanding", deleted reference to 17-5-1519; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1985 Amendment: In (6), near beginning after "bonds" inserted "secured under 17-5-1515 and 17-5-1519" and after "one time" deleted "[for projects other than major projects]", and at end increased bonding limit from $25 million to $75 million; and deleted former (7) that read: "The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $50 million."

Composite Section: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Subsection (6) is from sec. 6, Ch. 701, L. 1983, which had no provision for major projects. The compiler inserted the bracketed language in (6) to clarify that the amount of outstanding bonds in (6) relates only to projects other than major projects. Subsection (7) was from sec. 4, Ch. 686, L. 1983.

17-5-1508. Provisions of bond resolutions.

Compiler's Comments

1983 Amendment: Chapter 281, in (4), substituted "debt service funds" for "sinking funds".

17-5-1514. Accounts.

Compiler's Comments

Composite Section — 1983 Amendment: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 12, Ch. 686, L. 1983, contained only the first sentence of 17-5-1514 which was identical to the first sentence of sec. 14, Ch. 701, L. 1983. Compiler has codified section as set forth in sec. 14, Ch. 701, L. 1983, as there is no conflict between the sections.

Chapter 281, in (1), substituted "a fund" for "a bond proceeds fund".

17-5-1515. Reserve funds and appropriations.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

17-5-1516. Maintenance of capital reserve account.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-5-1518. Tax exemption of bonds.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

17-5-1521. Adoption of rules.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-5-1525. Bonds as legal investment.

Compiler's Comments

1991 Amendment: In (2), near beginning after "under", substituted "17-5-1505 through 17-5-1518 and 17-5-1521 through 17-5-1529" for "17-5-1505 through 17-5-1529"; and made minor change in style. Pursuant to sec. 62, Ch. 16, L. 1991, the Code Commissioner has changed the reference to 17-5-1718 to 17-5-1518. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

17-5-1526. Procedure prior to financing projects.

Compiler's Comments

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

1991 Amendment: At end of (1)(d), after "guarantor", deleted "including but not limited to a guaranty by the board pursuant to 17-5-1519"; near middle of (5), before "capital reserve", deleted "board's guarantee under 17-5-1519 or the"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 273 in lead-in of (1) substituted commas for brackets around "other than major projects"; and inserted (6) exempting projects financed with bonds that are not exempt from federal taxation.

Chapter 561 in (1)(e) deleted reference to subsection (4) of 18-2-401.

1985 Amendments: Chapter 296 in (4) reduced notice requirement from 3 weeks to 2 weeks; and inserted (5) creating an exemption from certain requirements for bonds not secured by the Board's guaranty or the capital reserve account.

Chapter 653 inserted (1)(e) requiring a hiring preference for Montana residents.

Statement of Intent: The statement of intent attached to Ch. 653, L. 1985, provided: "It is the intent of the legislature that nothing contained in HB 554 shall require the economic development board [now the Board of Investments] of the department of commerce to enforce the statements submitted by an applicant to comply with section 17-5-1526(1)(e), MCA, provided a statement has been submitted by the applicant prior to the approval of the loan."

Compiler Clarification: Section 32, Ch. 686, L. 1983, provided that Ch. 686, L. 1983, was to be codified with Ch. 701, L. 1983, and that only those provisions differing should be codified separately. Section 24, Ch. 686, L. 1983 (17-5-1527), provided for the procedure prior to financing major projects. Section 26, Ch. 701, L. 1983 (17-5-1526), dealt with the procedure prior to financing projects. Since Ch. 701 did not deal with major projects, for clarification the compiler has inserted in 17-5-1526(1) bracketed language (now codified) referring to major projects.

Attorney General's Opinions

Local Government Determination of Public Interest Question Binding on Board: If a local government elects to hold a hearing pursuant to 17-5-1526 or 17-5-1527 to determine whether a project is in the public interest, the Montana Economic Development Board (now the Board of Investments) is bound by the decision of the local government on the public interest question. 40 A.G. Op. 78 (1984).

17-5-1527. Procedure prior to financing major projects.

Compiler's Comments

2003 Amendment: Chapter 609 in (1)(b) substituted "$50 million" for "$10 million"; and inserted (7) encouraging the board to consider certain applications for project financing. Amendment effective May 9, 2003.

1993 Amendment: Chapter 464 inserted (1)(g) requiring an applicant to submit a statement that the contractor will pay the standard prevailing wage for work on certain projects financed from bond proceeds; and made minor changes in style. Amendment effective April 21, 1993.

1991 Amendment: At end of (1)(d), after "guarantor", deleted "including but not limited to a guaranty by the board pursuant to 17-5-1519"; near middle of (5), after "secured by", deleted "the board's guarantee under 17-5-1519 or"; and made minor changes in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 273 inserted (6) exempting projects financed with bonds that are not exempt from federal taxation.

Chapter 561 in (1)(e) deleted reference to subsection (4) of 18-2-401.

1985 Amendments: Chapter 296 in (4) reduced notice requirement from 3 weeks to 2 weeks; and inserted (5) creating an exemption from certain requirements for bonds not secured by the Board's guaranty or the capital reserve account.

Chapter 653 inserted (1)(e) requiring a hiring preference for Montana residents.

Attorney General's Opinions

Local Government Determination of Public Interest Question Binding on Board: If a local government elects to hold a hearing pursuant to 17-5-1526 or 17-5-1527 to determine whether a project is in the public interest, the Montana Economic Development Board (now the Board of Investments) is bound by the decision of the local government on the public interest question. 40 A.G. Op. 78 (1984).

17-5-1529. Annual audits.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration"; and made minor changes in style. Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to economic development bonds"; and made minor changes in style. Amendment effective May 1, 2001.

1985 Amendment: Inserted (1) requiring examination of Board's loans and investments by Department's bank examiners.

Part 16

Municipal Finance Consolidation Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 8, L. 2005, provided: "WHEREAS, the Legislature has previously authorized various state agencies to borrow from the INTERCAP program authorized under the Municipal Finance Consolidation Act of 1983; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature has specified loan security for some of these loans and not for others; and

WHEREAS, the funding for these loans is obtained from proceeds of bonds purchased by private investors and the status of these loans should be clarified."

Loan Reauthorization: Section 1, Ch. 8, L. 2005 provided: "(1) All loans listed in subsection (2) are reauthorized. The amount shown for each loan represents the actual amount authorized by the legislature or, in the absence of a specified amount authorized by the legislature, the amount committed by the Montana board of investments in its loan agreements. The terms of and security for these loans, either as authorized by the legislature or embodied in loan agreements with the Montana board of investments, are ratified.

(2) The following loans are reauthorized in the original principal amount of:

(a) $500,000 to the department of justice for the law enforcement academy to be paid from the state general fund as provided in Chapter 531, Laws of 1995;

(b) $3,712,000 to the petroleum tank release compensation board to clean up leaking underground storage tanks to be paid from petroleum storage tank cleanup fees as provided in Chapter 115, Laws of 1997;

(c) $600,000 to the department of natural resources and conservation for information technology to be paid from the state general fund instead of school trust land income as provided in Chapter 578, Laws of 1999;

(d) $2,000,000 to the department of administration, public employees' retirement board, for the state defined contribution retirement system plan startup costs to be paid from employer and employee contributions as provided in Chapter 471, Laws of 1999;

(e) $340,000 to the department of administration for the voluntary employees' beneficiary association startup costs to be paid from the state general fund as provided in Chapter 272, Laws of 2001;

(f) $4,500,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 394, Laws of 2001; and

(g) $18,000,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 562, Laws of 2003."

Saving Clause: Section 4, Ch. 8, L. 2005, was a saving clause.

Severability: Section 34, Ch. 620, L. 1983, was a severability section.

Part Administrative Rules

Title 8, chapter 97, subchapter 7, ARM Municipal finance consolidation program.

Part Law Review Articles

Expanding Responsibilities: Recent Disclosure Actions Involving Municipal Securities Issuers, Doty, 37 Urb. Law. 113 (2005).

17-5-1602. Policy and purpose.

Compiler's Comments

1995 Amendment: Chapter 208 in (1)(a) substituted "eligible government units" for "counties, cities, towns, school districts, special taxing districts, and other public bodies"; in (1)(b), before "public indebtedness", deleted "local"; and in (2)(a) substituted "eligible government units" for "public bodies".

Attorney General's Opinions

Solid Waste Management District Not Considered Political Subdivision for Municipal Finance Consolidation Purposes: A solid waste management district created under Title 7, ch. 13, part 2 (now repealed), is not governed by an independent board autonomous from the supervisory control of the Board of County Commissioners. Therefore, a solid waste management district is not considered a political subdivision for purposes of funding under the Municipal Finance Consolidation Act. 44 A.G. Op. 28 (1992).

17-5-1604. Definitions.

Compiler's Comments

2019 Amendment: Chapter 359 in (3)(c) at beginning deleted "for the purposes of Title 90, chapter 4, part 12, only" and at end inserted "in accordance with 17-1-702"; and made minor changes in style. Amendment effective May 7, 2019.

2007 Amendment: Chapter 378 in definition of eligible government unit inserted (c) providing that for the purposes of Title 90, chapter 4, part 12, an Indian tribal government is included; and made minor changes in style. Amendment effective May 3, 2007.

Preamble: The preamble attached to Ch. 378, L. 2007, provided: "WHEREAS, the Montana Legislature has previously determined that Montana is blessed with an abundance of diverse renewable resources, that renewable energy production promotes and sustains economic development activity in local communities across the state, that increased use of renewable resources will enhance Montana's energy self-sufficiency, that economic and environmental benefits from renewable energy production accrue to the public at large, and that the expanded development of these resources to meet Montana's electricity demand and stabilize electricity prices should be encouraged and promoted; and

WHEREAS, Congress, pursuant to the Energy Tax Incentives Act of 2005, codified in part as section 54 of the Internal Revenue Code and referred to as the Federal Act, has created a federal tax credit program that would enable qualified issuers to issue clean renewable energy bonds for which the holder would receive a federal tax credit, in lieu of interest, to finance the capital costs of qualified projects as described in the Federal Act; and

WHEREAS, qualified issuers and qualified borrowers under the Federal Act include governmental bodies, which are defined as any state, territory, or possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of those entities; and

WHEREAS, the Legislature, in enacting the Montana Renewable Power Production and Rural Economic Development Act, has required Montana public utilities to establish graduated renewable energy standards and to purchase renewable energy from the community renewable energy projects and has allowed Montana political subdivisions or governmental bodies to be owners of community renewable energy projects; and

WHEREAS, several Montana cities, towns, and counties have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act that would provide the energy for their own needs at a stable price and have applied to the Internal Revenue Service for allocations under the Federal Act; and

WHEREAS, the purpose of this legislation is to authorize Montana local governmental bodies and Indian tribal governments to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies and Indian tribal governments to better access financial investments for community renewable energy projects or alternative renewable energy sources."

1999 Amendment: Chapter 498 in definition of eligible government unit in (a) inserted reference to regional water and wastewater authorities; and made minor changes in style. Amendment effective April 27, 1999.

Severability: Section 26, Ch. 498, L. 1999, was a severability clause.

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit" as defined term, at beginning of (b) inserted "the state, any board, agency, or department of the state", and at end inserted "when authorized by law to borrow money"; and made minor changes in style.

1993 Amendment: Chapter 380 in (3), after "taxing district", inserted "an assessment or service district authorized by law to borrow money". Amendment effective April 15, 1993.

1991 Amendment: At end of definition of local government unit, after "taxing district", inserted "or the board of regents of the Montana university system". Amendment effective July 1, 1991.

1987 Amendment: Substituted definition of Board for "the Montana economic development board created in 2-15-1805".

1983 Amendment: In (1), substituted reference to the Montana Economic Development Board for reference to the Board of Investments.

Attorney General's Opinions

Solid Waste Management District Not Considered Political Subdivision for Municipal Finance Consolidation Purposes: A solid waste management district created under Title 7, chapter 13, part 2 (now repealed), is not governed by an independent board autonomous from the supervisory control of the Board of County Commissioners. Therefore, a solid waste management district is not considered a political subdivision for purposes of funding under the Municipal Finance Consolidation Act. 44 A.G. Op. 28 (1992).

Refuse District Not Special Taxing District or Political Subdivision: Under the rationale of this section and 42 A.G. Op. 80 (1988), a refuse disposal district has no independent governing body and therefore does not fall within the definition of "special taxing district". Further, under the rationale of 43 A.G. Op. 56 (1990), because a refuse board is not a separate and independent body and has not been delegated supervisory authority over a refuse disposal district, a refuse disposal district cannot be considered a political subdivision, as that term is used in this section. 43 A.G. Op. 68 (1990).

17-5-1605. Board of investments to implement.

Compiler's Comments

1987 Amendment: Near beginning changed "Montana economic development board" to "board of investments".

1983 Amendment: Substituted reference to the Montana Economic Development Board for reference to the Board of Investments.

17-5-1606. Bonds, bond anticipation notes, and notes of the board.

Compiler's Comments

1995 Amendment: Chapter 208 in (1) substituted "eligible government units" for "local government units"; and made minor changes in style.

1985 Amendment: In (1) near middle, after "bonds", inserted "registered warrants, and tax or revenue anticipation notes and other".

17-5-1607. Participation voluntary.

Compiler's Comments

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit"; and made minor changes in style.

17-5-1608. Limitations on amounts.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 50 at end increased debt limit from $120 million to $126 million. Amendment effective July 1, 2007. This amendment was rendered void by Ch. 378.

Chapter 378 at end changed $120 million to $190 million. Amendment effective May 3, 2007.

Preamble: The preamble attached to Ch. 378, L. 2007, provided: "WHEREAS, the Montana Legislature has previously determined that Montana is blessed with an abundance of diverse renewable resources, that renewable energy production promotes and sustains economic development activity in local communities across the state, that increased use of renewable resources will enhance Montana's energy self-sufficiency, that economic and environmental benefits from renewable energy production accrue to the public at large, and that the expanded development of these resources to meet Montana's electricity demand and stabilize electricity prices should be encouraged and promoted; and

WHEREAS, Congress, pursuant to the Energy Tax Incentives Act of 2005, codified in part as section 54 of the Internal Revenue Code and referred to as the Federal Act, has created a federal tax credit program that would enable qualified issuers to issue clean renewable energy bonds for which the holder would receive a federal tax credit, in lieu of interest, to finance the capital costs of qualified projects as described in the Federal Act; and

WHEREAS, qualified issuers and qualified borrowers under the Federal Act include governmental bodies, which are defined as any state, territory, or possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of those entities; and

WHEREAS, the Legislature, in enacting the Montana Renewable Power Production and Rural Economic Development Act, has required Montana public utilities to establish graduated renewable energy standards and to purchase renewable energy from the community renewable energy projects and has allowed Montana political subdivisions or governmental bodies to be owners of community renewable energy projects; and

WHEREAS, several Montana cities, towns, and counties have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act that would provide the energy for their own needs at a stable price and have applied to the Internal Revenue Service for allocations under the Federal Act; and

WHEREAS, the purpose of this legislation is to authorize Montana local governmental bodies and Indian tribal governments to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies and Indian tribal governments to better access financial investments for community renewable energy projects or alternative renewable energy sources."

2003 Amendments — Composite Section: Chapter 562 at end increased bond debt limit from $80 million to $100 million. Amendment effective July 1, 2003, and terminates June 30, 2013. The amendment by Ch. 597 rendered the amendment by Ch. 562 void.

Chapter 597 increased amount of outstanding bonds to $120 million. Amendment effective May 9, 2003.

Termination Provision Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 9, Ch. 394, L. 2001, which terminated amendments to this section June 30, 2011. Effective January 1, 2004.

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

Saving Clause: Section 15, Ch. 597, L. 2003, was a saving clause.

2001 Amendment: Chapter 394 at end substituted "$80 million" for "$75 million"; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

1997 Amendment: Chapter 483 at end of section increased bond limit from $50 million to $75 million. Amendment effective May 1, 1997.

1987 Amendment: Increased outstanding indebtedness limit from $25 million to $50 million.

1985 Amendment: Deleted former (1) that read: "(1) make any loans to or purchase the bonds or notes of any single local government unit in an amount greater than $500,000 per single loan, bond issue, or note; or"; and near end of section after "notes", inserted "or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101".

17-5-1609. Purchase of anticipation notes.

Compiler's Comments

1995 Amendment: Chapter 208 in first and second sentences substituted "eligible government unit" for "local government unit"; and at end of first sentence substituted "eligible government unit securities" for "municipal securities".

17-5-1611. Additional powers of the board.

Compiler's Comments

1995 Amendment: Chapter 208 throughout section substituted "eligible government unit bonds" for "municipal bonds" and substituted "eligible government unit(s)" for "local government unit(s)"; inserted introductory clause of (4) concerning eligible local government unit; in (4)(a), after "required", deleted "of a local government unit"; and made minor changes in style.

1985 Amendment: Throughout section, after "bond anticipation notes", inserted "registered warrants, tax or revenue anticipation notes, or other".

17-5-1612. Specific loan authorization.

Compiler's Comments

Preamble: The preamble attached to Ch. 399, L. 2005, provided: "WHEREAS, the Legislature has previously authorized various state agencies to borrow from the program authorized under the Municipal Finance Consolidation Act of 1983, Title 17, chapter 5, part 16, MCA, and commonly known as the INTERCAP program; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature desires to establish parameters for the future use of the INTERCAP program by state agencies to ensure that loans are properly authorized."

Effective Date: Section 3, Ch. 399, L. 2005, provided that this section is effective on passage and approval. Approved April 25, 2005.

17-5-1621. Provisions of bond resolutions.

Compiler's Comments

1983 Amendment: Chapter 281, in (2), substituted "debt service funds" for "sinking funds".

17-5-1623. Nonimpairment by state.

Compiler's Comments

1995 Amendment: Chapter 208 substituted "eligible government unit" for "local government unit".

17-5-1628. Bonds or notes as legal investments.

Compiler's Comments

1983 Amendment: Chapter 281, near end of section, substituted "debt service funds" for "sinking funds".

17-5-1629. Tax exemption of bonds.

Compiler's Comments

2000 Amendment by Referendum: Chapter 9 near end of first sentence deleted references to inheritance taxes and gift taxes; and made minor changes in style. Amendment effective November 7, 2000.

Applicability: Section 38, Ch. 9, Sp. L. May 2000, provided: "This act applies to deaths occurring after December 31, 2000."

17-5-1630. Reserve fund.

Compiler's Comments

1987 Amendment: In (5), near beginning of first sentence after "board", deleted "of investments" and in second sentence, after "as the board considers proper", deleted "and as may be agreed upon between the board and the board of investments".

1983 Amendment: Chapter 281, in (2), substituted "debt service fund" for "sinking fund" in two places.

17-5-1643. Sale or exchange of securities.

Compiler's Comments

1995 Amendment: Chapter 208 throughout section substituted "eligible government unit" for "local government unit"; in (1), in first sentence, substituted "eligible government unit securities" for "municipal securities"; and made minor changes in style.

17-5-1644. Care and custody of bonds purchased by the board.

Compiler's Comments

1995 Amendment: Chapter 208 in three places, before "bonds", deleted "municipal"; and made minor changes in style.

17-5-1645. Insurance or guaranty.

Compiler's Comments

1995 Amendment: Chapter 208 deleted "municipal" before "bonds"; and substituted "eligible government units" for "local government units".

17-5-1646. Default in payment.

Compiler's Comments

1995 Amendment: Chapter 208 in two places substituted "eligible government unit" for "local government unit".

17-5-1647. Powers and duties of trustee on default.

Compiler's Comments

1995 Amendment: Chapter 208 in four places substituted "eligible government unit" for "local government unit"; and made minor changes in style.

17-5-1649. Annual audit.

Compiler's Comments

1987 Amendment: Deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds."

1985 Amendment: Inserted (1) requiring annual examinations by Department's bank examiners of Board's loans and investments and requiring payment of costs from Board's funds.

17-5-1650. Annual report.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 496, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: See 2021 Session Law for amendment made by sec. 39, Ch. 261, L. 2021. Amendment effective April 20, 2021.

1995 Amendment: Chapter 208 in third sentence substituted "eligible governmental securities" for "local governmental securities".

Chapter 545 in second sentence, after "two copies to the", substituted "legislative services division" for "office of the legislative fiscal analyst, two copies to the legislative council". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1993 Amendment: Chapter 349 in first sentence, after "legislature", deleted "as provided in 5-11-210" and inserted second sentence regarding distribution to the Legislature; and made minor changes in style.

1991 Amendment: In first sentence inserted reference to 5-11-210. Amendment effective March 20, 1991.

1987 Amendment: Near beginning changed report date from September 1 to December 31.

17-5-1651. Limitations on board's power.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 23, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 483 in (3) near middle after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 208 in (1), in two places, substituted "eligible government unit" for "local government unit".

Part 20

Procurement of Vehicles and Equipment

17-5-2001. Loans to state agencies.

Compiler's Comments

Effective Date — Contingency: Section 9, Ch. 443, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2018.

(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective January 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner." In a letter dated June 21, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2017, to meet REAL ID requirements. In a letter dated October 16, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2018, to meet REAL ID requirements.

2017 Amendment: Chapter 443 inserted (3) authorizing the department of justice to enter into an agreement to finance the cost of an information technology system and other associated costs to implement the REAL ID Act of 2005. Amendment effective January 1, 2018, or on occurrence of contingency, and void on occurrence of contingency.

2007 Amendment: Chapter 50 in (2)(a) increased debt limit from $22.5 million to $28.5 million and increased term of payment from 10 years to 15 years; and deleted former (3) that read: "(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation." Amendment effective July 1, 2007.

Termination Provision Repealed: Section 8, Ch. 50, L. 2007, repealed sec. 15, Ch. 562, L. 2003, which would have terminated the 2003 amendments to this section June 30, 2013. Effective July 1, 2007.

2005 Amendment: (Temporary version) Chapter 550 in (4)(b) at end deleted "from the administrative assessment provided for in 15-1-141"; deleted former (4)(c) that read: "(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue from the administrative assessment provided for in 15-1-141 must be sufficient to repay the indebtedness with respect to the replacement system over the proposed term of the loan"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 562 in (2)(a) increased loan limit to the department of justice for motor vehicle information technology system from $4.5 million to $22.5 million; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2013.

Chapter 597 inserted (4) concerning indebtedness for replacement system for POINTS computer system; and made minor changes in style. Amendment effective May 9, 2003, and terminates June 30, 2011.

Termination Provision Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 9, Ch. 394, L. 2001, which terminated amendments to this section June 30, 2011. Effective January 1, 2004.

Severability: Section 14, Ch. 597, L. 2003, was a severability clause.

Saving Clause: Section 15, Ch. 597, L. 2003, was a saving clause.

2001 Amendment: Chapter 394 in (1) near beginning of first sentence after "vehicles" inserted "automated systems"; inserted (2) concerning financing of information technology system for vehicle title and registration records and driver's license records; inserted (3) concerning financing for acquisition of video gambling automated accounting and reporting system data collection units; and made minor changes in style. Amendment effective July 1, 2001, and terminates June 30, 2011.

Deposit of Loan Proceeds — Capital Projects Appropriation: Section 5, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of justice up to $4.5 million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212."

Deposit of Loan Proceeds — Appropriation — Contractual Restrictions: Section 6, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for the acquisition of video gambling automated accounting and reporting system data collection units must be deposited in a state special revenue account.

(2) There is appropriated from the state special revenue account to the department of justice $1,120,000 for the purchase of video gambling automated accounting and reporting system data collection units. The department shall enter into contracts with the owners or operators of machines in which the units are placed that will encumber and allow the expenditure of the appropriation over the term of the loan from the board of investments for the purchase of the units.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the purchase of video gambling automated accounting and reporting system data collection units authorized by 17-5-2001 for agency current level operating expenses."

Effective Date: Section 5, Ch. 483, L. 1997, provided that this section is effective on passage and approval. Approved May 1, 1997.

Part 21
Crossover Refunding Bonds

17-5-2102. Crossover refunding bonds authorized.

Compiler's Comments

2003 Amendment: Chapter 277 in (4) inserted second and third sentences providing that the bonds do not count against any debt limitation until the crossover date and that after the crossover date, the bonds must be considered outstanding for purposes of any debt limitation; and made minor changes in style. Amendment effective July 1, 2003.

Part 22
Bond Fees

17-5-2201. Fee for issuance of bonds.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 58, L. 2023. Amendment effective January 1, 2024.

2009 Amendment: Chapter 341 in first sentence after "revenue" inserted "and as provided in 17-5-1312(2)(a)" and at end after "bonds" inserted "unless another fee is specifically provided for a type of bonds"; and made minor changes in style. Amendment effective April 24, 2009.

Attorney General's Opinions

Montana Higher Education Student Assistance Corporation Not State Bond Issuer — Bond Fee Inapplicable: A reasonable interpretation of 17-5-1312 is that it governs application of the audit fee for entities issuing private activity bonds, while this section governs application of the fee for all other types of bond issuance. The Montana Higher Education Student Assistance Corporation is not a state bond issuer as that term is used in this section; therefore, the fees in this section do not apply to bonds issued by the Corporation. 47 A.G. Op. 1 (1997).

CHAPTER 6
DEPOSITS AND INVESTMENTS

Part 1
Deposits

17-6-101. Deposit of funds in hands of state treasurer.

Compiler's Comments

1993 Amendments: Chapter 107 inserted (6) allowing the State Treasurer to contract with a financial institution to provide general depository banking services and statutorily appropriating contracting costs from the general fund; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 131 inserted (2) allowing the deposit of public money in out-of-state financial institutions under certain circumstances; and made minor changes in style.

1985 Amendment: In (1) and (2) inserted reference to credit unions and made minor changes in phraseology.

Case Notes

Insolvent Banks: Neither this section nor sections 6071 (repealed) and 6803 (repealed), R.C.M. 1921, requiring state banks to make report of their condition to the Superintendent of Banks and conferring upon the Superintendent of Banks visitorial powers with the right to examine books of bank, expressly or by implication waived the state's preference right over unsecured creditors of an insolvent bank to payment of its deposits. State ex rel. Rankin v. Madison St. Bank, 68 M 342, 218 P 652 (1923).

17-6-102. Insurance on deposits.

Compiler's Comments

1993 Amendment: Chapter 10 in (1), in first sentence, deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

1985 Amendment: In (1) in first sentence, after "corporation", inserted "or national credit union administration", and after "association", inserted "or credit union"; in (2), in first sentence, after "association", inserted "or credit union" and in last sentence, in two places, after "depository", substituted "financial institution" for "bank"; and made minor changes in phraseology.

17-6-103. Security for deposits of public funds.

Compiler's Comments

2019 Amendment: Chapter 45 inserted (16) concerning certificates of deposit fully insured by the federal deposit insurance corporation; and made minor changes in style. Amendment effective March 7, 2019.

1999 Amendment: Chapter 158 in (3)(e) inserted reference to letter of credit from federal home loan bank. Amendment effective October 1, 1999.

1997 Amendment: Chapter 42 in (8), in second sentence, substituted "32-1-424(1)(a)" for "32-1-424(3)(a)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 179 in (8), at beginning of second sentence, deleted "Subject to rules prescribed by the department of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 137 in second sentence of (8) inserted reference to subsection (a) of 32-1-424(3); and made minor changes in phraseology.

Chapter 201 inserted (4) relating to investments in a qualifying investment company or investment trust; and made minor changes in style.

1987 Amendments: Chapter 57 inserted (15) referring to linked deposit loan obligations.

Chapter 370 in (11) inserted reference to part 42.

1985 Amendment: Inserted (3)(j) referring to federal home loan mortgage corporation.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (7).

17-6-104. Interest on deposits — conformity with federal law.

Compiler's Comments

1993 Amendment: Chapter 10 near middle of (2) deleted reference to Federal Savings and Loan Insurance Corporation; and made minor changes in style.

1985 Amendment: In (1) near middle, after "savings and loan associations", inserted "credit unions"; in (2) near middle, after "federal savings and loan insurance corporation", inserted "national credit union administration" and near end, after "savings and loan associations", inserted "or credit unions"; and made minor changes in phraseology.

17-6-105. State treasurer as treasurer of state agencies — deposits of money.

Compiler's Comments

2007 Amendment: Chapter 420 in (2) near beginning and (2)(a) near middle after "agencies" deleted "and institutions"; in (5) near middle after "agency" deleted "or institution"; in (6) in first sentence near beginning after "law" inserted "and subject to subsection (8)", after "state agency" deleted "or institution", after "deposit exceeds" increased "$100" to "$200", and at end increased "$500" to "$750"; inserted (8) authorizing an agency to propose a modified deposit schedule, providing review criteria, and providing for approval or disapproval of the proposal by the department and the board of investments; inserted (9) requiring the department to submit to the legislative fiscal analyst and legislative auditor a report for active accounts for which a modified deposit schedule has been approved; inserted (10) defining agency; and made minor changes in style. Amendment effective October 1, 2007.

1991 Amendment: At beginning of (6) inserted exception clause; and made minor changes in style. Amendment effective April 4, 1991.

1985 Amendment: In (2)(a) in two places and in (3), inserted reference to credit union(s); and made minor changes in phraseology.

Case Notes

State Board of Education: Nothing contained in this section or 17-2-202 and 17-3-1003, relative to the duties of the State Treasurer and state boards, is out of harmony with Ch. 94, L. 1929 (since repealed), concerning power of State Board of Education to erect and operate dormitories. Barbour v. St. Bd. of Educ., 92 M 321, 13 P2d 225 (1932).

Attorney General's Opinions

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

University System — Deposit of Funds — State Treasurer: All money received or collected by the Montana University System from any source whatsoever is required to be deposited in the state treasury except as otherwise provided by statute. 34 A.G. Op. 2 (1971).

Educational Institutions — Extension Programs — Fees: All fees derived from extension programs authorized by the State Board of Education must be placed in the general fund. 28 A.G. Op. 7 (1959).

Part 2
Investments

17-6-201. Unified investment program — general provisions.

Compiler's Comments

2011 Amendment: Chapter 349 inserted (3)(e) concerning investment in home loan mortgages. Amendment effective July 1, 2011.

Preamble: The preamble attached to Ch. 349, L. 2011, provided: "WHEREAS, the Legislature finds that members of the Montana National Guard, residents of Montana in the federal reserves, and Montana residents serving on active duty in the armed forces have all made sacrifices of various kinds in order to serve the state and their country in times of war or national emergency; and

WHEREAS, the Legislature further finds that while those sacrifices may be difficult to quantify or compare because they range from loss of time with family and friends due to demands of reserve duty to loss of life in the service of the country, those sacrifices have in common that they occurred because of the status of the individual as a member of the armed forces; and

WHEREAS, the Legislature further finds that it has the authority pursuant to Article II, section 35, of the Montana Constitution to recognize and reward this status by providing special consideration to the status of service members and veterans; and

WHEREAS, the Legislature finds that it is appropriate to reward this status and the sacrifices the status represents by facilitating the fulfillment of the American dream of home ownership for those who serve or have served in the American armed forces; and

WHEREAS, the purpose of the Montana Veterans' Home Loan Mortgage Program Act is not to provide the most substantial return on the investment of money in the coal tax trust fund used for the program but to use some of the money in the trust fund for a mortgage loan program so that first-time home buyers who are eligible veterans can acquire a mortgage loan at a rate lower than prevailing market rates and in this way reward those eligible veterans who have served this country well and reward the unremarried spouses of eligible veterans who have made the ultimate sacrifice in service to their country."

2007 Amendment: Chapter 247 in (7) in first sentence at end inserted "other than the fund derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329" and inserted second sentence providing that appropriation to pay costs of administering and accounting for Morrill Act fund is provided for in 77-1-108; and made minor changes in style. Amendment effective April 26, 2007.

Contingent Effective Date: Section 13(2), Ch. 418, L. 2001, provided: "[Section 5] [17-6-201] is effective January 1, 2003, if Senate Bill No. 493 is approved by the electorate." Senate Bill No. 493 was not approved by the electorate, so the contingency did not occur.

2001 Amendment: Chapter 418 deleted former (2)(b) that read: "(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation"; and made minor changes in style. Amendment effective on occurrence of contingency.

1999 Amendments — Composite Section: Chapter 330 deleted (6)(d) that read: "(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (2)(a) at end deleted "except that an investment may not be made at any time that would cause the book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of the retirement fund". Amendment effective April 27, 1999.

Saving Clause: Section 77, Ch. 471, L. 1999, was a saving clause.

Severability: Section 78, Ch. 471, L. 1999, was a severability clause.

1997 Amendments: Chapter 32 in (6)(a), in first clause after "transferring", deleted "all", after "through" deleted "foreclosure of any", and after "investments" deleted "purchased under the provisions of 17-6-211 when full payment has been received for the property" and inserted second sentence requiring an appraisal prior to transfer of real property; and made minor changes in style.

Chapter 422 in (6)(d) deleted former second sentence that read: "The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (6)(d), at end of second sentence after "board", deleted "and are statutorily appropriated, as provided in 17-7-502". Amendment effective July 1, 1997.

Chapter 549 deleted (8) that read: "(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305." Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendment: Chapter 18 near beginning of introductory clause of (1), before "Montana", deleted "1972"; and at beginning of second sentence of (4) deleted "Except as provided in this chapter".

1993 Special Session Amendment: Chapter 37 deleted (9) that read: "(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202"; and made minor changes in style. Amendment effective January 5, 1994.

1993 Amendments — Composite Section: Chapter 46 inserted (2)(b) prohibiting investment in private corporate capital stock; inserted (3)(d) prohibiting a direct loan to an individual borrower; in (4), at end of second sentence, inserted "unless otherwise provided by law"; inserted (6)(d) allowing expenditure of funds needed to cover costs of necessary property repairs; and made minor changes in style.

Chapter 331 in (4), in first sentence before "authority", substituted "primary" for "sole" and at beginning of second sentence inserted exception clause; inserted (8) relating to Board reimbursement to the Department of administrative costs not covered by payback funds; in (9)(a) substituted "subsection (9)(b)" for "subsection (8)(b)"; in (9)(b) substituted "subsection (9)(a)" for "subsection (8)(a)"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1)(a), (1)(c), (2)(a), (3)(a), (5)(e), and (7) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

Severability: Section 9, Ch. 331, L. 1993, was a severability clause.

1991 Amendment: In (7), after "therefrom", deleted "except that such costs of the nonexpendable trust funds shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds". Amendment effective April 1, 1991.

1987 Amendments: Chapter 158 inserted (8) authorizing preparation of statewide cost allocation plan.

Chapter 335 in (3)(a), at end of introductory clause after "Montana", deleted "if the investment meets the standard of care required by this section"; and inserted (3)(b) referring to venture capital companies.

Chapter 581 in (1), in introductory clause after "board of investments", deleted "and the Montana economic development board" and after "in accordance with" deleted "Article VIII, section 13, of the Montana constitution and"; in (3)(c) substituted "board" for "board of investments and the Montana economic development board"; in (4), in first sentence after "board", deleted "of investments" and at end deleted "other than the Montana in-state investment fund"; and in (5) and (6), at beginning after "board", deleted "of investments".

1985 Amendments: Chapter 183 inserted (5)(e) requiring Board to keep total of each fund and investments of each fund and a record of participation of each fund account; and deleted former (6) that read: "The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments."

Chapter 418 in (1) near beginning, after "The", substituted "unified" for "uniform"; in first sentence of (1), after "accordance with", inserted "Article VIII, section 13, of the Montana constitution and the prudent expert principle which requires any investment manager to:" and deleted remainder of former (1) that read: "the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation. Investments by the Montana economic development board are limited to those made from the Montana in-state investment fund and for the purposes set forth in part 3"; deleted former (2) that read: "All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes"; and inserted (1)(a), (1)(b), and (1)(c) explaining the prudent expert principle; inserted (2) allowing investment in corporate common stocks; and inserted (3) allowing investment in Montana business activity and urging investment in venture capital companies.

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

1983 Amendments: Chapter 281, in (7), changed "trust and legacy fund" to "nonexpendable trust funds".

Chapter 677, in middle of (1) following "funds shall be administered by the board of investments" inserted "and the Montana economic development board", and substituted "people of prudence" for "men of prudence"; inserted last sentence of (1) (deleted by 1985 amendment); in (3) inserted "other than the Montana in-state investment fund" after "The board of investments has the sole authority to invest state funds"; and in (4) substituted "board of investments" for "board".

1981 Amendment: Added "and preservation of purchasing power of capital during periods of sustained high monetary inflation" at the end of (1).

Administrative Rules

ARM 8.97.311 False or misleading statements.

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

Attorney General's Opinions

Public University Endowment Funds Not "Public Funds" — Not Required to be Invested Through Unified Investment Program: Article VIII, sec. 13, Mont. Const., does not require that endowments granted to Montana's public universities be invested through the unified investment program. 53 A.G. Op. 6 (2010).

Investment Earnings Not to Be Credited to Science and Technology Development Account: Investment earnings on funds earmarked to be loaned but not yet paid out to a loan recipient are not payback funds or loan repayments within the context of 90-3-305 (now repealed) or this section. Therefore, those earnings may not be credited to the science and technology development account to be used to cover costs of administering programs under the Montana Science and Technology Financing Act. 45 A.G. Op. 28 (1994).

Cost Deductions From Investment Earnings Allowed: Subsection (7) of this section allows for deduction of allocated program costs from investment earnings of the state special revenue accounts referred to in 81-1-104. 42 A.G. Op. 108 (1988).

Regulation of Gifts to School for Deaf and Blind: The Board of Public Education has complete control over the ultimate disposition of gifts to the Montana School for the Deaf and Blind and can utilize such gifts without a specific appropriation. Pending such disposition, cash and similar gifts to the School must be deposited with the State Treasurer. If the Board invests any gifts, investment must be done pursuant to the unified investment program. 36 A.G. Op. 106 (1976).

University System — Funds — Deposit and Investment: The statutes relating to the deposit and investment of state money are applicable to the Board of Regents of Higher Education and the separate units of the Montana University System. 36 A.G. Op. 2 (1975).

17-6-202. Investment funds — general provisions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 48, L. 2023. Amendment effective March 13, 2023.

Retroactive Applicability: Section 10, Ch. 48, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to funds collected pursuant to 17-6-202(2) on or after July 1, 2022."

Preamble: The preamble attached to Ch. 48, L. 2023, provided: "WHEREAS, there is a benefit to the citizens of Montana to pay off debts and be debt free in 2023; and

WHEREAS, paying off debts and other financial liabilities of the State of Montana is a responsible use of one-time funds; and

WHEREAS, issuing and paying off public debt when prudent is and should remain a standard function of state government; and

WHEREAS, paying off debt now allows more capacity to responsibly pay for capital expenditures via financing in the future, when desired by the Executive and Legislature."

Severability: Section 7, Ch. 48, L. 2023, was a severability clause.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

Attorney General's Opinions

Foreclosure and Disposal of Real Property: Arguably, if the Board of Investments has the authority to invest in first mortgages, it should have the authority to foreclose and dispose of the real property involved. However, no such specific authority exists. Therefore, once title to real property passes to the state, its administration, control, and subsequent disposition come under the direction and supervision of the Board of Land Commissioners. (See 1997 amendments to 17-6-201, 77-1-101, and 77-1-701.) 36 A.G. Op. 104 (1976).

17-6-203. Separate investment funds.

Compiler's Comments

2011 Amendment: Chapter 99 inserted (2)(b), (2)(d), and (2)(f) through (2)(h) regarding certain retirement systems or compensation acts; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendments — Composite Section: Chapter 34 in (1) near beginning of first sentence and in second sentence substituted reference to permanent fund for reference to nonexpendable trust fund and near middle of second sentence after "subject to" substituted "deposit" for "payment"; in (2)(e) at beginning substituted "workers' compensation program" for "industrial accident insurance program"; in (6) near end substituted "the appropriation or investment" for "such liquidation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 467 inserted (7) regarding establishment of the Montana tobacco settlement trust fund; and made minor changes in style. Amendment effective April 30, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, in (2)(c) the Code Commissioner has substituted "game wardens' and peace officers' retirement system" for "game wardens' retirement system". Amendment effective July 1, 1997.

1989 Amendment: In (2)(a) changed "patrolmen's" to "patrol officers'".

1987 Amendment: Inserted (4) referring to fish and wildlife mitigation trust fund.

1985 Amendment: In (5) after "permanent", deleted "and invested in the permissible investments enumerated in 17-6-211".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Code Commissioner Deletion: In (1) under authority of sec. 48, Ch. 281, L. 1983, the Code Commissioner deleted "and all money referred to in 17-2-102(8)" as an erroneous and redundant reference to former treasury fund structure.

1983 Amendment: Near beginning of (1), changed "trust and legacy fund" to "nonexpendable trust funds"; and in last sentence of (1), after "each and every", substituted "fund constituting the Montana nonexpendable trust fund type" for "subfund constituting the Montana trust and legacy fund" and near end, changed "subfund" to "fund".

Attorney General's Opinions

Foreclosure and Disposal of Real Property: Arguably, if the Board of Investments has the authority to invest in first mortgages, it should have the authority to foreclose and dispose of the real property involved. However, no such specific authority exists. Therefore, once title to real property passes to the state, its administration, control, and subsequent disposition come under the direction and supervision of the Board of Land Commissioners. (See 1997 amendments to 17-6-201, 77-1-101, and 77-1-701.) 36 A.G. Op. 104 (1976).

17-6-204. Short-term investment of local government funds.

Compiler's Comments

2015 Amendment: Chapter 84 in (1), (2), and (3) substituted "short-term pooled investment fund" for "pooled investment fund". Amendment effective February 27, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Distribution of Interest Accrued on Protest Fund: Interest accrued on amounts held in a protest fund established under 15-1-402 must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units. 41 A.G. Op. 60 (1986).

17-6-205. Long-term investment of local government funds.

Compiler's Comments

Effective Date: Section 5, Ch. 84, L. 2015, provided that this section is effective on passage and approval. Approved February 27, 2015.

17-6-211. Preference to in-state investment firms — commitment agreement with board of housing.

Compiler's Comments

1985 Amendments — Composite Section: Chapter 418 deleted former (1) through (3) that read: "(1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (1)(b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of highest quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (1)(c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, savings and loan associations, and credit unions located in Montana; provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property as provided in this subsection (1)(f) and subsection (5), provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund; and

(g) any other investment in any business activity in the state, including activities that continue existing jobs or create new jobs in Montana, provided that investments which do not meet the requirements of subsections (1)(a) through (1)(f) may not, in the aggregate, exceed 10% of the fund from which each such investment is made.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (3)(c) does not apply to funds provided for in 17-6-203(4)"; in first sentence of (1), after "and/or", substituted "financial institutions" for "banks"; at beginning of (2), deleted former first sentence that read: "The board may invest in mortgage loans financed by the board of housing if the mortgages are not in default and meet the requirements of subsection (1)(f)"; and deleted former (6) that read: "The Montana economic development board created in 2-15-1805 may invest the Montana in-state investment fund in any in-state investment authorized by its rules in addition to those investments authorized by this section."

Chapter 421 in (1) in first sentence, after "firms", inserted "credit unions".

Chapter 418 substituted "financial institutions" for "banks". Chapter 421 inserted "credit unions" before "banks". Because the term "financial institutions" includes credit unions, the Code Commissioner has not inserted "credit unions".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

1983 Amendments — Composite: Chapter 358, near beginning of (1)(c) before "quality", changed "prime" to "highest"; and in (1)(c)(ii) after "reporting period," deleted "had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1½ to 1 and".

Chapter 360, in (1)(f), inserted "as provided in this subsection (1)(f) and subsection (5)"; and inserted (5) authorizing commitment agreement with Board of Housing.

Chapter 387, in (1)(e), after "associations" inserted ", and credit unions"; inserted (1)(g) authorizing investment in any business activity that continues or creates jobs in Montana.

Chapter 677, in (4), following "to direct", inserted "its portion of"; and inserted (6) allowing Board to authorize in-state investments by rule.

1981 Amendment: Deleted former subsection (3)(c) restricting investments in common stock to stocks that have paid cash dividends in each of at least 5 years immediately preceding purchase and to stocks of corporations with aggregate earnings at least equal to aggregate dividends paid and limiting to 2% the assets of a retirement fund that may be invested in stocks that didn't qualify under the above restrictions; increased the percent of book value from 20% to 50% and the percent of one corporation's stock from 1% to 2% in subsection (3)(c).

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-6-212. State purchase of general fund warrants.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 in (5) substituted "state treasurer" for "state auditor". Amendment effective March 12, 1997.

Chapter 48 in (5) substituted "department" for "state treasurer" and after "orders" deleted "upon the proper funds addressed to the state auditor". Amendment effective July 1, 1997.

The Code Commissioner has codified the amendment in Ch. 48, because "department" is a broader reference than "state treasurer" and the Director of the Department is the ex officio State Treasurer.

1995 Amendments — Composite Section: Chapter 40 inserted last sentence of (2), (2)(a), and (2)(b) allowing the Board to set the rate of interest and providing criteria that the Board must consider in setting the interest rate; and made minor changes in style.

Chapter 325 deleted former last sentence in (2) that read: "It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts"; in (3) substituted "state treasurer" for "auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

17-6-213. Redemption of bonds before maturity.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-6-214. Debt and liability free account — rules for deposits and transfers — purpose.

Compiler's Comments

Effective Date: Section 9, Ch. 48, L. 2023, provided: "[This act] is effective on passage and approval." Approved March 13, 2023.

Retroactive Applicability: Section 10, Ch. 48, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to funds collected pursuant to 17-6-202(2) on or after July 1, 2022."

Preamble: The preamble attached to Ch. 48, L. 2023, provided: "WHEREAS, there is a benefit to the citizens of Montana to pay off debts and be debt free in 2023; and

WHEREAS, paying off debts and other financial liabilities of the State of Montana is a responsible use of one-time funds; and

WHEREAS, issuing and paying off public debt when prudent is and should remain a standard function of state government; and

WHEREAS, paying off debt now allows more capacity to responsibly pay for capital expenditures via financing in the future, when desired by the Executive and Legislature."

Severability: Section 7, Ch. 48, L. 2023, was a severability clause.

17-6-225. Loans to petroleum tank release compensation board.

Compiler's Comments

Effective Date: Section 7, Ch. 115, L. 1997, provided: "[This act] is effective July 1, 1997."

17-6-230. Reports on retirement system trust fund investments and benefits.

Compiler's Comments

2013 Amendment: Chapter 155 in (2) inserted "and to the state administration and veterans' affairs interim committee". Amendment effective October 1, 2013.

Preamble: The preamble attached to Ch. 155, L. 2013, provided: "WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee voted to make the recommendations contained in this bill."

Effective Date: Section 11, Ch. 285, L. 2007, provided that this section is effective June 1, 2007.

17-6-231. Definitions.

Compiler's Comments

Effective Date: Section 7, Ch. 175, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 19, 2023.

Severability: Section 6, Ch. 175, L. 2023, was a severability clause.

17-6-232. Consideration of nonpecuniary factors prohibited.

Compiler's Comments

Effective Date: Section 7, Ch. 175, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 19, 2023.

Severability: Section 6, Ch. 175, L. 2023, was a severability clause.

17-6-233. Voting ownership interests.

Compiler's Comments

Effective Date: Section 7, Ch. 175, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 19, 2023.

Severability: Section 6, Ch. 175, L. 2023, was a severability clause.

17-6-234. Enforcement by attorney general.

Compiler's Comments

Effective Date: Section 7, Ch. 175, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 19, 2023.

Severability: Section 6, Ch. 175, L. 2023, was a severability clause.

Part 3
Montana In-State Investment

Part Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 677, L. 1983, provided: "(1) A statement of intent is required for this bill because it grants rulemaking authority to the Montana economic development board [now the Board of Investments] in section 16. These rules will include definitions of small- and medium-sized businesses, a method of commitment of funds to financial institutions, setting service fees for loans, defining types of permissible investments, and procedural rules to govern the board's proceedings.

(2) It is the intent of the legislature that:

(a) the definitions of small- and medium-sized business be based on either the number of employees of the business, the level of capitalization of the business, or a combination of these factors;

(b) the method of committing funds to financial institutions be similar to the method utilized by the board of housing for committing funds for housing developments to financial institutions;

(c) the level of service fees be set to cover the costs associated with processing the investment and be similar to those charged by financial institutions;

(d) the permissible investments adopted by rules be based on the long-term benefit to the Montana economy and adhere to the prudent-man rule. The investments should be aimed at diversifying, strengthening, and stabilizing the Montana economy and increasing employment opportunities while maintaining and improving a clean and healthful environment; and

(e) the procedural rules be based on the Attorney General's model rules."

Part Law Review Articles

Growth, Taxes, and Government Expenditures: Growth Hills for U.S. States, Bania, Gray, & Stone, 60 Nat'l Tax J. 193 (2007).

Living in the Past: The Kelo Court and Public-Private Economic Redevelopment, Mihaly, 34 Ecology L.Q. 1 (2007).

Tribal Bonds: Statutory Shackles and Regulatory Restraints on Tribal Economic Development, Clarkson, 85 N.C.L. Rev. 1009 (2007).

17-6-302. Definitions.

Compiler's Comments

2019 Amendment: Chapter 245 in definition of coal-fired generating unit substituted "100 megawatts" for "200 megawatts"; and in definition of owner inserted "or a public utility regulated by the public service commission in accordance with Title 69". Amendment effective May 2, 2019.

Severability: Section 6, Ch. 245, L. 2019, was a severability clause.

2017 Amendment — Composite Section: Chapter 373 inserted definitions of coal-fired generating unit and owner; and made minor changes in style. Amendment effective May 9, 2017.

Chapter 419 inserted definitions of coal-fired generating unit and existing infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

2011 Amendment: Chapter 9 deleted definition that read: ""Capital company" means a Montana capital company created pursuant to Title 90, chapter 8"; in definition of loan participation at end deleted "and does not include the purchase of debentures issued by a capital company"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 8, Ch. 9, L. 2011, was a saving clause.

2003 Amendment: Chapter 183 inserted definitions of intermediary loan and local economic development organization; and made minor changes in style. Amendment effective July 1, 2003.

1997 Amendment: Chapter 549 inserted definition of Department; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1991 Amendment: Deleted definition of Montana in-state investment fund; and made minor change in style. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendments: Chapter 124 inserted definition of capital company; and at end of definition of loan participation inserted "and does not include the purchase of debentures issued by a capital company".

Chapter 370 in definition of Montana in-state investment fund changed "17-6-305" to "17-6-306".

Chapter 581 substituted definition of Board for "the Montana economic development board established in 2-15-1805".

1985 Amendment: Inserted definition of clean and healthful environment.

Incorrect Internal References: (1) Section 2(1), Ch. 677, L. 1983, provided: "(1) Board means the Montana economic development board established in [section 19]." The "Board", however, was created in section 17 because sections 17 and 18 of the bill as introduced were deleted, which resulted in section 19 being renumbered as section 17.

(2) Section 2(3), Ch. 677, L. 1983, provided: "(3) Committee means the Economic Development Oversight Committee created by [section 17]." The Economic Development Oversight Committee was deleted from the bill prior to passage and this definition was inadvertently left in the bill. The Code Commissioner therefore has not codified the subsection.

Administrative Rules

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-6-304. Use of the coal tax trust fund for economic development.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

17-6-305. Investment of coal tax trust fund in Montana economy — report by board.

Compiler's Comments

2007 Amendment: Chapter 444 in (1) near beginning of first sentence after "invest" deleted "up to" and inserted fifth sentence providing that subsection (1) does not prohibit the board from investing more than 25% of the permanent coal tax trust fund in the Montana economy if it is prudent to do so and the investments will benefit the Montana economy. Amendment effective July 1, 2007.

2001 Amendment: Chapter 307 in (1) in fourth sentence near middle after "development" deleted "and administered by the department pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

1997 Amendment: Chapter 549 in (1), in last sentence after "trust fund", inserted "contained in portfolios formerly" and substituted "and administered by the department pursuant to part 5 of this chapter is included in the 25%" for "pursuant to 17-6-308(3) may not be included in the 25%". Amendment effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendments: Chapter 34 in (1) inserted third and fourth sentences clarifying the portion of the permanent coal tax trust fund that is available for the in-state investment program.

Chapter 477 in (1) inserted second sentence concerning investments not including investments pursuant to 17-6-309(2). Amendment effective April 14, 1995.

Preamble: The preamble attached to Ch. 34, L. 1995, provided: "WHEREAS, state law authorizes the Board of Investments to invest up to 25% of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises; and

WHEREAS, state law also authorizes the Montana Board of Science and Technology Development to invest $23.6 million of the permanent coal tax trust fund established in section 17-6-203(6), MCA, in seed capital project loans and in research and development project loans; and

WHEREAS, the Legislature has established in section 17-5-703(1), MCA, several funds within the permanent coal tax trust fund; and

WHEREAS, it is unclear whether the Legislature intended these funds to be included in the total permanent coal tax trust fund for purposes of calculating the 25% available to the Board of Investments for the in-state investment program."

1993 Amendment: Chapter 349 in (4), after "shall", inserted "include a", after "report" deleted "biennially to the legislature", and after "section" inserted "as a part of the information required by 17-7-111".

1991 Amendments: Chapter 16 in (1) corrected citation to subsection of 17-6-203; and made minor changes in style.

Chapter 589 in (1), at beginning before "the permanent", substituted "Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of" for "Twenty-five percent of all revenue deposited after June 30, 1983, into", near middle changed subsection reference to 17-6-203, and after "17-6-203(6)" deleted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2) shall be invested"; inserted (4) concerning Board reporting biennially to Legislature on investments made under section; and made minor change in style. Amendment effective July 1, 1991.

Chapter 787 in (1), after "established in 17-6-203(6)", deleted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1985 Amendments — Applicability: Chapter 338 in middle of (1) inserted "and 15% of the annual income and earnings on the Montana in-state investment fund appropriated to the coal severance tax permanent fund by 17-5-704(2)". Amendment effective April 3, 1985, and applies retroactively, within the meaning of 1-2-109, to appropriations on and after July 1, 1983. (See sec. 3, Ch. 338, L. 1985.)

Chapter 418 in (2) after "revenue" deleted "as required by 17-6-201(1)".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Attorney General's Opinions

Board of Investments Allowed to Complete Grants Entered Between Board of Science and Technology Development and University System: In 1989, the Legislature created the Board of Science and Technology Development and allowed that Board to administer a statutorily allocated amount of money from the in-state investment fund for seed capital project loans. From 1989 to 1997, the Legislature continued to fund the Board of Science and Technology Development, which used the money to enter into research and development loans with different units of the Montana University System. In 1997, the Legislature deleted the Board of Science and Technology Development's authority to make loans that had been authorized in previous sessions, effective July 1, 1999, but authorized the Board of Science and Technology Development to grant up to $2 million of interest and income from investments to university research and development projects during the interim between 1997 and 1999. Relying on that authority, the Board of Science and Technology Development entered into six separate grant agreements with the University System, and the various units relied on the grants to secure matching federal funds for the projects. In 1999, in an attempt to make the coal tax permanent trust fund whole, the Legislature dismantled the Board of Science and Technology Development and directed the Board of Investments to administer agreements entered into by the Board of Science and Technology Development that had been funded with coal tax permanent trust funds and, at the same time, eliminated the funds set aside for the completion of the agreements, creating an inherent statutory conflict. Nevertheless, the agreements were fully integrated, binding contracts. The Attorney General concluded that the 1999 elimination of the Board of Investment's ability to complete the grant obligations to the University System would constitute a substantial impairment of contracts. Further, without the funds, the University System would not be able to complete the projects and federal matching funds would be jeopardized. To harmonize the conflict and avoid a contract impairment, the Attorney General held that the Board of Investments could complete the payment of grants to the University System from interest and income derived from Board of Science and Technology Development loans. 49 A.G. Op. 2 (2001).

17-6-308. Authorized investments.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 774, L. 2023. Amendment effective June 13, 2023.

Preamble: The preamble attached to Ch. 774, L. 2023, provided: "WHEREAS, the availability of attainable workforce housing is critical to the well-being of individuals, communities, businesses, and organizations of all sizes, and the economy at large; and

WHEREAS, access to attainable workforce housing provides greater opportunities to realize the American dream, allows for more robust job creation, promotes a stronger economy, and is essential to ensuring our residents and future generations are able to live, work, and raise their families in the state; and

WHEREAS, driven by a shortage of housing supply, the state faces a crisis of attainable workforce housing that poses substantial challenges to hardworking Montanans, employers, communities, and the state's economic health; and

WHEREAS, between 2010 and 2020, the state's population growth of 9.6% outpaced the state's housing unit growth of 6.6%, and a substantial factor contributing to tight housing supply has been underbuilding of entry-level homes, which are in high demand but low supply; and

WHEREAS, it is in the public interest of our state, our communities, and our people to find solutions to the tight supply of attainable workforce housing; and

WHEREAS, the health and stability of the state is directly dependent on the health and stability of local economic regions that are struggling due to an inadequate workforce, which is creating concerns for negative, long-term consequences; and

WHEREAS, a diverse, capable workforce is essential to retain the economic vitality and prosperity of the state within the global marketplace; and

WHEREAS, the Montana Community Reinvestment Plan Act may generate 500 attainable workforce housing dwellings allowing qualified individuals to achieve homeownership."

2021 Amendment: Chapter 443 inserted (7)(b)(v) regarding costs related to decommissioning and remediation of a coal-fired generating unit; and made minor changes in style. Amendment effective May 10, 2021.

2019 Amendments — Composite Section: Chapter 190 in (5) substituted "$50 million" for "$40 million. Amendment effective July 1, 2019.

Chapter 245 in (7)(b) substituted "to an owner to finance" for "only to finance"; inserted (7)(b)(ii) concerning the purchase of additional interests in a coal-fired generating unit if the owner already has a shared interest; inserted (7)(b)(iii) concerning the purchase of coal to use at a coal-fired generating unit or necessary improvements to use coal from a different source; inserted (7)(b)(iv) concerning the purchase of electric transmission lines and associated facilities; inserted

(7)(b)(v) concerning a combination of subsections; deleted former (6)(c) that read: "(c) Loans may not be provided to operate or maintain a coal-fired generating unit beyond July 1, 2022"; and made minor changes in style. Amendment effective May 2, 2019.

Chapter 460 in (1) substituted "subsections (2) through (8) of this section" for "subsections (2) through (7)"; inserted (6) allowing the board of housing to administer a portion of the permanent coal tax trust fund for low-income housing loans; and made minor changes in style. Amendment effective July 1, 2019.

Severability: Section 6, Ch. 245, L. 2019, was a severability clause.

2017 Amendments — Composite Section: Chapter 373 in (1) inserted reference to subsection (6); inserted (6) concerning working capital loans from the permanent coal tax trust fund to owners of coal-fired generating units, including financing purposes, restrictions, and application fees; and made minor changes in style. Amendment effective May 9, 2017.

Chapter 419 in (1) inserted reference to subsection (7); inserted (7) allowing loans to certain local governments impacted by closure of a coal-fired generating unit for existing infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

2015 Amendment: Chapter 396 in (5) substituted "$40 million" for "$30 million". Amendment effective July 1, 2015.

2013 Amendment: Chapter 213 in (5) substituted "$30 million" for "$15 million". Amendment effective July 1, 2013.

2011 Amendment: Chapter 349 in (1) substituted "(5)" for "(4)"; inserted (5) concerning the administration of $15 million of the permanent coal tax trust fund; and made minor changes in style. Amendment effective July 1, 2011.

Preamble: The preamble attached to Ch. 349, L. 2011, provided: "WHEREAS, the Legislature finds that members of the Montana National Guard, residents of Montana in the federal reserves, and Montana residents serving on active duty in the armed forces have all made sacrifices of various kinds in order to serve the state and their country in times of war or national emergency; and

WHEREAS, the Legislature further finds that while those sacrifices may be difficult to quantify or compare because they range from loss of time with family and friends due to demands of reserve duty to loss of life in the service of the country, those sacrifices have in common that they occurred because of the status of the individual as a member of the armed forces; and

WHEREAS, the Legislature further finds that it has the authority pursuant to Article II, section 35, of the Montana Constitution to recognize and reward this status by providing special consideration to the status of service members and veterans; and

WHEREAS, the Legislature finds that it is appropriate to reward this status and the sacrifices the status represents by facilitating the fulfillment of the American dream of home ownership for those who serve or have served in the American armed forces; and

WHEREAS, the purpose of the Montana Veterans' Home Loan Mortgage Program Act is not to provide the most substantial return on the investment of money in the coal tax trust fund used for the program but to use some of the money in the trust fund for a mortgage loan program so that first-time home buyers who are eligible veterans can acquire a mortgage loan at a rate lower than prevailing market rates and in this way reward those eligible veterans who have served this country well and reward the unremarried spouses of eligible veterans who have made the ultimate sacrifice in service to their country."

2001 Amendments — Composite Section: Chapter 137 in (4) in first sentence substituted "Montana facility finance authority" for "Montana health facility authority". Amendment effective July 1, 2001.

Chapter 307 in (3) deleted former fifth sentence that read: "Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201" and near beginning of fifth sentence after "made" substituted "by the former Montana board of science and technology development" for "pursuant to part 5 of this chapter". Amendment effective July 1, 2001.

Saving Clause: Section 18, Ch. 137, L. 2001, was a saving clause.

1999 Amendments — Composite Section: Chapter 66 throughout (3) changed "department" to "board", deleted former third and fourth sentences that read: "The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature", at end of third sentence inserted exception clause, inserted fourth sentence requiring board to administer instruments funded with coal tax permanent trust funds, and in sixth sentence substituted "the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest" for "the department may reinvest the principal in new loans pursuant to part 5 of this chapter"; and in (6) substituted "repayments of proceeds of investments made from the coal severance tax trust fund" for "repayments proceeds in excess of $4.395 million" and deleted last sentence that read: "In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system." Amendment effective July 1, 1999.

Chapter 160 near beginning of (1) substituted "(2) through (4)" for "(2) and (3)"; in (3) deleted former third and fourth sentences that read: "The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature"; inserted (4) authorizing health facility authority to administer $15 million of permanent coal tax trust fund for capital projects; in (6) at beginning substituted "All repayments proceeds pursuant to subsection (3)" for "Beginning July 1, 1999, all repayments proceeds" and deleted second sentence that read: "In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: (Temporary version) Chapter 549 in (3) inserted second and third sentences relating to research and development grants to universities, in fourth sentence changed years to 1999 from 1997, inserted fifth through eighth sentences relating to seed money and Judges' Retirement System transfer, and at end of 10th sentence substituted "the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997" for "the Montana board of science and technology development may reinvest the principal in new loans". Amendment effective May 7, 1997.

(Version effective July 1, 1999) In (3), at beginning, substituted "The department shall manage the seed capital and research and development loan portfolios created by the former Montana board" for "The board shall allow the Montana board", deleted the end of the first sentence and the former second sentence that read: "provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects", inserted second through fifth sentences relating to the repayment schedule, development of a business investment strategy, and the Department as successor in interest, in next-to-last sentence substituted "department" for "Montana board of science and technology development" and substituted "part 5 of this chapter, the $915,000 in funds" for "Title 90, chapter 3, the funds", and at beginning of last sentence after "As" deleted "seed capital and mezzanine financing", substituted "part 5 of this chapter are repaid, the department" for "this subsection are repaid, the Montana board of science and technology development", and at end inserted reference to part 5; and inserted (5) relating to Judges' Retirement System transfer. Amendment inserting subsection (5) effective May 7, 1997; all other amendments effective July 1, 1999.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

Coordination: Section 15, Ch. 549, L. 1997, provided: "(1) If House Bill No. 2 is vetoed, then the bracketed language in [section 7] [17-6-308, version effective May 7, 1997] is void.

(2) If the bracketed language in [section 7] is effective, then the $1 million for each fiscal year appropriated from the state special revenue account for university system research contained

in House Bill No. 2 is void." The bracketed language was the second and third sentences in subsection (3) relating to research and development grants to universities. House Bill No. 2 was not vetoed.

Retroactive Applicability: Section 16(2), Ch. 549, L. 1997, provided "... [section 7] [17-6-308, version effective May 7, 1997] applies retroactively, within the meaning of 1-2-109, to investment payments received on or after April 1, 1997."

1995 Amendment: Chapter 559 in (3), in first sentence, substituted "$12.5 million" for "$15.5 million", inserted "mezzanine financing loans", substituted "$11.1 million" for "$8.1 million", and after "development project" substituted "matching funds for projects at Montana public universities" for "loans pursuant only to the provisions of Title 90, chapter 3", in second sentence substituted "1997" for "1995" and substituted "projects" for "project loans", and inserted last sentence regarding reinvestment of principal of repaid loans; and made minor changes in style. Amendment effective April 26, 1995.

1993 Amendment: Chapter 331 in (3), in first sentence, increased allowable seed capital loan money from $7.5 million to $15.5 million and increased allowable research and development loan money from $5.1 million to $8.1 million and in second sentence extended authority from June 30, 1994, to June 30, 1997, for seed capital loans and to June 30, 1995, for research and development loans. Amendment effective July 1, 1993.

1991 Amendments: Chapter 251 inserted (4) requiring Board to adopt rules allowing certain nonprofit corporations to qualify for in-state investments of state funds. Amendment effective March 29, 1991.

Chapter 589 in (1), (2), and (3) substituted "permanent coal tax trust fund" for "in-state investment fund"; in (1), near beginning after "provided in", substituted "subsections (2) and (3) and subject to the provisions of 17-6-201" for "subsection (4)" and deleted last sentence concerning definition of investment as including guaranty of loans or bonds for a fee; deleted former (2) concerning Board using in-state investment fund to guarantee loans or bonds for a fee and subject to subrogation agreement, requiring Board to establish ratio between funds available and loans or bonds to be guaranteed, and establishing maximum amount of guaranty; in (2), in first sentence after "17-5-1515", deleted "and the guaranty fund created pursuant to 17-5-1520" and near end of third sentence, after "under", substituted "17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529" for "17-5-1501 through 17-5-1529"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 594 in (3), in first sentence, inserted allocation for research and development project loans and in second sentence, after "1994", inserted "for seed capital project loans and for research and development project loans"; and made minor changes in style. Amendment effective April 24, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Allocation of Funds: Section 3, Ch. 594, L. 1991, provided: "Provided the loans contain the repayment requirements set forth in 90-3-522 [now repealed] and 90-3-524, the $5.1 million of the permanent coal tax trust fund to be used for research and development project loans is allocated as follows:

(1) $600,000 to meet state matching fund requirements for the national science foundation awards to the center for interfacial microbial process engineering;

(2) $3.5 million for loans relating to but not limited to the centers of excellence program and the Montana entrepreneurial center and to meet state matching fund requirements for the national science foundation's experimental program to stimulate competitive research; and

(3) $1 million for medical facility research and development project loans provided that:

(a) a loan may not be less than $200,000 or more than $500,000; and

(b) a dollar-for-dollar matching requirement from federal or private sources is required."

Coordination Instruction — Code Commissioner Change: Section 12, Ch. 594, L. 1991, a coordination section, provided: "If Senate Bill No. 26 is passed and approved, if it includes a section that amends 17-6-308, and if it includes amendments that replace references to the "in-state investment fund" with "permanent coal tax trust fund", then in [this act], the code commissioner shall make similar changes." Senate Bill No. 26 was approved April 24, 1991, as Ch. 589, L. 1991, and included amendments replacing references to the funds as contemplated in the coordination instruction. The Code Commissioner has therefore substituted "permanent coal tax trust fund" for "in-state investment fund" in this section.

Severability: Section 13, Ch. 594, L. 1991, was a severability clause.

1989 Amendment: At beginning of (1) inserted exception clause; and inserted (4) relating to seed capital project loans by the Montana Board of Science and Technology Development. Amendment effective March 24, 1989.

1985 Amendments: Chapter 418 in (1) after "invested" substituted "as" for "in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment".

Chapter 640 in (1) inserted second sentence further defining "investment" for purposes of this section; inserted (2) authorizing guaranty of loans or bonds issued under Montana Economic Development Bond Act of 1983, Municipal Finance Consolidation Act of 1983, and Montana Health Facility Authority Act; and inserted (3) authorizing loans to establish balances and restore deficiencies in certain accounts.

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Case Notes

Provisions Permitting Use of In-State Investment Fund to Guarantee Private Loans or Bonds Unconstitutional: The provisions of this section which permit the use of in-state investment fund money derived from taxation to guarantee loans or bonds of private individuals or private entities either directly or through the capital reserve account or through the economic development guaranty fund are unconstitutional from the viewpoint of Art. V, sec. 11(5), Art. VIII, sec. 1, and Art. VIII, sec. 13(1), Mont. Const. Hollow v. St., 222 M 478, 723 P2d 227, 43 St. Rep. 1435 (1986).

Attorney General's Opinions

Board of Investments Allowed to Complete Grants Entered Between Board of Science and Technology Development and University System: In 1989, the Legislature created the Board of Science and Technology Development and allowed that Board to administer a statutorily allocated amount of money from the in-state investment fund for seed capital project loans. From 1989 to 1997, the Legislature continued to fund the Board of Science and Technology Development, which used the money to enter into research and development loans with different units of the Montana University System. In 1997, the Legislature deleted the Board of Science and Technology Development's authority to make loans that had been authorized in previous sessions, effective July 1, 1999, but authorized the Board of Science and Technology Development to grant up to $2 million of interest and income from investments to university research and development projects during the interim between 1997 and 1999. Relying on that authority, the Board of Science and Technology Development entered into six separate grant agreements with the University System, and the various units relied on the grants to secure matching federal funds for the projects. In 1999, in an attempt to make the coal tax permanent trust fund whole, the Legislature dismantled the Board of Science and Technology Development and directed the Board of Investments to administer agreements entered into by the Board of Science and Technology Development that had been funded with coal tax permanent trust funds and, at the same time, eliminated the funds set aside for the completion of the agreements, creating an inherent statutory conflict. Nevertheless, the agreements were fully integrated, binding contracts. The Attorney General concluded that the 1999 elimination of the Board of Investment's ability to complete the grant obligations to the University System would constitute a substantial impairment of contracts. Further, without the funds, the University System would not be able to complete the projects and federal matching funds would be jeopardized. To harmonize the conflict and avoid a contract impairment, the Attorney General held that the Board of Investments could complete the payment of grants to the University System from interest and income derived from Board of Science and Technology Development loans. 49 A.G. Op. 2 (2001).

17-6-309. Investment preferences.

Compiler's Comments

2017 Amendment: Chapter 373 inserted (3) concerning working capital loans to owners of coal-fired generating units; and made minor changes in style. Amendment effective May 9, 2017.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

1999 Amendment: Chapter 64 at end of (1)(a) inserted "including raising the per capita income of Montana jobholders"; in two places in (2) substituted "15 people" for "50 people" and at end inserted "or raise salaries, wages, and business incomes of existing employees and employers". Amendment effective March 15, 1999.

1995 Amendment: Chapter 477 in (1), at beginning, inserted "Subject to the provisions of subsection (2)"; inserted (2) concerning loan to enhance economic development that will create at least 50 jobs; and made minor changes in style. Amendment effective April 14, 1995.

1985 Amendment: Inserted (1) relating to employee-owned enterprises.

Administrative Rules

ARM 8.97.1310 Loan program policies.

ARM 42.4.3002 through 42.4.3004 Infrastructure user fee tax credits.

17-6-311. Limitation on size of investments.

Compiler's Comments

2019 Amendment: Chapter 245 in (3) at end of first sentence substituted "$50 million" for "$10 million". Amendment effective May 2, 2019.

Severability: Section 6, Ch. 245, L. 2019, was a severability clause.

2017 Amendment: Chapter 373 inserted (3) concerning total loan amount and elements for determining size of a loan; and made minor changes in style. Amendment effective May 9, 2017.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

2011 Amendment: Chapter 9 deleted former (1)(c) that read: "(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 8, Ch. 9, L. 2011, was a saving clause.

2007 Amendment: Chapter 444 in (2) near beginning of first sentence after "17-6-309(2)" deleted "or 17-6-317", after "exceed" increased amount from $50 million to $80 million, and after "million" inserted "the total amount of loans made pursuant to 17-6-317 may not exceed $70 million"; and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 487 deleted former (1), (2), and (3) that read: "(1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. This subsection does not apply to a loan made pursuant to 17-6-317.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase"; inserted (1) prohibiting certain types of investments; and made minor changes in style. Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) inserted second sentence excepting 17-6-317 from provisions of subsection (1); in (4) in first sentence inserted "or 17-6-317" and at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective May 11, 2000.

1999 Amendment: Chapter 64 in first sentence in (4) increased total loan amount from $20 million to $50 million and decreased single loan amount from $500,000 to $250,000; in second sentence in (4) increased per job loan amount from $10,000 to $16,666; inserted (4)(d) requiring board in determining size of loan to consider the amount of salaries, wages, and business income of existing jobholders and businesses; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 98 deleted former second sentence in (4) that read: "Loans must be made in $250,000 increments"; and in (4)(a), after "project", inserted "within a 4-year period from the time that the loan is made".

1995 Amendments: Chapter 2 in (1), in exception clause, extended reference to subsection (4); inserted (4) limiting size of a loan made pursuant to 17-6-309(2) to $20 million; and made minor changes in style. Amendment effective January 20, 1995.

Chapter 477 in (1), in exception clause, extended reference to subsection (4); inserted (4) limiting loan to not less than $500,000 or more than $20 million and enumerating factors to consider; and made minor changes in style. Amendment effective April 14, 1995.

1991 Amendment: Near end of (1) substituted "permanent coal tax trust fund" for "Montana in-state investment fund" and after "exceeds" substituted "1% of the permanent coal tax trust fund" for "10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund"; in (2), after "authority to", deleted "guarantee loans or bonds or", after "account" deleted "and guaranty fund", and at end deleted reference to 17-6-308(3); and near end of (3) substituted "1% of the Montana permanent coal tax trust fund" for "10% of the Montana in-state investment fund". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1987 Amendment: In (1), at beginning, inserted exception for subsection (3); and inserted (3) referring to debentures issued by a capital company.

1985 Amendment: In (1) at beginning inserted exception clause; and inserted (2) providing exception for Board's authority to guarantee loans or bonds or to make certain loans.

17-6-312. State participation in loans.

Compiler's Comments

2011 Amendment: Chapter 9 deleted former (2) that read: "(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1)"; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 8, Ch. 9, L. 2011, was a saving clause.

2001 Amendment: Chapter 487 in (1) near beginning after "Subject to" substituted "17-6-311" for "17-6-311(4)". Amendment effective May 1, 2001.

2000 Amendment: Chapter 4 in (1) in middle of first sentence inserted reference to 17-6-317. Amendment effective May 11, 2000.

1995 Amendments: Chapter 2 at beginning of (1) inserted reference to 17-6-311(4). Amendment effective January 20, 1995.

Chapter 477 in (1), at beginning, inserted "Subject to 17-6-311(4)"; and inserted (3) concerning loans to nonprofit corporations. Amendment effective April 14, 1995.

1987 Amendment: Inserted (2) referring to debentures issued by a capital company.

Attorney General's Opinions

When Environmental Impact Statement Required in Conjunction With Loan Participation Agreement: A determination by the Montana Board of Investments to enter into a loan participation agreement constitutes a major action of state government under the Montana Environmental Policy Act (MEPA). Therefore, the Board must comply with the environmental impact statement requirements of MEPA when considering whether to enter into a loan participation agreement when the underlying project benefiting from the agreement may significantly affect the quality of the human environment. 43 A.G. Op. 62 (1990).

17-6-313. Prior commitment of funds.

Compiler's Comments

2011 Amendment: Chapter 9 near beginning after "institutions" deleted "and capital companies" and at end deleted "or the capital company and the board". Amendment effective October 1, 2011.

Saving Clause: Section 8, Ch. 9, L. 2011, was a saving clause.

1987 Amendment: Near beginning, after "financial institutions", inserted "and capital companies" and at end inserted "or the capital company and the board".

Administrative Rules

ARM 8.97.1309 Authorized applicants.

17-6-314. Rate of return.

Compiler's Comments

2000 Amendment: Chapter 4 at beginning inserted exception clause. Amendment effective May 11, 2000.

1991 Amendment: Near beginning, before "investment", inserted "Montana", near middle substituted "permanent coal tax trust fund" for "Montana in-state investment fund", and at end inserted language concerning additional service fee discount. Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

17-6-316. Economic development loan — infrastructure tax credit.

Compiler's Comments

2019 Amendment: Chapter 359 in (1) in second and fourth sentences inserted "or an Indian tribal government". Amendment effective May 7, 2019.

1995 Amendment: Chapter 477 in (1), in first sentence, substituted "must" for "may" and after "infrastructure" inserted reference to 7-15-4288(4), in second sentence substituted "must" for "may", and inserted last sentence concerning qualifying for interest rate reduction; in (3), in first sentence near beginning after "created", inserted "or expanded" and inserted reference to Title 15, chapter 30, and inserted last sentence concerning carryforward and carryback; and made minor changes in style. Amendment effective April 14, 1995.

Effective Dates: Section 7, Ch. 2, L. 1995, provided that this section is effective on passage and approval. Approved January 20, 1995.

Section 8, Ch. 477, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Administrative Rules

ARM 42.4.3002 through 42.4.3004 Infrastructure user fee tax credits.

17-6-317. Participation by private financial institutions — rulemaking.

Compiler's Comments

2019 Amendment: Chapter 245 in (1)(b)(ii) at end substituted "for the purposes established in 17-6-308(6)" for "to provide for the continued operation and maintenance of a coal-fired generating unit until July 1, 2022"; in (5)(a) in exception clause inserted reference to (5)(c); inserted (5)(c) concerning when a public utility may pay dividends to investors and bonuses to employees. Amendment effective May 2, 2019.

Severability: Section 6, Ch. 245, L. 2019, was a severability clause.

2017 Amendment: Chapter 373 inserted (1)(b)(ii) concerning providing loans to owners for continued operation and maintenance of coal-fired generating units; and made minor changes in style. Amendment effective May 9, 2017.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

2007 Amendment: Chapter 100 in (5)(b) near beginning after "production of" substituted "ethanol" for "alcohol". Amendment effective March 30, 2007.

2005 Amendments — Composite Section: Chapter 26 in (2)(g) in first and third sentences substituted "state's average weekly wage" for "average weekly salary". Amendment effective July 1, 2005.

Chapter 452 in (5)(a) at beginning inserted exception clause; inserted (5)(b) regarding payment of dividends and bonuses; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date — Applicability: Section 12, Ch. 26, L. 2005, provided that this section is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

2001 Amendment: Chapter 289 in (1)(a)(i) and (1)(a)(ii) before "people" substituted "10" for "15"; inserted (1)(a)(iii) allowing joint participation in making loans if a loan will prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business; in (2)(a)(ii) after "require" inserted "the business to have an equity position greater than 50% of the total loan amount"; deleted former (2)(a)(ii)(A) and (2)(a)(ii)(B) that read:

"(A) the business enterprise to have an equity position greater than 25% of the total loan amount; or

(B) additional security or guarantees to cover its exposure, but this does not preclude federal guarantees"; inserted (2)(a)(iii) requiring that any necessary additional security or guarantees be proportional to the amount loaned by all participants; in (2)(d) in introductory clause after "following" inserted "annual"; in (2)(d)(i) after "5 years" inserted "if 15 or more jobs are created or retained"; inserted (2)(d)(ii) requiring an annual rate of 4% for the first 5 years if 10 to 14 jobs are created or retained; in (2)(d)(iv) at beginning substituted "the board's posted interest rate for the third 5 years" for "for the third 5 years, an amount equal to the national prime interest rate, adjusted annually on January 1 of each year"; inserted (2)(e) regarding interest rates that apply upon certification that the required number of jobs has been created or the elimination of jobs has been prevented; inserted (2)(f) allowing application of a graduated scale if a business reduces the number of required jobs; inserted (2)(g) establishing a formula to be used by the board in calculating job creation or retention requirements; inserted (2)(h)(ii) allowing a borrower to request the lead lender to change the national prime interest rate to an adjustable or fixed rate; and made minor changes in style. Amendment effective April 20, 2001.

Effective Date: Section 7, Ch. 4, Sp. L. May 2000, provided: "[This act] is effective on passage and approval." Approved May 11, 2000.

17-6-318. Job credit interest rate reduction for business loan participation.

Compiler's Comments

2005 Amendment: Chapter 26 in (2)(a) in three places substituted "state's average weekly wage" for "average weekly wage"; and in (2)(b) near beginning substituted "state's average weekly wage" for "average weekly wage" and at end substituted "state's average weekly wage" for "average wage". Amendment effective July 1, 2005.

Effective Date — Applicability: Section 12, Ch. 26, L. 2005, provided that this section is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

2001 Amendment: Chapter 487 in (1) in first sentence near end after "for each job created" deleted "over a 2-year period" and in second sentence at end after "each job created" deleted remainder of sentence and former third and fourth sentences that read: "in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last-completed fiscal year"; in (5) near middle after "shall make a written application" inserted "to the board", and after "through its financial institution" substituted "or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board" for "to the board when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan"; and made minor changes in style. Amendment effective May 1, 2001.

1999 Amendment: Chapter 64 in first sentence in (1) before "business" deleted "small"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 98 inserted second sentence in (1) providing that a borrower who uses loan proceeds to create jobs is entitled to a rate reduction for each job created during the 4-year period; at end of (5) substituted "applicable anniversary dates" for "first and second anniversary dates"; and made minor changes in style.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Effective Date: Section 23, Ch. 589, L. 1991, provided: "[This act] is effective July 1, 1991."

17-6-319. Incentive to financial institution for small business loan participation.

Compiler's Comments

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

Effective Date: Section 23, Ch. 589, L. 1991, provided: "[This act] is effective July 1, 1991."

17-6-320. Loan recipients — notice.

Compiler's Comments

Effective Date: Section 8, Ch. 373, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 9, 2017.

Preamble: The preamble attached to Ch. 373, L. 2017, provided: "WHEREAS, the Montana Legislature encourages the Board of Investments to act as expeditiously as possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in Montana; and

WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate the impacts of the units' retirement and plan for the future."

17-6-321. Audits.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 483 in (1) near middle after "department" inserted "of administration". Amendment effective July 1, 2001. The amendment by Ch. 487 rendered the amendment by Ch. 483 void.

Chapter 487 deleted former (1) that read: "(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds"; near beginning after "books and records" inserted "related to in-state investments"; and made minor changes in style. Amendment effective May 1, 2001.

1985 Amendment: Substituted language requiring annual examination by Department's bank examiners of Board's loans and investments, requiring payment of costs from Board's funds, and requiring audits of Board's books and records for: "(1) The board shall contract for an annual independent financial audit of the board and the Montana in-state investment fund.

(2) The board shall contract for biennial independent operational and performance evaluations of the board and the Montana in-state investment fund."

17-6-322. Report.

Compiler's Comments

1991 Amendment: Near beginning, after "operations of the", substituted "investment in the Montana economy from the permanent coal tax trust fund as required in 17-6-305" for "in-state investment fund"; and in (3) substituted "performance of the investments in the Montana economy" for "Montana in-state investment fund's performance". Amendment effective July 1, 1991.

Saving Clause: Section 20, Ch. 589, L. 1991, was a saving clause.

Severability: Section 21, Ch. 589, L. 1991, was a severability clause.

1989 Amendment: Substituted entire section regarding Board's annual report for former section that read: "(1) By December 31 of each year, the board shall publish a report for distribution to the governor, the legislature, and the public. The report must be written in easily understandable language. The report must include:

(a) financial statements audited by independent auditors;

(b) a statement of the amount of money received by the Montana in-state investment fund from each investment during the period covered;

(c) a statement of investments of the Montana in-state investment fund, including an appraisal at market value;

(d) a description of investment activity during the period covered by the report;

(e) a comparison of the Montana in-state investment fund's performance in relation to intended goals contained in 17-6-303;

(f) an examination of the impact of the investment criteria of 17-6-308 and 17-6-309;

(g) recommendations of any needed changes; and

(h) any other information the board believes would be of interest to the governor, the legislature, and the public.

(2) The annual income statement and balance sheet of the Montana in-state investment fund must be published in at least one newspaper in each judicial district of the state by December 31 of each year." Amendment effective July 1, 1989.

1987 Amendment: At beginning of (1) substituted "December 31" for "September 30"; and near end of (2) substituted "December 31" for "October 30".

17-6-324. Rulemaking authority.

Compiler's Comments

2000 Amendment: Chapter 4 in (1)(b) at end inserted language concerning guidelines for lead private financial institutions participating in consortium loans; inserted (1)(c) referring to guidelines for graduation clauses and early payment of loans; and made minor changes in style. Amendment effective May 11, 2000.

1985 Amendment: At end of first sentence substituted "17-6-211(2)" for "17-6-211(5)".

Interim Study Committee Bill: Chapter 418, L. 1985, was introduced by request of Joint Interim Subcommittee No. 3. See the committee report entitled "Effective Management of State Investments", Montana Legislative Council, December 1984. (The committee bill was substantially amended during the legislative process.)

Administrative Rules

ARM 8.97.310 Citizen participation rules.

ARM 8.97.311 False or misleading statements.

ARM 8.97.312 Procedural rules.

Title 8, chapter 97, subchapter 13, ARM General requirements for all investments in mortgages and loans.

17-6-325. Preference of Montana labor.

Compiler's Comments

1987 Amendment: Deleted reference to subsection (4) of 18-2-401.

17-6-331. Establishment of a Montana economic development fund.

Compiler's Comments

1987 Amendment: Substituted reference to 17-6-203(6) for 17-6-203(5).

17-6-345. Intermediary relending program.

Compiler's Comments

2019 Amendment: Chapter 191 in (1) changed set aside limit from $5 million to $10 million. Amendment effective April 18, 2019.

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

17-6-346. Interest rates and repayment of intermediary loan — terms.

Compiler's Comments

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

17-6-347. Purchase of seasoned or mature loans by board.

Compiler's Comments

Effective Date: Section 6, Ch. 183, L. 2003, provided: "[This act] is effective July 1, 2003."

Part 4

Microbusiness Development Act

Part Compiler's Comments

Repeal of Audit and Evaluation of Microbusiness Finance Program: Section 4, Ch. 88, L. 1993, repealed sec. 9, Ch. 602, L. 1991, which required an audit and evaluation of the microbusiness finance program and a report to the Legislature. Repealer effective March 10, 1993.

1991 Statement of Intent: The statement of intent attached to Ch. 602, L. 1991, provided: "A statement of intent is required for this bill because [sections 4 and 7] [17-6-406 and 17-6-411, now repealed] authorize the department of commerce to adopt rules for the administration of the microbusiness finance program and for the nomination of candidates to the microbusiness advisory council. [This act] [Title 17, ch. 6, part 4] is intended to provide a significant portion of the capital for a network of institutions that will, taken together, provide access throughout Montana to small loans for economically sound and feasible microbusiness projects that because of the high costs and diseconomies of scale of small lending or unconventional collateral are unlikely to receive financing from conventional public or private sources. The rules must ensure that a certified microbusiness development corporation receiving funds under this program:

(1) is prepared and qualified to provide or furnish access to management training and technical assistance to loan applicants and to conduct credit investigation and analysis and revolving loan fund administration in a prudent and professional manner;

(2) has identified adequate sources of operating income and sufficient prospective business clients; and

(3) includes in the membership of its board of directors representation of minorities, women, and low-income persons.

Ensuring management training capability, prudent revolving loan fund administration, and adequate operating income and market base must be balanced against the requirement to achieve geographic and rural-to-urban equity and equity for minorities, women, and low-income persons.

The rules must require that applicants to be certified as microbusiness development corporations submit cooperative proposals that propose to serve a multicounty region of the state and incorporate as partners or have the explicit approval of a significant number of development institutions and service providers within the communities to be served, including but not limited to local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations.

Interest rates paid to the department by certified microbusiness development corporations receiving development loans must be at least sufficient, when the development loan fund is fully invested in development loans, to cover the department's administrative costs of the microbusiness finance program. Rates generally must be kept at the minimum necessary to provide for the department's administrative costs in order to provide the corporations with an interest earnings spread to be used for their own operating expenses.

Development loans generally must be interest-only loans, renewable at terms not to exceed 8 years. When the department chooses not to renew an interest-only development loan that has come to term and the corporation receiving the loan has administered its funds according to the program's criteria, the department shall attempt to negotiate an amortization schedule for repaying the loan that does not disrupt the operations or earnings of the corporation.

For maximum interest rates that certified microbusiness development corporations may charge on microbusiness loans, the rules must attempt to ensure that microbusiness development corporations comply with federal and state usury laws and other federal and state statutes and regulations regarding maximum rates to be charged by financial institutions. The department shall develop guidelines designed to reflect prevailing market conditions and specific loan risk and portfolio risk and may establish specific rate limits based on standard industry benchmarks, such as the New York prime rate, with the objective of allowing modest interest premiums, on the order of 1% to 3% above prevailing market rates, to be charged.

For minimum interest rates on microbusiness loans, the rules must consider prevailing market conditions and established industry benchmarks, such as the New York prime rate, in attempting to ensure that microbusiness development corporations are charging at least a prevailing market rate for loans of similar nature, term, and risk."

Audit and Evaluation of Microbusiness Finance Program — Report to Legislature: Section 9, Ch. 602, L. 1991, provided: "An audit, an analysis of costs and benefits, and an evaluation of the microbusiness finance program must be conducted by the office of the legislative auditor, beginning October 1, 1994, and the findings of this audit, analysis, and evaluation must be reported to the legislature no later than January 15, 1995." Effective April 24, 1991.

Appropriation — Approval of Three-Fourths of Members Required — Severability: Section 11, Ch. 602, L. 1991, provided: "(1) (a) Notwithstanding the provisions of 17-6-308 and 17-6-309 and recognizing that the provisions of [sections 1 through 9] [Title 17, ch. 6, part 4] are consistent with 17-6-304 and 17-6-305 and that [sections 1 through 9] [Title 17, ch. 6, part 4] will result in long-term benefits to the economy of the state, there is appropriated, subject to the provisions of subsections (1)(b) and (1)(c), to the department of commerce from the in-state investment fund [now permanent coal tax trust fund] in 17-6-306 [now repealed] during the biennium beginning July 1, 1991, $3,250,000 for the microbusiness finance program established in [section 4] [17-6-406]. Funds appropriated from the in-state investment fund [now permanent coal tax trust fund] must be deposited in the microbusiness development loan account and are appropriated to the department for the purpose of making development loans pursuant to [sections 1 through 9] [Title 17, ch. 6, part 4].

(b) The funds appropriated in subsection (1)(a) from the in-state investment fund [now permanent coal tax trust fund] to the department of commerce must remain in the in-state investment fund [now permanent coal tax trust fund] until the department has decided to make a loan to a certified microbusiness development corporation under the provisions of [section 5] [17-6-407]. When the department has made the decision to make a loan to a certified microbusiness development corporation under the provisions of [section 5] [17-6-407], the director of the department shall notify the state treasurer of the decision and direct him to transfer an amount equal to the amount of the loan from the in-state investment fund [now permanent coal tax trust fund] to the microbusiness development loan account created in [section 5] [17-6-407].

(c) Funds may not be transferred from the in-state investment fund [now permanent coal tax trust fund] to the microbusiness development loan account for the purposes of [sections 1 through 9] [Title 17, ch. 6, part 4] except as provided in subsection (1)(b).

(2) Because subsection (1) appropriates money from the principal of the permanent coal tax trust fund, the appropriation requires a vote of three-fourths of the members of each house of the legislature. If [this act] is approved by a vote of less than three-fourths of the members of each house, this section is void and the remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment." The final vote requirement necessary to implement the provisions of this appropriation was met; therefore, the appropriation is valid. Section 13, Ch. 602, L. 1991, a coordination section, provided: "If Senate Bill No. 26 is passed and approved and if it includes provisions eliminating the in-state investment fund, the code commissioner is instructed to substitute "permanent coal tax trust" for "in-state investment fund" where it appears in [this act], unless the context requires otherwise." Senate Bill No. 26 was approved April 24, 1991, as Ch. 589, L. 1991; therefore, the references in this appropriation to the in-state investment fund are construed to mean the permanent coal tax trust fund. Section 14(2), Ch. 602, L. 1991, provided that this appropriation is effective July 1, 1991.

Appropriation: Section 12, Ch. 602, L. 1991, provided: "There is appropriated to the microbusiness finance program administrative account created in [section 5] [17-6-407] from the general fund $64,600 for the fiscal year ending June 30, 1992." Section 14(2), Ch. 602, L. 1991, provided that this appropriation is effective July 1, 1991.

Effective Date: Section 14(1), Ch. 602, L. 1991, provided that this part is effective on passage and approval. Approved April 24, 1991.

Part Administrative Rules

Title 8, chapter 99, subchapter 4, ARM Microbusiness Advisory Council.

Title 8, chapter 99, subchapter 5, ARM Microbusiness finance program.

Part Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

17-6-402. Legislative findings and purpose.

Compiler's Comments

2007 Amendment: Chapter 31 in (1)(b) and (2) substituted "$1 million" for "$500,000". Amendment effective July 1, 2007.

17-6-403. Definitions.

Compiler's Comments

2007 Amendment: Chapter 31 in (7)(a) at end substituted "$1 million" for "$500,000". Amendment effective July 1, 2007.

2003 Amendments — Coordination — Composite Section: Chapter 351 deleted former definition of certified community lead organization that read: ""Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department"; deleted former definition of council that read:

"“Council” means the microbusiness advisory council established in 17-6-411”; and made minor changes in style. Amendment effective April 16, 2003.

Section 15, Ch. 405, L. 2003, a coordination section, in (7)(b) at end substituted “15-6-225” for “90-4-102”.

Chapter 405 in definition of qualified microbusiness at end of (b) substituted “15-6-225” for “90-4-102”; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 591 in definition of qualified microbusiness inserted (b) concerning alternative renewable energy source; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 28, Ch. 591, L. 2001, was a severability clause.

17-6-406. Microbusiness finance program — powers and duties of department.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 453, L. 2007, repealed sec. 19, Ch. 512, L. 1999, sec. 5, Ch. 69, L. 2001, and secs. 3 and 4, Ch. 460, L. 2005, which terminated the 1999 amendments to this section June 30, 2009. Effective July 1, 2007.

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendment: Chapter 512 in second sentence of (8) inserted “or within an Indian reservation”. Amendment effective April 28, 1999, and terminates June 30, 2001.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1993 Amendment: Chapter 88 in (4), at end, deleted “However, the rate of interest may not be less than 3% a year.” Amendment effective March 10, 1993.

17-6-407. Microbusiness development loan account — criteria — limitations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 636, L. 2023. Amendment effective July 1, 2023.

2007 Amendment: Chapter 31 in (6)(b) in two places and in (6)(c) in two places substituted “$100,000” for “$35,000”. Amendment effective July 1, 2007.

Termination Provision Repealed: Section 3, Ch. 453, L. 2007, repealed sec. 19, Ch. 512, L. 1999, sec. 5, Ch. 69, L. 2001, and secs. 3 and 4, Ch. 460, L. 2005, which terminated the 1999 amendments to this section June 30, 2009. Effective July 1, 2007.

2005 Amendments — Composite Section: Chapter 130 in (1)(a) after “into which” substituted “funds allocated for that purpose” for “the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995”; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 204 inserted (1)(c) relating to depositing interest from the development loan account into the administrative account; inserted (2)(d) relating to the deposit of interest of the two accounts; and made minor changes in style. Amendment effective July 1, 2005.

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendments — Composite Section: Chapter 512 in (5)(c) substituted “including urban, rural[, and tribal] communities” for “including both urban and rural communities”. Amendment effective April 28, 1999, and terminates June 30, 2001.

Chapter 521 in (1) in second sentence after “account” deleted “in amounts not to exceed $250,000 a loan”; at end of (2) inserted “must be deposited”; at end of (2)(a) inserted “received directly from microbusiness development corporations”; at end of (2)(c) after “income” deleted “must be deposited”; substituted (10) concerning annual audit for former text that read: “(a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting"; in (11) in second sentence after "lien on" substituted "all funds and all receivables administered under the authority of the microbusiness development act by" for "the receivables of"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1995 Amendment: Chapter 413 in (1), after "1991", inserted "money appropriated pursuant to section 3, Chapter 413, Laws of 1995"; and throughout (5)(b) and (5)(c) substituted "$35,000" for "$20,000". Amendment effective July 1, 1995.

1993 Amendment: Chapter 88 in (3), near middle after "additional loan", deleted "after 1 year following approval of the previous loan"; in (5)(a), near beginning after "private", substituted "funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses" for "grants"; in (7), in first sentence before "development", substituted "contribute cash from other sources to leverage and secure" for "match" and after "program" deleted "with contributions to their revolving loan fund from other sources" and at beginning of second sentence inserted "contributions provided by the corporation must be" and increased ratio amount of $1 to $3 to ratio amount of $1 to $6; and made minor changes in style. Amendment effective March 10, 1993.

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

17-6-408. Certification of microbusiness development corporations.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 453, L. 2007, repealed sec. 19, Ch. 512, L. 1999, sec. 5, Ch. 69, L. 2001, and secs. 3 and 4, Ch. 460, L. 2005, which terminated the 1999 amendments to this section June 30, 2009. Effective July 1, 2007.

Extension of Termination Date: Sections 3 and 4, Ch. 460, L. 2005, amended sec. 19, Ch. 512, L. 1999, and sec. 5, Ch. 69, L. 2001, by extending the termination date imposed by Ch. 512 to June 30, 2009. Effective April 28, 2005.

Extension of Termination Date: Section 5, Ch. 69, L. 2001, amended sec. 19, Ch. 512, L. 1999, by extending the termination date imposed by Ch. 512 to June 30, 2005. Effective March 19, 2001.

1999 Amendment: Chapter 512 at end of (2)(a) inserted "or within at least four Indian reservations in Montana". Amendment effective April 28, 1999, and terminates June 30, 2001.

Severability: Section 15, Ch. 512, L. 1999, was a severability clause.

1993 Amendment: Chapter 88 in (2) substituted "subsections (1)(a) and (1)(c)" for "subsection (1)"; deleted former (2)(c) that read: "(c) obtains written indications of support from local development organizations in the communities in which it plans to offer its services"; and made minor changes in style. Amendment effective March 10, 1993.

17-6-409. Authority to accept funds — funding authorization.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 636, L. 2023. Amendment effective July 1, 2023.

1995 Amendment: Chapter 509 in (2), after "account", substituted "may be appropriated" for "is statutorily appropriated to the department, as provided in 17-7-502". Amendment effective July 1, 1995.

Part 6

Montana Tobacco Settlement Trust Fund

Part Compiler's Comments

Effective Date: Section 6, Ch. 467, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 30, 2001.

Retroactive Applicability: Section 7, Ch. 467, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to proceeds from the tobacco settlement occurring on or after January 1, 2001."

17-6-602. Definitions.

Compiler's Comments

2007 Amendment: Chapter 283 in definition of programs for tobacco disease prevention inserted (b)(v) adding chronic disease programs; and made minor changes in style. Amendment effective April 26, 2007.

2002 Amendment by Initiative: Section 1, I.M. No. 146, in definition of "programs for tobacco disease prevention" in (a) after "exposure" inserted "to secondhand tobacco smoke" and inserted (b) enumerating programs included in the definition. Amendment effective November 5, 2002.

17-6-606. Tobacco settlement accounts — purpose — uses.

Compiler's Comments

2015 Amendment: Chapter 63 deleted former (1)(d) that read: "(d) provide funds for the comprehensive health association programs"; deleted former (3)(b) that read: "(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513"; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2009 Amendment: Chapter 486 in (1)(c) at end substituted "healthy Montana kids plan provided for in Title 53, chapter 4, part 11" for "children's health insurance program"; in (3)(a) near middle substituted "healthy Montana kids plan" for "Children's Health Insurance Program Act" and at end after "part" substituted "11" for "10". Amendment effective July 1, 2009, and terminates June 30, 2011.

2007 Amendment: Chapter 283 in (1) after "fund" substituted "statewide programs for tobacco disease prevention" for "a statewide comprehensive tobacco disease prevention program"; in (2) in two places substituted references to programs for tobacco disease prevention for "tobacco prevention program"; in (5) after "section for" inserted "programs for"; and made minor changes in style. Amendment effective April 26, 2007.

2003 Amendment: Chapter 608 inserted (1)(e) relating to funding human services programs; in (2) in second sentence at end inserted reference to funding for human services programs; inserted (3)(c) relating to matching funds to secure the maximum amount of federal funds for the medicaid program; in (5) after "this section" deleted "for tobacco disease prevention"; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2005.

Effective Date: Section 7, I.M. No. 146, provided that this section is effective upon approval by the electorate. Approved November 5, 2002.

17-6-610. Tobacco prevention advisory board.

Compiler's Comments

Effective Date: Section 7, I.M. No. 146, provided that this section is effective upon approval by the electorate. Approved November 5, 2002.

Part 8
Montana Housing Infrastructure Revolving Loan Fund

Part Compiler's Comments

Effective Date: Section 25, Ch. 774, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 13, 2023.

Preamble: The preamble attached to Ch. 774, L. 2023, provided: "WHEREAS, the availability of attainable workforce housing is critical to the well-being of individuals, communities, businesses, and organizations of all sizes, and the economy at large; and

WHEREAS, access to attainable workforce housing provides greater opportunities to realize the American dream, allows for more robust job creation, promotes a stronger economy, and is essential to ensuring our residents and future generations are able to live, work, and raise their families in the state; and

WHEREAS, driven by a shortage of housing supply, the state faces a crisis of attainable workforce housing that poses substantial challenges to hardworking Montanans, employers, communities, and the state's economic health; and

WHEREAS, between 2010 and 2020, the state's population growth of 9.6% outpaced the state's housing unit growth of 6.6%, and a substantial factor contributing to tight housing supply has been underbuilding of entry-level homes, which are in high demand but low supply; and

WHEREAS, it is in the public interest of our state, our communities, and our people to find solutions to the tight supply of attainable workforce housing; and

WHEREAS, the health and stability of the state is directly dependent on the health and stability of local economic regions that are struggling due to an inadequate workforce, which is creating concerns for negative, long-term consequences; and

WHEREAS, a diverse, capable workforce is essential to retain the economic vitality and prosperity of the state within the global marketplace; and

WHEREAS, the Montana Community Reinvestment Plan Act may generate 500 attainable workforce housing dwellings allowing qualified individuals to achieve homeownership."

CHAPTER 7
BUDGETING AND APPROPRIATIONS

Chapter Collateral References

Understanding State Finances and the Budgeting Process, Mont. Leg. Fiscal Div. (2019).

Part 1
Budget Systems and Program Plans

Part Attorney General's Opinions

Appropriations to Community Colleges: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request which may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% of state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriations Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of 20-15-301, et seq. The General Appropriations Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

Part Law Review Articles

Public Pension Plans: Myths and Realities for State Budgets, Giertz & Papke, 60 Nat'l Tax J. 305 (2007).

Someone to Watch Over Me: State Monitoring of Local Fiscal Conditions, Kloha, Weissert, & Kleine, 35 Am. Rev. Pub. Admin. 236 (2005).

17-7-102. Definitions.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 18, Ch 722, L. 2023. Amendment effective May 22, 2023.

The amendment to this section made by sec. 2, Ch. 722, L. 2023, was replaced by sec. 18, Ch. 722, L. 2023, a coordination section.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

2021 Amendment: Chapter 351 in definition of university system unit substituted "supervised and coordinated by the board of regents pursuant to 20-15-103" for "at Miles City, Glendive, and Kalispell". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2017 Amendment: Chapter 429 inserted definitions of budget stabilization reserve and operating reserve; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 33, Ch. 429, L. 2017, was a severability clause.

2015 Purported Amendment: Although sec. 1, Ch. 269, L. 2015, purported to amend this section, only the section's termination date was amended.

Extension of Termination Date: Section 11, Ch. 269, L. 2015, amended sec. 11, Ch. 319, L. 2007, by extending the termination date imposed by Ch. 319 to June 30, 2028. Amendment effective July 1, 2015.

2011 Amendment: Chapter 394 in temporary version in definition of base budget in (a) inserted third sentence regarding base budget for human and community services division; inserted (4)(b)(ii) excluding funding for petroleum storage tank leak prevention from definition; and made minor changes in style. Amendment effective July 1, 2011, and amendment to subsection (4)(a) terminates June 30, 2013.

Severability: Section 6, Ch. 394, L. 2011, was a severability clause.

2009 Amendments — Composite Section: Chapter 486 in definition of present law base after "means" inserted "subject to subsection (10)(b)" and inserted (b) requiring adjustment to present law base for the budget for the 2011 legislative session; and made minor changes in style. Amendment effective July 1, 2009, and terminates June 30, 2011.

Chapter 489 in definition of base budget in (a) inserted last sentence concerning Chapter 489, Laws of 2009; in definition of present law base inserted (a)(v) concerning Chapter 489, Laws of 2009; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2007 Amendment: Chapter 319 in definition of base budget inserted (b) excluding funding for water adjudication; and made minor changes in style. Amendment effective July 1, 2007, and terminates June 30, 2020.

2003 Amendment: Chapter 607 in definition of base budget in second sentence inserted "for the state general fund and state special revenue funds". Amendment effective October 1, 2003.

1997 Amendment: Chapter 347 inserted definition of funds subject to appropriation; deleted definitions of approved long-range building program budget amendment, effectiveness measure, priority listing, program size, and program size indicator (see 1997 Session Law for text); substituted definition of agency for former definition that read: "means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system"; substituted definition of base budget for former definition that read: "means that level of funding authorized by the previous legislature"; substituted definition of budget amendment for former definition that read: "means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures"; in definition of present law base, near beginning after "means that", deleted "additional"; substituted definition of program for former definition that read: "means a combination of resources and activities designed to achieve an objective or objectives"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in definition of university system unit substituted "university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls" for former language that read: "university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon" and near end, after "Great Falls", deleted "the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 12 inserted definitions of base budget, present law base, and new proposals; deleted definition of current funding level that read: ""Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation"; deleted definition of modified funding level that read: ""Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding"; and made minor changes in style. Amendment effective December 23, 1993.

1991 Amendment: In introductory clause, after "as used in", deleted "parts 1 through 3 of"; and inserted definitions of additional services, agency, approved long-range building program budget amendment, approving authority, budget amendment, emergency, necessary, requesting agency, and university system unit. Amendment effective July 1, 1991.

1983 Amendment: Inserted definitions of current funding level and modified funding level.

Attorney General's Opinions

Water Adjudication Program Not Void Given Sufficient Line Item Appropriations to Avoid Voidness: A contingent voidness clause attached to legislation establishing the water adjudication account required that at least $2 million each fiscal year be appropriated to the water adjudication account by line item appropriation. Although the line item appropriations were directed to two agencies instead of being included in a single programmatic line item, the Attorney General concluded that more than $2 million had been appropriated from state sources other than the water adjudication account to avoid the contingent voidness provision. 51 A.G. Op. 3 (2005).

17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 760, L. 2023. Amendment effective May 18, 2023.

2021 Amendments — Composite Section: Chapter 330 in (4)(d) near end substituted "Montana coal endowment program" for "treasure state endowment program". Amendment effective October 1, 2021.

Chapter 384 inserted (7) concerning provisions applicable to the budget request for the department of public health and human services. Amendment effective July 1, 2021.

2019 Amendment: Chapter 469 in (4)(a) after "detailed recommendations for" inserted "capital developments for" and inserted (4)(a)(i) and (4)(a)(ii) concerning recommendations for capital developments; in (4)(a)(iii) inserted "for the capital developments long-range building program"; and made minor changes in style. Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2017 Amendment: Chapter 429 in (3) at beginning deleted "Subject to subsections (7) and (8)"; deleted former (7) and (8) that read: "(7) (a) The department of public health and human services' budget request for the 2013 biennium must identify changes necessary to reduce the 2013 biennium expenditures to the level funded in the general appropriations act. The department may include changes such as reducing administrative costs, developing more cost-efficient methods to deliver services, limiting the number of medicaid services that adults may receive, changing medicaid services included in the Montana medicaid state plan, changing eligibility or level-of-care requirements for medicaid waiver services, limiting or changing services that are fully state-funded, or implementing other initiatives that reduce state funds. Achieving the necessary general fund reduction in the 2013 biennium budget request may not include shifting costs to state special revenue funds.

(b) The department of public health and human services shall prepare a work plan with goals, milestones, and measures to guide its review of alternatives to identify, evaluate, and select initiatives to reduce ongoing state spending in its 2013 biennium budget submission. The department shall submit the work plan, goals, milestones, and measures to the legislative finance committee at its first meeting after the adjournment of the 2009 legislative session for its review and comment. The department shall provide an update of its budget reduction for review and comment at each legislative finance committee meeting in a format developed with and agreed upon by the committee.

(8) Each agency budget request for the 2013 biennium must include the adjustments to present law base specified in 17-7-102(10)(b)"; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 33, Ch. 429, L. 2017, was a severability clause.

2009 Amendments — Composite Section: Chapter 2 in (2) in third sentence near middle substituted "17-7-112(2)" for "17-7-112(2)(a)"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 8 in (2) in third sentence after "provided in" substituted "17-7-112(2)" for "17-7-112(2)(a)". Amendment effective March 13, 2009.

Chapter 225 in (3)(a) near beginning after "appropriation" substituted "as provided in 17-8-101" for "or enterprise funds that transfer profits to the general fund or to an account subject to appropriation"; and made minor changes in style. Amendment effective April 16, 2009.

Chapter 478 inserted (3)(h) requiring that an agency's financial plan include energy cost saving information; and made minor changes in style. Amendment effective May 10, 2009.

Chapter 486 in (3) at beginning inserted "Subject to subsections (7) and (8)"; inserted (7) and (8) regarding reductions in the department of public health and humans services' budget request for the 2013 biennium; and made minor changes in style. Amendment effective July 1, 2009.

Severability: Section 22, Ch. 478, L. 2009, was a severability clause.

2007 Amendment: Chapter 70 deleted former (6) that read: "(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns"; inserted (6)(a) requiring department of revenue to make individual income tax information available after removing certain information; and inserted (6)(b) providing for disclosure of name and address of taxpayers to budget director under certain circumstances. Amendment effective March 27, 2007.

2005 Amendment: Chapter 106 in (4)(b) substituted "statewide project budget summary as provided in 2-17-526" for "statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526". Amendment effective October 1, 2005.

2003 Amendment: Chapter 332 in (3)(f) inserted third sentence to exempt certain items from the 5% target amounts. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 313 inserted (3)(g) relating to new information technology proposals; inserted (4)(b) relating to a statewide summary of recommendations for information technology projects; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (3)(b) near middle after "each" deleted "accounting entity within each"; deleted former (3)(f) that read: "(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program"; in (3)(f) near beginning of first sentence after "reduce the proposed" substituted "base budget for the general appropriations act and the proposed state pay plan to 95%" for "budget to 85%" and at end inserted "or lower if directed by the budget director" and inserted second sentence requiring each agency plan to include base budget reductions; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 20 in (3)(a) near beginning after "appropriation" inserted "or enterprise funds that transfer profits to the general fund or to an account subject to appropriation". Amendment effective February 17, 1999.

Chapter 332 inserted (3)(g) requiring agency program budgets for agencies with more than 20 FTE to contain a plan to reduce base budgets by 15% and containing a prioritized list of services to be eliminated or reduced; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendment: Chapter 347 inserted (1) indicating that certain information is necessary to prepare the state budget and requiring the Budget Director and Legislative Fiscal Analyst to establish standards for information sharing between agencies and to provide for the collection of certain budgetary and financial information; in (2), in first sentence near beginning, substituted "not later than the date specified in 17-7-112(1)" for "not later than July 1 in the year preceding the convening of the legislature", after "all" substituted "agencies" for "state offices and departments, including the judicial branch and the legislative branch", after "forms" inserted "and instructions", and at end inserted "by the budget director" and inserted third and fourth sentences providing that forms submitted to the Budget Director must be submitted by a certain date or are subject to preparation based upon estimates as provided in 17-7-112(5) and providing that the Budget Director may refuse forms that do not comply with certain requirements; in (3), near beginning after "budget", substituted "request" for "requests, when completed by the budget office"; in (3)(a), near beginning after "summary", inserted "of funds subject to appropriation", after "expenditures" inserted "including statutory appropriations", and after "each" substituted "present law adjustment and new proposal" for "modification" and deleted second sentence that read: "The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit"; in (3)(b), near end, substituted "current biennium and estimated for the subsequent biennium" for "current and subsequent biennium"; deleted former (3)(c) that read: "(c) a detailed schedule of receipts, by accounting entity within each fund, including classification and source of funds"; deleted former (3)(d) that read: "(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following"; in (3)(c), near beginning, substituted "agency mission" for "agency goals and objectives" and deleted third sentence that read: "The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law"; in second sentence of (4)(a), after "presented by", deleted "department"; near beginning of (4)(b), after "employees", inserted "at the program level by fund"; inserted (4)(c) requiring the inclusion of agency proposals for the use of cultural and aesthetic project grants, the renewable resource grant and loan program, the reclamation and development grants program, and the treasure state endowment program; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1993 Special Session Amendment: Chapter 13 in (2)(d)(i) deleted last sentence that read: "Any discretionary programs established by the agency that are not required by law must also be enumerated"; inserted (2)(e) requiring agency, when submitting budget request, to specify whether operation of each agency program is discretionary or whether program operation, administration, or management is required by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (2)(a), near beginning, substituted "the current base budget" for "current level". Amendment effective December 23, 1993.

1993 Amendment: Chapter 20 inserted (5) regarding provision of individual income tax data to the Budget Director; and made minor changes in style.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, in (2)(d)(i) inserted last two sentences concerning prioritized list of duties and discretionary programs. Amendment effective July 24, 1992.

1985 Amendment: Inserted second sentence of (2)(d)(i) clarifying required contents of statement; and inserted (4) requiring report on University System bonded indebtedness and related finances.

1983 Amendment: At end of (1) substituted "required by subsection (2)" for "as the budget director shall, in his discretion, feel is necessary for the preparation of a budget, including budget estimates, to include estimates of receipts, actual receipts, estimates of disbursements, actual disbursements, and other information classified and grouped as requested by the budget director and covering such period or periods of time as specified by the budget director"; inserted (2) requiring and explaining balanced financial plan; inserted (3) requiring submission of detailed recommendations for long-range building program and proposed pay plan for Executive Branch employees; and changed phraseology.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

17-7-112. Submission deadlines — budgeting schedule.

Compiler's Comments

2019 Amendment: Chapter 168 at end of introductory clause substituted "convening in any session that will be adopting a state budget" for "convening in the following year". Amendment effective July 1, 2019.

2009 Amendment: Chapter 8 in (2)(a) at beginning inserted exception clause; inserted (2)(b) regarding dates for submission of a budget request by the consolidated legislative branch; in (3) near middle of first sentence after "request" inserted "except the budget request for the consolidated legislative branch"; and made minor changes in style. Amendment effective March 13, 2009.

2007 Amendments — Composite Section: Chapter 44 in (8) near beginning after "schedule and the" substituted "statewide project budget" for "information technology". Amendment effective October 1, 2007.

Chapter 230 in (2) deleted former second sentence that read: "The department of justice shall submit information received from counties concerning the state's share of county attorney salaries"; deleted former (2)(b) that read: "(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department's budget and appropriated for that purpose"; and made minor changes in style. Amendment effective July 1, 2007.

Legislative Findings: Section 1, Ch. 230, L. 2007, provided: "The legislature finds that:

(1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;

(2) the county attorney workloads vary greatly from county to county;

(3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation."

2001 Amendment: Chapter 313 in (8) near beginning inserted reference to the information technology summary. Amendment effective July 1, 2001.

Effective Date: Section 10, Ch. 507, L. 2001, provided that subsection (2)(b) of this section is effective May 1, 2001.

1997 Amendment: Chapter 347 at beginning inserted "The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year"; inserted (1) requiring certain forms needed for budget estimates to be distributed by August 1; in (2), at beginning of first sentence, substituted "By September 1, each agency shall submit" for "It is the duty of each department, agency, and office, including the Montana university system, to submit" and at end, after "director", deleted "on or before September 1 in the even year preceding the convening of the legislature"; in (3), at beginning of first sentence, substituted "By September 1, the budget director" for "Between August 15 and September 30 in the year preceding the convening of the legislature, the director" and substituted "17-7-111(3)" for "17-7-111(2)" and near end of second sentence, after "information", deleted "during the month of September and"; inserted (4) requiring the Budget Director to furnish the Legislative Fiscal Analyst with a preliminary budget reflecting the base budget by October 10; in (5), at beginning of first sentence, deleted "If any department, institution, university unit, or agency fails to present the information within the time specified in this section, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor", after "request" substituted "must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency" for "on behalf of the department, institution, university unit, or agency", and at end inserted "that did not present the information required by this section" and at beginning of second sentence inserted "The budget request must be" and after "needs of the" deleted "department"; inserted (6) requiring the

Budget Director to furnish the Legislative Fiscal Analyst with a present law base for each agency in a form agreed upon by November 1, including documents reflecting the means of financing the base budget and present law base for the ensuing biennium; inserted (7) requiring the Budget Director to furnish by November 12 the documents reflecting expenditures to the second level by funding source and detailed by accounting entity; in (8) substituted language concerning statutory requirements for former language that read: "The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature"; inserted (9) requiring the Budget Director to submit a preliminary budget to the Governor and Governor-Elect if there is one, by December 15; inserted (10) requiring that budget changes recommended by a Governor-Elect be transmitted to the Legislative Fiscal Analyst and Legislature by January 7; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 332, in (1) inserted last sentence that read: "The department of justice shall submit information received from counties concerning the state's share of county attorney salaries"; and made minor changes in style.

1983 Amendment: In (1), inserted "including the Montana university system" and substituted "the information required under 17-7-111 to" for "information requested by the budget director"; inserted (2) requiring submission of agency budget requests to Legislative Fiscal Analyst; in (3) inserted two references to "university unit", and in middle inserted "and submit to the legislative fiscal analyst and the governor by October 30"; and inserted (4) establishing deadline for submission of proposed pay plan schedule.

1981 Amendment: Deleted "Except as provided in this subsection" at the beginning of (1); substituted "September 1" for "August 15" in (1); deleted "The Montana university system, the department of institutions, and the department of highways shall submit such information on or before September 1 of such year" from the end of (1).

Case Notes

County Properly Ordered to Pay County Attorney's Salary Increase: Although the Board of County Commissioners had been notified that the state would be unable to pay an increased contribution to the County Attorney's salary, the Board awarded the County Attorney a salary in excess of twice the amount appropriated by the state. When the state's one-half share of the salary failed to cover the salary increase, the County Attorney sued the county for the shortfall. The District Court ordered the county to pay the salary increase, and the county appealed, but the Supreme Court affirmed, holding that counties are responsible for any increases in County Attorneys' salaries that are not taken into account and included in the state appropriation for paying County Attorneys' salaries. Oster v. Valley County, 2006 MT 180, 333 M 76, 140 P3d 1079 (2006).

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

17-7-113. Inquiries and investigations by budget director.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 10 deleted former second sentence that read: "In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-7-121. Preliminary budget preparation and submission to governor and governor-elect.

Compiler's Comments

1997 Amendment: Chapter 347 in (1), near middle after "on or before", substituted "the date established in 17-7-112" for "December 15 in the year preceding the convening of the legislature"; in (2), in first sentence near middle after "to make, and", inserted "by the date established in 17-7-112" and near end, after "legislature", inserted "and the legislative fiscal analyst"; and made minor changes in style. Amendment effective July 1, 1997.

17-7-122. Preparation of budget.

Compiler's Comments

2009 Amendment: Chapter 10 in (1) at end deleted "for inclusion in the combined governor's budget and budget analysis report". Amendment effective October 1, 2009.

1997 Amendment: Chapter 347 in (1), near middle, substituted "17-7-112" for "5-12-303". Amendment effective July 1, 1997.

1995 Amendment: Chapter 545 at end of (1) substituted "the legislative fiscal analyst in accordance with 5-12-303 for inclusion in the combined governor's budget and budget analysis report" for "each member of the legislature at the time of the convening of the legislature"; and near beginning of (2) and (3) substituted "budget proposals" for "requests". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (3) substituted "the current base budget" for "current level funding". Amendment effective December 23, 1993.

1991 Amendment: Inserted (3) relating to Judicial Branch budget requests; and made minor changes in style.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

17-7-123. Form of executive budget.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 10 in (1) at beginning of second sentence of introductory clause substituted "budget" for "base level plan"; in (2) near middle after "schedule" inserted "as required in 17-7-111(3)(b)" and after "fund" deleted "required in 17-7-111(3)(b)". Amendment effective October 1, 2009.

Chapter 225 in (1) near beginning of introductory clause after "appropriation" substituted "as provided in 17-8-101" for "and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation"; and made minor changes in style. Amendment effective April 16, 2009.

Chapter 478 inserted (1)(g) requiring that the base level plan include energy cost saving information and energy conservation program information; and made minor changes in style. Amendment effective May 10, 2009.

Severability: Section 22, Ch. 478, L. 2009, was a severability clause.

2001 Amendments — Composite Section: Chapter 313 inserted (1)(e)(iii) relating to a summary of budget requests; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 569 in (1)(c) near end after "objectives for" deleted "each program of"; inserted (2) providing that the statement of departmental goals and objectives and the schedule for each fund need not be printed but must be available in the office of budget and program planning and on the internet; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 20 in introduction in first sentence near middle inserted "and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation"; in (6)(a) near beginning after "funds" inserted "not subject to the requirements of subsections (1) through (5)"; and made minor changes in style. Amendment effective February 17, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendment: Chapter 347 in first sentence, near middle after "plan", inserted "of funds subject to appropriation" and after "for" inserted "each accounting entity and for" and at beginning of second sentence inserted "The base level"; in (1), at end of second sentence, deleted "classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit"; substituted language in (2) requiring the base level plan to consist of budget and full-time equivalent personnel comparisons, language in (3) requiring the base level plan to consist of the departmental mission and statement of goals and objectives for each program of the department, language in (4) requiring the base level plan to consist of base budget disbursements, estimated comparable disbursements and the proposed present law base budget plus new proposals for each department and department program, and language in (5) requiring the base level plan to consist of a statement containing recommendations of the Governor, including explanations of appropriation and revenue measures and matters not included as part of the budget bill but as part of the executive budget for former language in (2), (3), and (4) that read: "(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within the fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and present spending plans by agency and the means of financing the proposed plan. Information presented must include the following:

(a) a summary of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the current base budget and the current base budget plus new proposals, if any, for each department and each program of the department;

(c) a reference for each program as required under 17-7-111(2)(e); and

(d) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category and other matters considered necessary"; substituted language in (6) requiring the base level plan to include a report on enterprise funds and fees and charges in the internal service fund type for former language that read: "detailed recommendations for the state long-range building program. Each recommendation must be presented by the department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended"; inserted (7) requiring the base level plan to include any other budgetary material agreed to by the Budget Director and the Legislative Fiscal Analyst; and made minor changes in style. Amendment effective July 1, 1997.

1993 Special Session Amendment: Chapter 13 inserted (4)(c) requiring executive budget to specify whether agency program is discretionary or mandated by federal or state law; and made minor changes in style. Amendment effective December 23, 1993.

Code Commissioner Instruction: Pursuant to sec. 3, Ch. 12, Sp. L. November 1993, in (4)(b) substituted "base budget and the current base budget plus new proposals" for "funding level and the modified funding level". Amendment effective December 23, 1993.

1993 Amendment: Chapter 349 at beginning of (4)(a) substituted "summary" for "statement"; at beginning of (4)(b) inserted "actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and" and at end, after "department", deleted remainder of former (4) through (4)(d) that read: "The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;
(vi) dollar difference for the upgrade or downgrade for each position; and
(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category"; in (4)(c), after "containing", deleted "further" and after "governor" substituted "for the ensuing biennium by program and disbursement category and other matters considered" for "should he deem it"; deleted (6) that read: "(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state"; and made minor changes in style.

1983 Amendment: Inserted (4)(b) referring to current and modified funding levels and pay grade changes.

Case Notes

Legislative Mandate of Budget Inclusion: The mandatory language in the Housing Act of 1975 that the Governor include the Housing Board's appropriation request in his budget creates no constitutionally prohibited invasion of the executive's power. Huber v. Groff, 171 M 442, 558 P2d 1124 (1976).

17-7-124. Additional budget data.

Compiler's Comments

1997 Amendment: Chapter 347 near middle, after "request", inserted "a detailed analysis of receipts by accounting entity within each fund type indicating classification and source of funds"; and deleted (1), (2), and (3) that read: "(1) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information available must include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department; and

(b) schedules showing the number of employees who were given a pay grade change under the pay schedule implemented pursuant to 2-18-303 and the net cost to the agency for the grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;
(ii) grade assigned prior to the completed fiscal year;
(iii) grade assigned during the completed fiscal year;
(iv) grade assigned during the current fiscal year;
(v) recommended grade for the ensuing biennium;
(vi) dollar difference for the upgrade or downgrade for each position; and
(vii) net cost to the agency for grade changes.

(2) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions by department, institution, or agency of the state; and

(3) information submitted by agencies as required by 17-7-111." Amendment effective July 1, 1997.

17-7-130. Budget stabilization reserve fund — rules for deposits and transfers — purpose.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 19, Ch 722, L. 2023. Amendment effective May 22, 2023.

The amendment to this section made by sec. 3, Ch. 722, L. 2023, was replaced by sec. 19, Ch. 722, L. 2023, a coordination section.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

2021 Amendment: Chapter 491 deleted former (2)(b) setting forth additional purposes of the fund (see 2021 Session Law for former text); in (3)(a) near end "most recently completed" for "prior"; inserted current language in (4) and deleted former (4) and (5) regarding transfers to the fund (see 2021 Session Law for former text); in (5) near middle after "second year of the biennium" deleted "in the subsequent fiscal year," in middle before "any funds in excess" inserted "50%", and near end after "account established in" substituted "17-7-209 and 50% to the general fund" for "17-7-208"; in (6) deleted definition of adjusted revenue and inserted definition of adjusted compound annual growth rate revenue; in definition of growth amount after "revenue for the" substituted "fiscal year prior to the most recently completed fiscal year" for "prior fiscal year"; in definition of growth rate inserted current language and deleted former text (see 2021 Session Law for former text); and made minor changes in style. Amendment effective May 12, 2021.

2019 Amendment — Coordination: Chapter 398 in (2)(b) before "reserve level" deleted "operating"; deleted former (2)(b)(iii) that read: "(iii) allow the funds to remain in the account"; in (5) after "of the following fiscal year" deleted "(a) if there is not an operating reserve differential"; deleted former (5)(b) and (5)(c) concerning budget stabilization reserve fund transfers (see 2019 Session Law for former text); inserted (6) concerning the transfer of amounts in excess of 4.5% of all general fund appropriations in the second year of the biennium; deleted former (6)(e) that read: "(e) "Operating reserve differential" means a nonnegative difference from 8.3% of all general fund appropriations in the second year of the biennium minus the sum of the ending fund balance for the prior year and 50% of excess revenue of the prior year"; and made minor changes in style. Amendment effective July 1, 2019.

The amendments made to this section by sec. 3, Ch. 398, L. 2019, were replaced by sec. 17, Ch. 398, a coordination section.

Effective Date: Section 34, Ch. 429, L. 2017, provided that this section is effective July 1, 2017.

Severability: Section 33, Ch. 429, L. 2017, was a severability clause.

17-7-131. Legislative action — ending fund balance.

Compiler's Comments

2017 Amendment: Chapter 429 inserted (3) regarding ending fund balance of general fund in adopted budget. Amendment effective July 1, 2017.

Severability: Section 33, Ch. 429, L. 2017, was a severability clause.

2003 Amendment: Chapter 607 in (1) in second sentence at end inserted "at the request of the governor"; inserted (2) requiring a positive ending general fund balance at the end of the biennium; and made minor changes in style. Amendment effective October 1, 2003.

Attorney General's Opinions

Applicability of Budget Amendment Process to Statutory Appropriations: Legislative history and case law support the conclusion that the scope of the budget amendment process is restricted to the expenditure of funds by state agencies in excess of their appropriations. The budget amendment process does not apply to "statutory appropriations", which are those appropriations accomplished by legislative enactment, either with or without specific appropriation laws. (See Title 17, ch. 7, part 5.) 40 A.G. Op. 25 (1983).

17-7-132. Right to appear on consideration of budget.

Compiler's Comments

1997 Amendment: Chapter 347 at beginning substituted "The budget director and representatives of agencies" for "The department of administration and representatives of the executive officers, agencies, and institutions of the state and other state agencies"; and made minor changes in style. Amendment effective July 1, 1997.

17-7-133. Montana local disaster resiliency fund.

Compiler's Comments

Effective Date: Section 23, Ch. 722, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 22, 2023.

Termination: Section 24, Ch. 722, L. 2023, provided that this section terminates June 30, 2027.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

17-7-134. Pension state special revenue account.

Compiler's Comments

Effective Date: Section 23, Ch. 722, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 22, 2023.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

17-7-138. Operating budget.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 494, L. 2023, repealed sec. 12, Ch. 525, L. 2021, which terminated the 2021 amendments to this section December 31, 2025. Effective May 1, 2023.

2021 Amendment: Chapter 525 in (1)(a) at end of third sentence after "Title 5, chapter 5, part 2" inserted "and to the appropriate interim budget committee in accordance with 5-12-501". Amendment effective May 14, 2021, and terminates December 31, 2025.

2009 Amendments — Composite Section: Chapter 2 in (3) in fourth sentence substituted "statewide accounting, budgeting, and human resource system" for "statewide budget and accounting state financial system". Amendment effective October 1, 2009.

Chapter 226 in (1)(b)(ii) in two places increased amount from $25,000 to $75,000. Amendment effective April 16, 2009.

2005 Amendment: Chapter 58 in (1)(a) inserted third sentence concerning submitting explanation of significant change to interim committee with program evaluation and monitoring functions. Amendment effective July 1, 2005.

2003 Amendment: Chapter 547 in (2) in first sentence substituted "board of regents, on behalf of the university system units" for "commissioner of higher education for distribution by the board of regents to the university system units" and inserted second through fourth sentences relating to operating budgets and transfers. Amendment effective July 1, 2003.

Applicability: Section 3, Ch. 547, L. 2003, provided: "[This act] applies to university fiscal years beginning on or after July 1, 2003."

2001 Amendments — Composite Section — Coordination: Chapter 255 in (1)(a) in second sentence near middle after "conformity to" inserted "the conditions contained in the general appropriations act and to", inserted fourth sentence that read: "A significant change may not conflict with a condition contained in the general appropriations act", and in last sentence at end inserted "and conditions contained in the general appropriations act"; and in (3) inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation" and inserted last sentence requiring that the forms be signed. Amendment effective April 16, 2001.

Chapter 569 in (1)(b)(i) and (1)(b)(ii) at beginning substituted "the operating budget" for "the expenditure"; in (2) near beginning after "appropriations act to" inserted "the commissioner of higher education for distribution by the board of regents to" and after "approval of" substituted "a comprehensive operating" for "an operating" and deleted former second sentence that read: "All other requirements in this section apply to the university system"; in (3) in third sentence after "operating budget" inserted "for all funds, other than higher education funds" and after "accounting" inserted "state financial", inserted fourth sentence requiring that documents implementing approved changes be signed, deleted former fourth sentence that read: "Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget", and inserted fifth and sixth sentences requiring that the operating budget for higher education funds be recorded on the university financial system and allowing state sources and university sources of funds to be combined; and made minor changes in style. Amendment effective July 1, 2001.

Section 13, Ch. 569, L. 2001, a coordination section, provided: "If House Bill No. 533 and [this act] are both passed and approved, then the sentence "The forms must be signed." added to section 17-7-138(3) by House Bill No. 533 is void." House Bill No. 533 was approved as Ch. 255, L. 2001; therefore, the sentence added by amendment to section 17-7-138(3) by House Bill No. 533 is void.

1997 Amendments: Chapter 11 in (1), at end of last sentence, deleted "and any statement of intent adopted as part of a bill". Amendment effective February 7, 1997.

Chapter 347 in (1)(a), in first sentence after "compliance with", substituted "the budget approved by the legislature" for "an operating budget approved by an approving authority", deleted second sentence that read: "Substantial compliance means that a first level category in the operating budget may not be exceeded by more than 5%", and inserted six sentences concerning determination of substantial compliance, requiring the submission to the Legislative Fiscal Analyst and Legislative Finance Committee for review and explanation of any significant changes in agency program scope, objectives, activities, or expenditures, and providing a procedure for an approving authority to certify that a change is time-sensitive and to obtain approval for the change by the Legislative Finance Committee; inserted (1)(b) providing guidelines for determining what is considered a significant change in an agency's scope, objectives, activities, or expenditures; and made minor changes in style. Amendment effective July 1, 1997.

1992 Special Session Amendment: Chapter 8, Sp. L. July 1992, in (1), in third sentence, substituted "approved by an approving authority within 45 days after the effective date of the general appropriations act or a revision of the general appropriations act" for "by August 1 of each fiscal year". Amendment effective August 6, 1992, and terminates June 30, 1993.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-139. Program transfers.

Compiler's Comments

Termination Provision Repealed: Section 3, Ch. 494, L. 2023, repealed sec. 12, Ch. 525, L. 2021, which terminated the 2021 amendments to this section December 31, 2025. Effective May 1, 2023.

2021 Amendment: Chapter 525 in (1) at end of third sentence after "Title 5, chapter 5, part 2" inserted "and to the appropriate interim budget committee in accordance with 5-12-501". Amendment effective May 14, 2021, and terminates December 31, 2025.

2009 Amendment: Chapter 226 in (2)(b) in two places increased amount from $25,000 to $75,000. Amendment effective April 16, 2009.

2005 Amendment: Chapter 58 in (1) inserted third sentence concerning submitting explanation of significant transfer to interim committee with program evaluation and monitoring functions. Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 255 in (1) in first sentence near beginning after "law" inserted "or a condition contained in the general appropriations act", inserted second sentence that read: "The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation", and in 10th sentence after "approval of the transfer" inserted "in writing". Amendment effective April 16, 2001.

Chapter 569 in (1) at end of last sentence after "retransferred" inserted "except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred". Amendment effective July 1, 2001.

1999 Amendment: Chapter 6 in (1) inserted 10th sentence prohibiting the subsequent transfer of money transferred to another fiscal year. Amendment effective July 1, 1999.

1997 Amendment: Chapter 347 in (1) deleted former second sentence that read: "The transfer may not exceed 5% of the total agency appropriation, excluding statutory appropriations, administrative authorizations, and budget amendments" and inserted five sentences requiring the submission to the Legislative Fiscal Analyst and Legislative Finance Committee for review and explanation of any transfer that involves significant changes in agency program scope, objectives, activities, or expenditures and providing a procedure for an approving authority to certify that a change is time-sensitive and to obtain approval for the change by the Legislative Finance Committee; inserted (2) providing guidelines for determining what is considered a significant change in an agency's scope, objectives, activities, or expenditures; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-140. Reduction in spending.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 20, Ch 722, L. 2023. Amendment effective May 22, 2023.

The amendment to this section made by sec. 4, Ch. 722, L. 2023, was replaced by sec. 20, Ch. 722, L. 2023, a coordination section.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

2021 Amendments — Composite Section: Chapter 261 in (1)(c) inserted eighth sentence concerning providing recommendations to the legislature in accordance with 5-11-210; and in (4) near end of first sentence after "committee" inserted "in accordance with 5-11-210". Amendment effective April 20, 2021.

Chapter 508 in (1)(b) at beginning of second sentence deleted "Starting January 1, 2021" and near end before "appropriations" inserted "general fund"; deleted former (6) regarding transfers from the budget stabilization reserve fund prior to making reductions in spending (see 2021 Session Law for former text); in (7) at beginning before "governor" inserted current language and deleted former introductory clause that read: "If the budget director certifies a projected general fund budget deficit"; and made minor changes in style. Amendment effective May 14, 2021.

2019 Amendments — Composite Section: Chapter 163 in (4) in three places substituted "revenue interim committee" for "revenue and transportation interim committee". Amendment effective April 18, 2019.

Chapter 398 in (1)(a)(i) at beginning substituted "4%" for "6%"; in (1)(b) inserted second sentence concerning the prohibition against a governor reducing total agency spending in the biennium by more than 4% of the second year appropriations for the agency and in third sentence after "general fund spending reductions required for the" substituted "weighted average" for "total"; in (3)(a)(i) at beginning substituted "4%" for "5%"; in (5) inserted reference to (8); inserted (6) concerning the authorization of transfers from the budget stabilization reserve fund prior to making reductions in spending before January 1, 2021; and made minor changes in style. Amendment effective July 1, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2017 Special Session Amendment: Chapter 7 in (1)(a)(i) and (3)(a)(i) at beginning inserted "subject to subsection (8)"; and inserted (8) providing for a reduction in the percentages in subsections (1)(a)(i) and (3)(a)(i) pursuant to sec. 4, Ch. 7, Sp. L. November 2017. Amendment effective November 27, 2017, and terminates October 1, 2018.

Severability: Section 7, Ch. 7, Sp. L. November 2017, was a severability clause.

2017 Amendment: Chapter 429 in (1)(a)(i) substituted "6% of the general fund appropriations for the second fiscal year of the biennium" for "3.5% of all general fund appropriations for the biennium"; in (1)(a)(ii) substituted "3% of the general fund appropriations for the second fiscal year of the biennium" for "1.875% of all general fund appropriations for the biennium"; in (1)(a)(iii) substituted "2% of the general fund appropriations for the second fiscal year of the biennium" for "1.25% of all general fund appropriations for the biennium"; in (1)(a)(iv) substituted "1% of the general fund appropriations for the second fiscal year of the biennium" for "0.625% of all general fund appropriations for the biennium"; and inserted (5) through (7) regarding transfers by governor to general fund from budget stabilization reserve fund and fire suppression account. Amendment effective July 1, 2017.

Severability: Section 33, Ch. 429, L. 2017, was a severability clause.

2015 Amendment: Chapter 165 substituted current text in (1)(a)(i) through (1)(a)(iv) providing percentages of general fund appropriations for certain bienniums for former text that read: "1% of all general fund appropriations during the biennium"; in (3)(a)(i) substituted "5%" for "2%"; in (3)(a)(ii) substituted "1.875%" for "3/4 of 1%"; in (3)(a)(iii) substituted "1.25%" for "1/2 of 1%"; in (3)(a)(iv) substituted "0.625%" for "1/4 of 1%"; and made minor changes in style. Amendment effective April 1, 2015.

2013 Amendments — Composite Section: Chapter 120 in (1)(b) inserted fourth and seventh sentences requiring reports and recommendations to be submitted in electronic format. Amendment effective July 1, 2013.

Chapter 368 in (3)(b) after "aid" inserted "and the cost of the state's wildland fire suppression activities exceeding the amount statutorily appropriated in 10-3-312". Amendment effective May 1, 2013.

2003 Amendments — Composite Section: Chapter 114 in (4) in first sentence substituted "5-5-227" for "5-18-107". Amendment effective October 1, 2003.

Chapter 169 inserted (2)(f) prohibiting governor from directing reduction in spending for Montana school for the deaf and blind; and made minor changes in style. Amendment effective March 28, 2003.

Chapter 607 in (3)(a)(i) at end inserted "prior to October of the year preceding a legislative session"; inserted (3)(a)(ii) through (3)(a)(iv) relating to percentages for certain time periods; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date — Applicability: Section 2, Ch. 169, L. 2003, provided: "[This act] is effective on passage and approval [approved March 28, 2003] and applies to fiscal years beginning on or after July 1, 2003."

1999 Amendment: Chapter 19 throughout (3)(b) substituted "revenue and taxation interim committee" for "revenue oversight committee"; and made minor changes in style. Amendment effective February 17, 1999.

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, substituted current language (see July 1992 Special Session Law for text) for former text providing for reduction of appropriations by up to 15% in the event of a shortfall in revenue. Amendment effective July 24, 1992.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-141. Audit costs.

Compiler's Comments

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: (Temporary version) Chapter 348 inserted (4) concerning a community college paying any difference calculated under (3) as a fee to the community college FTE adjustment account established in 20-15-328; and made minor changes in style. Amendments in temporary version effective July 1, 2021, and terminate June 30, 2023.

(Version effective July 1, 2023) Chapter 348 in (1) following "Montana university system" deleted "or a community college"; and made minor changes in style.

In the temporary version in (4), the Code Commissioner inserted brackets around "20-15-328" to reflect that the effective date of that section is January 1, 2023, which is later than the effective date of the amendments made to this section by Ch. 348, L. 2021.

Transition: Section 8, Ch. 348, L. 2021, provided: "The legislature intends that fiscal years 2022 and 2023 be governed by the current community college funding formula and that revisions to the formula in [this act] be used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 6] [20-15-328]." Effective July 1, 2021.

2003 Amendment: Chapter 23 near end of (1) after "university system" inserted "or a community college". Amendment effective February 14, 2003.

Effective Date: This section is effective October 1, 2001.

17-7-150. Definitions.

Compiler's Comments

2015 Amendment: Chapter 232 in definition of state resources substituted (a)(v) regarding identified fund transfers for "long-range building program appropriations", substituted (a)(vi) regarding the capital projects fund type for "agency funds distributed to local governments", and substituted (b)(i) through (b)(vi) listing exceptions for former (b)(i) through (b)(xii) that read:

"(i) debt service funds;
(ii) capital project funds other than those appropriated;
(iii) internal service or proprietary funds that do not require an appropriation;
(iv) fund transfers;
(v) enterprise funds;
(vi) unrestricted or other university funds;
(vii) agency funds not distributed to local governments;
(viii) private purpose trust funds;
(ix) permanent funds;
(x) pension trust funds;
(xi) noncash accounting entries; and

(xii) private funds deposited in state special revenue accounts"; and made minor changes in style. Amendment effective October 1, 2015.

2001 Amendment: Chapter 34 in definition of state resources in (b)(viii) substituted "private purpose trust funds" for "expendable trust funds" and in (b)(ix) substituted "permanent funds" for "nonexpendable trust funds". Amendment effective July 1, 2001.

17-7-151. Budget comparison.

Compiler's Comments

2015 Amendment: Chapter 232 in (1) substituted current text concerning budget comparison contrasts for "The measure of budget performance is the total actual or estimated expenditure of state resources that reflects the cost of general government operations funded by taxes and fees"; in (2) near beginning inserted "for legislative sessions", near middle substituted "temporary and statutory appropriations of state resources in the current biennium to temporary and statutory appropriations" for "actual expenditures of state resources in the first year of the current biennium plus appropriations of state resources in the second year of the current biennium to appropriations", and deleted former second sentence that read: "Anticipated reversions may be deducted from appropriated amounts per agreement between the two offices"; in (3) deleted former first sentence that read: "The legislative fiscal analyst and the budget director shall enter into an agreement on measurement standards for budget comparisons" and near middle substituted "share the methods used" for "use the same methodology"; in (4) near middle of second sentence substituted "reappropriations" for "emergency appropriations"; and made minor changes in style. Amendment effective October 1, 2015.

17-7-152. Expenditure comparison.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

17-7-153. State contributions to local government — expenditure comparison.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

17-7-154. Expenditures for district courts and office of public defender.

Compiler's Comments

2017 Amendment: Chapter 358 at end substituted "appellate defender division" for "office of appellate defender". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

Effective Date: This section is effective October 1, 2015.

Termination: Section 7, Ch. 232, L. 2015, provided that this section terminates June 30, 2025.

17-7-160. Montana highway patrol exempt from vacancy savings.

Compiler's Comments

2015 Amendment: Chapter 118 deleted former (3) that read: "(3) Each fiscal year, the department of justice shall provide to the legislative audit committee a detailed report on all positions in the Montana highway patrol. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant;

(c) the total number of hours spent on patrol during the year broken out by enforcement activity and position title." Amendment effective March 25, 2015.

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Effective Date: Section 10(1), Ch. 421, L. 2005, provided that this section is effective on passage and approval. Approved April 26, 2005.

17-7-161. Game warden positions exempt from vacancy savings.

Compiler's Comments

2015 Amendment: Chapter 118 deleted former (3) that read: "(3) Each fiscal year, the department shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized game warden positions in the department. At a minimum, the report must include the following information:

(a) the number of authorized game warden positions that were filled during the year and the average salary paid at hire;

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the authorized game warden position remained vacant;

(c) the total number of hours worked in authorized game warden positions during the year broken out by enforcement activity and position title." Amendment effective March 25, 2015.

Effective Date: Section 3, Ch. 519, L. 2007, provided that this section is effective July 1, 2007.

17-7-162. Montana school for the deaf and blind exempt from vacancy savings.

Compiler's Comments

2015 Amendment: Chapter 118 deleted former (2) that read: "(2) Each fiscal year, the board shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized positions in the Montana school for the deaf and blind. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire; and

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant"; deleted former (3)(b) that read: "(b) "Board" means the board of public education created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507"; and made minor changes in style. Amendment effective March 25, 2015.

Severability: Section 6, Ch. 394, L. 2011, was a severability clause.

Effective Date: Section 8, Ch. 394, L. 2011, provided: "[This act] is effective July 1, 2011."

17-7-163. Appropriations for medicaid expenditures.

Compiler's Comments

Effective Date: Section 3, Ch. 355, L. 2021, provided: "[This act] is effective July 1, 2021."

Erroneous Codification Instruction: Section 2, Ch. 355, L. 2021, provided that this section was to be codified as an integral part of Title 53, chapter 6, part 1. The Code Commissioner has codified this section in Title 17, chapter 7, part 1, to more closely reflect the subject matter.

Part 2

Long-Range Building Program and Budget

Case Notes

No Conflict Between Long-Range Building Statutes and Lease-Option Limitations: The long-range building statutes are not exclusive; therefore, there is no conflict between the long-range building program and the lease-option arrangement for the acquisition of personal property. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

17-7-201. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 763, L. 2023. Amendment effective May 11, 2023.

Severability: Section 29, Ch. 763, L. 2023, was a severability clause.

2019 Amendment: Chapter 469 inserted definitions of capital development, division, major repair, new facility, operations and maintenance, and replacement cost of existing long-range building program-eligible building; and made minor changes in style. Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2017 Amendment: Chapter 281 inserted definition of long-range building program-eligible building; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 135 inserted definition of high-performance building; and made minor changes in style. Amendment effective April 1, 2009.

Applicability: Section 5, Ch. 135, L. 2009, provided: "[This act] applies to buildings constructed, renovated, or leased after [the effective date of this act]." Effective April 1, 2009.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

17-7-202. Preparation of building programs and submission to department of administration — statewide facility inventory and condition assessment.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 41, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 469 throughout section substituted "division" for "department"; in (1) near beginning" substituted "the year preceding a legislative session" for "each even-numbered year", before "department of administration" inserted "architecture and engineering division of the", after "long-range building program" inserted "for major repair projects and capital developments", and at end substituted "major repair projects and capital developments" for "buildings"; in (2)(e) near end substituted "the year preceding a legislative session" for "each even-numbered year"; in (4) at end of first sentence substituted "major repair projects and capital developments" for "the construction of buildings" and at end of second sentence substituted "October 1 of the year preceding a legislative session" for "December 1 of each even-numbered year"; and made minor changes in style. Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

2017 Amendment: Chapter 281 inserted (2) providing requirements for statewide facility inventory and condition assessment; inserted (3) providing that buildings with replacement value of less than $150,000 do not need to be included in facility assessment; and made minor changes in style. Amendment effective July 1, 2017.

17-7-203. Submission to legislature.

Compiler's Comments

2019 Amendment: Chapter 469 in (1) and (2) after "building program" inserted "for capital developments"; in (2) substituted "capital developments budget" for "capital construction budget"; inserted (3) concerning list of anticipated major repair projects; and made minor changes in style. Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-204. Long-range building program for capital developments.

Compiler's Comments

2019 Amendment: Chapter 469 near middle of first sentence after "long-range building program" inserted "for capital developments" and in second sentence after substituted "capital development" for "project". Amendment effective July 1, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

1997 Amendment: Chapter 347 in first sentence, after "presented", substituted "in order of importance by fund type" for "in a priority listing" and near beginning of second sentence, after "presented by", deleted "department, institution"; and made minor changes in style. Amendment effective July 1, 1997.

17-7-208. Capital development funding — transfer as present law base.

Compiler's Comments

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-209. Capital developments long-range building program account.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 722, L. 2023. Amendment effective May 22, 2023.

Severability: Section 16, Ch. 722, L. 2023, was a severability clause.

2021 Amendment: Chapter 491 inserted (1)(b) concerning excess funds and their allowable uses; and made minor changes in style. Amendment effective May 12, 2021.

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-210. Required funding for maintenance of newly authorized state buildings.

Compiler's Comments

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-211. Expansion to be authorized — budget amendment.

Compiler's Comments

1997 Amendment: Chapter 347 in (1), near end after "authorized by", substituted "a" for "an approved" and at end inserted "approved by the budget director"; inserted (2) requiring a long-range building program budget amendment to be submitted to the Budget Director and allowing the Budget Director to authorize certain excess fund transfers or project expansion financing; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-212. Reappropriation of capital projects.

Compiler's Comments

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

17-7-213. High-performance building standards.

Compiler's Comments

Effective Date: Section 4, Ch. 135, L. 2009, provided that this section is effective April 1, 2009.

Applicability: Section 5, Ch. 135, L. 2009, provided: "[This act] applies to buildings constructed, renovated, or leased after [the effective date of this act]." Effective April 1, 2009.

17-7-214. High-performance program for operations and maintenance of existing buildings.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 42, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Extension of Termination Date: Section 1, Ch. 408, L. 2019, amended sec. 5, Ch. 422, L. 2015, by extending the termination date imposed by Ch. 422 to June 30, 2029. Effective May 9, 2019.

Effective Date: This section is effective July 1, 2015.

Termination: Section 5, Ch. 422, L. 2015, provided: "[This act] terminates June 30, 2021."

17-7-215. Transfer of budgeted utility funds — special revenue account — university plant subfunds.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 408, L. 2019, amended sec. 5, Ch. 422, L. 2015, by extending the termination date imposed by Ch. 422 to June 30, 2029. Effective May 9, 2019.

Effective Date: This section is effective July 1, 2015.

Termination: Section 5, Ch. 422, L. 2015, provided: "[This act] terminates June 30, 2021."

17-7-221. Major repair long-range building program account.

Compiler's Comments

2019 Amendment: Chapter 469 in (1) near beginning before "long-range building program" inserted "major repair" and at end inserted "to fund major repair projects"; in (3) substituted current text regarding allocation and deposit of taxes for "Coal severance taxes allocated to the account under 15-35-108 may be appropriated for the long-range building program or debt service payments on building projects. Coal severance taxes required for general obligation bond debt service may be transferred to the debt service fund." Amendment effective July 1, 2019.

2017 Special Session Amendment: Chapter 6 in (1) inserted second sentence providing for legislative fund transfer. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2011 Amendment: Chapter 387 in (2) after "revenue" inserted "is" and after "16-11-119" deleted "must be obligated prior to obligating other funds in the account". Amendment effective May 12, 2011.

Severability: Section 17, Ch. 387, L. 2011, was a severability clause.

Effective Date: Section 8, Ch. 456, L. 1995, provided that this section is effective July 1, 1995.

17-7-222. Minimum funding for major repair — restriction of capital developments — transfer to satisfy minimum as present law base.

Compiler's Comments

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-223. Major repair — submission of list to legislature — priorities.

Compiler's Comments

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-224. Funding for major repair — emergency funding.

Compiler's Comments

Effective Date: Section 20, Ch. 469, L. 2019, provided: "[This act] is effective July 1, 2019."

Severability: Section 19, Ch. 469, L. 2019, was a severability clause.

17-7-225. Capitol complex executive branch state special revenue account.

Compiler's Comments

Effective Date: Section 18, Ch. 762, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

17-7-226. Eligible use of funds.

Compiler's Comments

Effective Date: Section 18, Ch. 762, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

17-7-227. Capitol complex legislative branch state special revenue account.

Compiler's Comments

Effective Date: Section 18, Ch. 762, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

17-7-228. Eligible use of funds.

Compiler's Comments

Effective Date: Section 18, Ch. 762, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

Part 3
Supplemental Appropriations, Encumbrances, and Reversions

17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 393 inserted (2)(c) exempting certain expenditures for medicaid benefits; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2021.

Chapter 415 in (1) in second sentence inserted reference to Chapter 415, Laws of 2019; inserted (2)(d) exempting certain expenditures for medicaid expansion benefits; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2021.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

1997 Amendment: Chapter 347 throughout section substituted references to approving authority for references to Governor; in (1), at beginning of first sentence, substituted "An agency may make" for "A state department, institution, or agency of the executive branch desiring authorization to make" and at end, after "biennium", deleted "shall submit" and inserted "if authorized by the general appropriations act", at beginning of second sentence inserted "An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of" and at end deleted "through the budget director", and in fourth sentence, near middle after "maintenance of the", deleted "department, institution, or" and near end, after "recommendation", inserted "for executive branch proposals"; in (4), at beginning, substituted "The agency" for "The department, institution, or agency"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 357 inserted second sentence of (1) requiring the proposal to include a plan for reducing second-year expenditures; inserted (2) clarifying when the plan is not required; inserted second sentence of (3) requiring implementation of the plan; inserted (7) prohibiting certain supplemental appropriations; and made minor changes in style.

1992 Special Session Amendment: Chapter 11 in (1), near end of first sentence, substituted "submit a proposed supplemental appropriation" for "make application for such authorization", at end of second sentence inserted requirement of submission to Legislative Fiscal Analyst, and at beginning of third sentence inserted reference to recommendation of Legislative Finance Committee; and inserted (4) defining proposed supplemental appropriation. Amendment effective January 21, 1992.

17-7-302. Encumbrance of fiscal yearend obligations.

Compiler's Comments

2007 Amendment Not Codified: Section 2, Ch. 482, L. 2007, was not codified because of its short duration. In (2) in second sentence inserted "Except as provided in 53-6-1201(4)"; and made minor changes in style. Amendment effective May 11, 2007, and terminates July 1, 2007.

1987 Amendment: In (1), at beginning of second sentence, inserted exception clause; at beginning of (2) substituted "An appropriation may be encumbered by" for "For the purposes of encumbering appropriations under subsection (1), a valid obligation includes"; at end of (2) inserted second sentence requiring unencumbered appropriations to revert to fund of original appropriation; and deleted former (3) requiring unexpended encumbered appropriations to revert to fund of original appropriation.

1985 Amendment: At end of (1) deleted "except construction contracts which, upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end"; inserted (2) permitting encumbrances for alteration, repair, maintenance, or renovation of a building; and inserted (3) requiring unexpended encumbered appropriations to revert to fund of original appropriation.

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30, 1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., 17-7-304 contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to this section; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

Encumbrance of Funds — Valid Obligation: The Coal Board may encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under 17-7-302. The Coal Board does not incur a valid obligation against its appropriation by inviting a full application for a grant after screening a preapplication since it is not legally bound to approve the application. 40 A.G. Op. 4 (1983).

17-7-304. Disposal of unexpended appropriations.

Compiler's Comments

2019 Amendment: Chapter 453 inserted (4)(b)(iii) concerning deposit of unexpended and unencumbered money appropriated to the legislative audit division. Amendment effective May 10, 2019.

2017 Amendment: Chapter 204 in (4)(a) after "purpose" inserted "except for increases in pay"; inserted (5) requiring an agency to report use of carryforward appropriations to the approving authority; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendments — Composite Section: Chapter 426 in (2) in second sentence in middle following "fund balance" deleted "There is a statutory appropriation, as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 486 in (1) in first sentence after "subsection (2)" deleted "[or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10,]". Amendment effective July 1, 2009.

2007 Amendment Not Codified: Section 3, Ch. 482, L. 2007, was not codified because of its short duration. In (1) in first sentence after "subsection (4)" inserted "and 53-6-1201(4)". Amendment effective May 11, 2007, and terminates July 1, 2007.

2005 Amendments — Composite Section: Chapter 565 in (1) near middle of first sentence after "subsection (2)" inserted "or state money appropriated for the state children's health insurance program provided for in Title 53, chapter 4, part 10"; and made minor changes in style. Amendment effective May 2, 2005.

Chapter 581 in (4)(a) at beginning inserted "Subject to subsection (4)(b)"; inserted (4)(b) providing for deposit of certain unexpended and unencumbered money in the legislative branch reserve account; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 565, L. 2005, provided: "[This act] applies to contracts offered, issued, or renewed after [the effective date of this act]." Effective May 2, 2005.

Contingent Termination: Section 7, Ch. 565, L. 2005, provided: "[Sections 1 through 3] [17-7-304, 53-4-1007, and 53-4-1012] terminate on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued." The language that was to terminate on occurrence of contingency was deleted from this section by Ch. 486, L. 2009.

Retroactive Applicability: Section 6, Ch. 581, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003."

2001 Amendment: Chapter 569 in (4) at beginning of first sentence substituted "After" for "For the 2 years following" and near end before "for any purpose" substituted "reappropriated to be spent during the following 2 years" for "spent". Amendment effective July 1, 2001.

1997 Amendments: Chapter 361 in (1), at end of second sentence, inserted "or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year". Amendment effective July 1, 1997.

Chapter 532 in (4), near middle of first sentence after "equipment", inserted "by fund type". Amendment effective July 1, 1997.

Repeal of Termination Date: Section 13, Ch. 23, Sp. L. November 1993, provided that the 1993 amendments to this section terminated July 1, 1997. Section 40(2), Ch. 532, L. 1997, repealed sec. 13, Ch. 23, Sp. L. November 1993. The effect of the 1997 repealer was to make the 1993 amendments to 17-7-304 permanent.

1995 Amendment: Chapter 308 in temporary version in (2), in first sentence, substituted "university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls" for former language that read: "university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon" and after "offices in Butte" deleted "and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula"; and made minor changes in style. Amendment effective July 1, 1995.

Termination Removed: Chapter 128 removed the termination dates formerly applicable to this section found in sec. 5, Ch. 5, Sp. L. July 1992, and sec. 23, Ch. 787, L. 1991, making permanent the provisions allowing the Board of Regents to retain unspent appropriations for long-term maintenance. Amendment effective March 13, 1995.

1993 Special Session Amendment: (Temporary version) Chapter 23 in (1), after "subsection (2)", inserted "and except as provided in subsection (4)"; and inserted (4) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993.

(Version effective July 1, 1996) At beginning of (1) inserted exception clause; and inserted (2) concerning agency retention of 30% of the money appropriated to an agency for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year to be spent for any purpose that is consistent with the goal and objectives of the agency. Amendment effective December 23, 1993, and terminates July 1, 1997.

Note: This amendment was rendered inapplicable by Ch. 128, L. 1995.

Termination: Section 13, Ch. 23, Sp. L. November 1993, provided that the amendments to this section terminate July 1, 1997.

1993 Amendment: Chapter 10 in 1996 version, in first sentence after "purpose", deleted "except those appropriated for the university system units listed in subsection (2)"; and made minor changes in style. Amendment effective June 30, 1996.

Note: This amendment was rendered inapplicable by Ch. 128, L. 1995.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, near beginning of (2) inserted reference to subsection (3); inserted (3) concerning reversions that result from a reduction in spending directed by the Governor; and made minor changes in style. Amendment effective July 24, 1992, and terminates June 30, 1996.

1991 Amendment: In (1) added exception for money appropriated for University System units; and inserted (2) relating to appropriations to University System units. Amendment effective July 1, 1991.

Applicability: Section 21, Ch. 787, L. 1991, provided: "[Section 6(2)] applies to reversions due from fiscal year 1991."

Termination: Section 23, Ch. 787, L. 1991, provided: "[Section 6(2)] terminates June 30, 1996."

Attorney General's Opinions

No Encumbrance of Unexpended Microbusiness Development Funds After End of Fiscal Year: The Department of Commerce entered into contracts with several microbusiness development corporations in June 1997, contingent upon matching funds being provided by September 30,

1997. However, when the matching funds were not received by that date, the Department amended the contracts to extend the time for providing matching funds to September 30, 1999. The Legislative Auditor conceded that Department rules allowed a valid encumbrance through September 30, 1997 (see ARM 8.99.505(3)), but maintained that after that time, the funds were no longer validly encumbered and should have reverted to the coal tax trust fund from which they were appropriated. The Attorney General agreed. In light of the balanced budget requirement in Art. VIII, sec. 9, Mont. Const., this section contemplates that an appropriation for a specific purpose will revert to the fund or account from which it was appropriated after the expiration of the time for which it was appropriated, and appropriations for an unspecified period of time must revert at the end of the biennium. In this case, the appropriation was subject to reversion on June 30, 1997. The Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to 17-7-302; thus any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997. 48 A.G. Op. 26 (2000). See also 40 A.G. Op. 4 (1983).

General Fund Responsible for Payment of Airport Loan Program Shortfall: Proceeds from bonds issued under the long-range building program were appropriated for use by the airport improvement program. As bond retirement occurred, a deficit shortfall was created between the bond payments and the repayment of the loans. Although the Legislature in 1993 established a different loan program with imposition of a 1-cent tax on aviation fuel pursuant to 67-1-301, there was no suggestion that proceeds from that tax were to be used for payment of bond proceeds under the previous loan program. Despite the fact that a legislative audit recommended that payment of the shortfall on the bonds should be paid from either of two special revenue accounts of the Aeronautics Division, the Attorney General held that both the bond instrument and the appropriation of bond proceeds clearly showed that the general fund was the proper source for payment on the bond shortfall. 47 A.G. Op. 7 (1997).

Reversion of Coal Board Funds: The provision of 17-7-304, requiring the reversion of unexpended and unencumbered portions of appropriations at the close of the fiscal year, applies to the appropriations to the Coal Board from the local impact and education trust fund. The Legislature appropriates money to the Coal Board as a discretionary matter under 90-6-207. There is no constitutional impediment to the reversion of the funds, nor is there any indication of legislative intent to except the Coal Board grant money from the operation of 17-7-304. The Board must follow the legislatively created financial requirements. 40 A.G. Op. 4 (1983).

17-7-311. Proposed fiscal year transfer supplemental appropriation — procedure.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 393 in (1) at beginning of first and second sentences inserted exception clause; inserted (6) providing an exception for certain expenditures for medicaid benefits; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2021.

Chapter 415 inserted (7) providing an exception for certain expenditures for medicaid expansion benefits. Amendment effective July 1, 2019, and terminates June 30, 2021.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2001 Amendment: Chapter 569 throughout section in 15 places after "proposed" inserted "fiscal year transfer"; and in (1) near beginning of first sentence after "appropriation" inserted "to transfer appropriations between fiscal years of a biennium". Amendment effective July 1, 2001.

1993 Amendment: Chapter 357 at end of first sentence of (2) inserted "and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations"; and made minor changes in style.

Effective Date: Section 4, Ch. 11, Sp. L. January 1992, provided that this section is effective January 21, 1992.

Part 4
Budget Amendments

Part Compiler's Comments

Severability: Section 10, Ch. 536, L. 1983, was a severability section.

Part Attorney General's Opinions

Applicability of Budget Amendment Process to Statutory Appropriations: Legislative history and case law support the conclusion that the scope of the budget amendment process is restricted to the expenditure of funds by state agencies in excess of their appropriations. The budget amendment process does not apply to "statutory appropriations", which are those appropriations accomplished by legislative enactment, either with or without specific appropriation laws. (See Title 17, ch. 7, part 5.) 40 A.G. Op. 25 (1983).

Failure to Deduct Carryover Balance — Not Subject to Appropriation: In determining the amount of the fee, the Department of Revenue failed to deduct the carryover balance from the previous year. This unappropriated balance was not available to the office of Consumer Counsel for expenditure under a budget amendment. Rather, the balance inures to the benefit of the regulated companies in the form of a corresponding lower fee for the succeeding year. 39 A.G. Op. 59 (1982).

17-7-402. Budget amendment requirements.

Compiler's Comments

2021 Amendment: Chapter 491 inserted (1)(a)(xii) allowing expenditure of certain state special funds through the budget amendment process; and made minor changes in style. Amendment effective May 12, 2021.

2009 Amendment: Chapter 489 in (1)(a)(i) at end inserted language concerning grant funds or funds received pursuant to the American Recovery and Reinvestment Act of 2009; in (1)(e) near beginning after "any matter" inserted "other than the receipt of federal funds pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, that are not allocated or appropriated in Chapter 489, Laws of 2009"; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2003 Amendments — Composite Section: Chapter 182 inserted (1)(a)(xi) to allow a budget amendment to expend revenue generated from fees collected by the department of justice for dissemination of criminal history record information; inserted (1)(c)(ii) allowing expenditures from the state special revenue fund that are authorized under subsection (1)(a); and made minor changes in style. Amendment effective March 31, 2003.

Chapter 332 inserted (1)(a)(viii) through (1)(a)(x) relating to water pollution fund revenue, drinking water fund revenue, and adjustments for certain leave time; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 569 in (1)(f) at end inserted "except that budget amendments for federal funds may extend to the end of the federal fiscal year"; in (3) at beginning inserted "Subject to subsection (1)(f)"; in (4) deleted former second sentence that read: "The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst"; in (6) at beginning of first sentence after "An appropriation" inserted "for a nonrecurring item" and at end after "session" inserted "between January 1 and the senate hearing on the budget amendment bill" and at beginning of second sentence substituted "The bill may include authority to spend money in the current fiscal year and in both fiscal years" for "may not include authority to spend money beyond the first fiscal year"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 11 inserted (2) providing that a general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 76 inserted (1)(a)(vii) providing authority for a budget amendment to spend revenue collected for the administration of the state grain laboratory; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1)(c), at end, inserted "or the expenditure is exempt under subsection (4)"; and in (3) inserted second sentence requiring the proposed expenditure to be submitted to the Legislative Fiscal Analyst. Amendment effective July 1, 1997.

Severability: Section 23, Ch. 76, L. 1997, was a severability clause.

1995 Amendments: Chapter 36 inserted (1)(a)(vi) granting an exception for approval of a budget amendment to spend revenue resulting from the sale of goods from an institutional industries program; and made minor changes in style. Amendment effective February 8, 1995.

Chapter 545 in (1)(a)(v), at end, deleted "or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter"; in (3), after "budget director and the", deleted "office of the"; in (4), after "donation", deleted "is subject to the review process provided in 17-7-114 and"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 556 in (1)(a)(v), at end, deleted "or a new source of revenue that was not available for legislative consideration during the most recent legislative session open to that matter"; in (1)(e) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1993 Amendment: Chapter 433 at beginning of (1) inserted exception clause; near beginning of (1)(a), after "spend", substituted present list of excepted budget amendment revenue for former language that read: "funds which were not available for legislative consideration"; inserted (4) clarifying that certain nonstate and nonfederal money is subject to review and exemption; inserted (5) disallowing spending authority beyond the first fiscal year of the next biennium; inserted (6) exempting a budget amendment required for matching funds; and made minor changes in style. Amendment effective July 1, 1993.

17-7-403. Budget amendment certification.

Compiler's Comments

1993 Amendment: Chapter 433 in second sentence of (1)(c), after first "existing", substituted "appropriations" for "personnel because of the present required workload of existing personnel" and after second "existing" substituted "appropriations" for "funding"; deleted former (2) that read: "The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date"; near beginning of (2), after "fund", inserted "except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; and made minor changes in style. Amendment effective July 1, 1993.

17-7-404. Budget amendment procedures.

Compiler's Comments

1995 Amendment: Chapter 545 in (3) deleted second sentence and (3)(a) and (3)(b) that read: "The approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6)"; deleted former (4) that read: "(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the approving authority"; deleted first sentence of former (5) that read: "Upon receipt of the legislative finance committee's written report, the approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information"; deleted (6) that read: "(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review"; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1985 Amendment: In (1) near beginning, after "amendment", deleted "from a requesting agency"; and throughout section, before "approving authority", deleted "executive branch".

Attorney General's Opinions

Disaster and Emergency Payments — Budget Amendment Process Inapplicable: The budget amendment process was not applicable to a request to pay the costs associated with the suppression of forest fires. The budget amendment process is not intended to permit a loan from the state's general fund when the only anticipated revenue for repayment is the possibility of a subsequent appropriation of funds from the general fund. 42 A.G. Op. 123 (1988).

Part 5
Statutory Appropriations

Part Compiler's Comments

Severability: Section 35, Ch. 703, L. 1985, which chapter enacted this part, was a severability section.

17-7-502. Statutory appropriations — definition — requisites for validity.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 44, L. 2023, inserted "15-1-142" in list of statutory references. Amendment effective March 13, 2023, and terminates December 31, 2025.

Section 6, Ch. 47, L. 2023, inserted "15-1-2302" in list of statutory references. Amendment effective March 13, 2023, and terminates June 30, 2025.

Section 3, Ch. 48, L. 2023, in (3) inserted "17-6-214" in list of statutory references; and in (4) substituted current first sentence for former first sentence that read: "There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana." Amendment effective March 13, 2023.

Section 2, Ch. 49, L. 2023, inserted "15-70-131" in list of statutory references. Amendment effective March 13, 2023.

Section 1, Ch. 75, L. 2023, inserted "81-2-203" in list of statutory references. Amendment effective July 1, 2023.

Section 6, Ch. 123, L. 2023, inserted "15-70-128" in list of statutory references. Amendment effective July 1, 2023.

Section 2, Ch. 134, L. 2023, inserted "10-3-316" in list of statutory references. Amendment effective April 18, 2023.

Section 5, Ch. 558, L. 2023, inserted "20-9-250" in list of statutory references. Amendment effective May 18, 2023, and terminates December 31, 2029.

Section 11, Ch. 616, L. 2023, inserted "20-7-1709" in list of statutory references. Amendment effective July 1, 2023.

Section 3, Ch. 698, L. 2023, inserted "15-70-132" in list of statutory references. Amendment effective July 1, 2023.

Section 7, Ch. 722, L. 2023, in (3) inserted "17-7-133" in list of statutory references; in (4) substituted current first sentence for former first sentence that read: "There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana." Amendment effective May 22, 2023, and amendment in (3) terminates June 30, 2027.

Section 5, Ch. 729, L. 2023, deleted "19-6-404" from list of statutory references. Amendment effective July 1, 2023.

Section 5, Ch. 758, L. 2023, inserted "44-4-1506" in list of statutory references. Amendment effective July 1, 2023, and terminates June 30, 2027.

Section 3, Ch. 764, L. 2023, inserted "15-1-143" in list of statutory references. Amendment effective June 5, 2023, and terminates December 31, 2025.

Section 6, Ch. 770, L. 2023, inserted "20-3-369" in list of statutory references. Amendment effective July 1, 2023.

Termination Provision Repealed — Code Commissioner Explanation: Effective February 16, 2023, sec. 1, Ch. 8, L. 2023, repealed sec. 12, Ch. 55, L. 2017, which would have terminated 37-54-113 June 30, 2023. Chapter 8, L. 2023, failed to repeal sec. 40, Ch. 3, L. 2019, which would have terminated the reference in this section to 37-54-113 on June 30, 2023. Because the sole purpose of Ch. 8, L. 2023, was to make 37-54-113 permanent, the Code Commissioner has not terminated the reference in this section to 37-54-113.

Extension of Termination Dates: Section 1, Ch. 20, L. 2023, and sec. 2, Ch. 20, L. 2023, amended sec. 13, Ch. 339, L. 2011, and sec. 5, Ch. 284, L. 2017, by extending the termination date of the references to 81-1-112 and 81-7-106 imposed by those sections to June 30, 2029. Effective February 28, 2023.

Section 3, Ch. 20, L. 2023, amended sec. 8, Ch. 284, L. 2017, by extending the termination date of the reference to 81-1-113 imposed by Ch. 284 to June 30, 2029. Effective February 28, 2023.

Section 2, Ch. 374, L. 2023, amended sec. 5, Ch. 477, L. 2019, by extending the termination date of the reference to 10-3-802 imposed by Ch. 477 to June 30, 2031. Effective May 3, 2023.

Section 3, Ch. 621, L. 2023, amended sec. 5, Ch. 244, L. 2013, and sec. 4, Ch. 621, L. 2023, amended sec. 1, Ch. 340, L. 2017, by extending the termination date of the reference to 22-1-327 imposed by Ch. 244, L. 2013, to July 1, 2029. Effective May 19, 2023.

Applicability — Retroactive Applicability: Section 10, Ch. 48, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to funds collected pursuant to 17-6-202(2) on or after July 1, 2022."

Section 11, Ch. 558, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Section 9, Ch. 758, L. 2023, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after [the effective date of this act] and to the use of accommodations or campgrounds on or after [the effective date of this act], even if the sale occurred before [the effective date of this act]." Effective July 1, 2023.

Termination Provision Repealed: Section 2, Ch. 183, L. 2023, repealed sec. 10, Ch. 427, L. 2015, and sec. 5, Ch. 50, L. 2019, which terminated the 2015 amendments to this section September 30, 2023. Effective April 19, 2023.

Transition: Section 13, Ch. 616, L. 2023, provided: "The legislature intends that this program be operational for the school year beginning July 1, 2024, and that the office of public instruction develop all necessary components of the program during the school year beginning July 1, 2023, to meet that intention."

Preamble: The preamble attached to Ch. 48, L. 2023, provided: "WHEREAS, there is a benefit to the citizens of Montana to pay off debts and be debt free in 2023; and

WHEREAS, paying off debts and other financial liabilities of the State of Montana is a responsible use of one-time funds; and

WHEREAS, issuing and paying off public debt when prudent is and should remain a standard function of state government; and

WHEREAS, paying off debt now allows more capacity to responsibly pay for capital expenditures via financing in the future, when desired by the Executive and Legislature."

Preamble: The preamble attached to Ch. 49, L. 2023, provided: "WHEREAS, state and federal stewardship is necessary for the maintenance of Montana's highway system; and

WHEREAS, creating the Securing Access to Federal Expenditures to Repair (SAFER) Montana Roads and Bridges Account will promote safe road transportation across the state; and

WHEREAS, establishing the SAFER account as a stable funding source for state match dollars will allow access to one-time-only federal grant opportunities awarded to the state."

Severability: Section 6, Ch. 44, L. 2023, was a severability clause.

Section 7, Ch. 48, L. 2023, was a severability clause.

Section 15, Ch. 616, L. 2023, was a severability clause.

Section 16, Ch. 722, L. 2023, was a severability clause.

Section 15, Ch. 729, L. 2023, was a severability clause.

Section 8, Ch. 764, L. 2023, was a severability clause.

2021 Amendments — Composite Section — Code Commissioner Correction: Chapter 112 in (3) inserted "60-5-530" in list of statutory references. Amendment effective July 1, 2021.

Chapter 193 in (3) inserted "76-13-417" in list of statutory references. Amendment effective April 14, 2021.

Chapter 200 in (3) inserted "10-4-310" in list of statutory references. Amendment effective July 1, 2021, and terminates July 1, 2031.

Chapter 225 in (3) inserted "7-4-2924" in list of statutory references. Amendment effective October 1, 2021.

Chapter 348 in (3) inserted "20-15-328" in list of statutory references. Amendment effective July 1, 2021. In (3) the Code Commissioner inserted brackets around "20-15-328" to reflect that the effective date of that section is January 1, 2023, which is later than the effective date of the amendment made to this section by Ch. 348, L. 2021.

Chapter 415 in (3) inserted "7-32-236" in list of statutory references. Amendment effective October 1, 2021.

Chapter 437 inserted "15-31-165" in list of statutory references. Amendment effective October 1, 2021.

Chapter 563 in (3) deleted "22-3-1004" from list of statutory references. Amendment effective July 1, 2021, and terminates June 30, 2027.

Chapter 574 in (3) inserted "46-32-108" in list of statutory references. Amendment effective July 1, 2021, and terminates June 30, 2023.

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date of the reference to 53-9-113 imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

Sections 3 and 4, Ch. 404, L. 2021, amended sec. 16, Ch. 58, L. 2011, and sec. 55, Ch. 151, L. 2017, by extending the termination date of the reference to 30-10-1004 imposed by those sections to June 30, 2027. Effective May 7, 2021.

Section 5, Ch. 548, L. 2021, amended sec. 6, Ch. 291, L. 2015, by extending the termination date of the reference to 50-1-115 imposed by Ch. 291 to June 30, 2025. Effective June 30, 2021.

2015 Amendment Repealed — Termination Ineffective: Section 21, Ch. 480, L. 2021, repealed sec. 26, Ch. 457, L. 2015, which amended this section. This rendered ineffective the termination date imposed by sec. 33, Ch. 457, L. 2015, which would have terminated the amendments December 31, 2023. Effective October 1, 2021.

Contingent Effective Date: Section 11(2), Ch. 17, L. 2013, provided that the amendment to this section deleting 17-3-112 is effective on the date that the governor certifies to the code commissioner that federal funds and interest earnings received under 17-3-112 have been spent. In a letter dated June 26, 2020, the governor's office certified that the funds and interest earnings have been spent.

Severability: Section 13, Ch. 574, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 343 in (3) deleted 90-3-1003 from list of statutory references. Amendment effective July 1, 2019.

Chapter 352 in (3) inserted "15-31-1004" and "15-31-1005" in list of statutory references. Amendment effective July 1, 2019.

Chapter 354 in (3) deleted "37-51-501" from list of statutory references. Amendment effective February 1, 2021.

Chapter 376 in (3) inserted "76-13-151" in list of statutory references. Amendment effective May 8, 2019.

Chapter 415 in (3) deleted "53-6-1304" from list of statutory references. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency. However, because the original inclusion of the reference to 53-6-1304 was scheduled to terminate at the same time that 53-6-1304 terminated, the reference to 53-6-1304 would not be reinserted and the contingent termination of this amendment is effectively ineffective.

Chapter 434 in (3) inserted "81-7-123" in list of statutory references. Amendment effective July 1, 2019.

Chapter 453 in (3) inserted "5-13-404" in list of statutory references. Amendment effective May 10, 2019.

Chapter 455 in (3) inserted "67-1-309" in list of statutory references. Amendment effective July 1, 2019.

Chapter 465 in (3) inserted "85-2-526" in list of statutory references. Amendment effective July 1, 2019, and terminates July 1, 2023.

Chapter 477 in (3) inserted "10-3-802" in list of statutory references. Amendment effective July 1, 2019, and terminates June 30, 2023

Applicability: Section 20, Ch. 352, L. 2019, provided: "(1) Except as provided in subsection (2), [this act] applies to tax years beginning after December 31, 2020.

(2) The tax credit in [section 7] [15-31-1007] applies after June 30, 2019, as provided in [section 7(1)] [15-31-1007(1)]."

Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date of the reference to 37-50-209 imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

Section 11, Ch. 343, L. 2019, amended sec. 10, Ch. 10, Sp. L. May 2000, sec. 12, Ch. 343, L. 2019, amended sec. 3, Ch. 481, L. 2003, and sec. 14, Ch. 343, L. 2019, amended sec. 2, Ch. 459, L. 2009, to extend the termination date of the reference to 15-35-108 imposed by Ch. 10, Sp. L. May 2000, to June 30, 2027. Effective May 7, 2019.

Section 1, Ch. 408, L. 2019, amended sec. 5, Ch. 422, L. 2015, by extending the termination date imposed by Ch. 422 to June 30, 2029. Effective May 9, 2019.

Severability: Section 18, Ch. 352, L. 2019, was a severability clause.

Section 44, Ch. 415, L. 2019, was a severability clause.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2017 Amendments — Composite Section — Code Commissioner Correction: Chapter 32 in (3) deleted "15-70-601" from list of statutory references. Amendment effective July 1, 2017.

Chapter 55 inserted "37-54-113" in list of statutory references. Amendment effective March 1, 2017. Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner inserted parenthetical language to clarify that the reference to 37-54-113 terminates on the date that 37-54-113 terminates. See also sec. 40, Ch. 3, L. 2019, which terminated the reference to 37-54-113 on June 30, 2023.

Chapter 77 in (3) inserted "16-11-119" in list of statutory references. Amendment effective July 1, 2017.

Chapter 106 in (3) inserted "10-2-807" in list of statutory references. Amendment effective March 27, 2017.

Chapter 122 in (3) inserted "10-3-1304" in list of statutory references. Amendment effective March 30, 2017, and terminates September 30, 2025.

Chapter 247 in (3) inserted "75-26-308" in list of statutory references. Amendment effective May 3, 2017.

Chapter 250 in (3) inserted "61-3-321" in list of statutory references. Amendment effective July 1, 2017.

Chapter 267 in (3) inserted "15-70-130" in list of statutory references. Amendment effective July 1, 2017.

Chapter 284 in (3) inserted "81-1-113" in list of statutory references. Amendment effective May 4, 2017, and terminates June 30, 2023.

Chapter 312 in (3) inserted "80-11-1006" in list of statutory references. Amendment effective July 1, 2017.

Chapter 326 in (3) inserted "69-4-527" in list of statutory references. Amendment effective July 1, 2017.

Chapter 336 in (3) deleted "20-9-517" and "20-9-520" from list of statutory references. Amendment effective July 1, 2017.

Chapter 351 in (3) inserted "19-3-320" in list of statutory references. Amendment effective July 1, 2017.

Chapter 360 in (3) inserted "76-22-109" in list of statutory references. Amendment effective May 8, 2017.

Chapter 364 in (3) inserted "53-6-148" in list of statutory references. Amendment effective July 1, 2017.

Chapter 367 in (3) substituted "10-4-304" for "10-4-301" in list of statutory references. Amendment effective July 1, 2018.

Chapter 374 in (3) inserted "76-17-103" in list of statutory references. Amendment effective July 1, 2017, and terminates June 30, 2027.

Extension of Termination Date: Section 55, Ch. 151, L. 2017, amended sec. 16, Ch. 58, L. 2011, by extending the termination date of the reference to 30-10-1004 imposed by Ch. 58 to June 30, 2021. Effective April 4, 2017.

Section 1, Ch. 213, L. 2017, amended sec. 5, Ch. 442, L. 2009, by extending the termination date of the reference to 90-6-331 imposed by Ch. 442 to June 30, 2027. Effective April 20, 2017.

Section 5, Ch. 284, L. 2017, amended sec. 13, Ch. 339, L. 2011, by extending the termination date of the references to 81-1-112 and 81-7-106 imposed by Ch. 339 to June 30, 2023. Effective May 4, 2017.

Section 1, Ch. 340, L. 2017, amended sec. 5, Ch. 244, L. 2013, by extending the termination date of the reference to 22-1-327 imposed by Ch. 244 to July 1, 2023. Effective May 7, 2017.

Contingent Voidness: Section 2, Ch. 340, L. 2017, as amended by sec. 32, Ch. 429, L. 2017, a coordination section, provided: "If the certified unaudited general fund revenue and transfers into the general fund received in fiscal year 2017 are less than $2,217,000,000, as determined by the state treasurer on or before August 15, 2017, the statutory appropriations in 22-1-327 for fiscal years 2018 and 2019 are void." On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was $2,139,414,715.40.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that the amendment to this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Section 9, Ch. 247, L. 2017, was a saving clause.

Section 22, Ch. 326, L. 2017, was a saving clause.

Section 29, Ch. 367, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

Section 23, Ch. 326, L. 2017, was a severability clause.

Section 26, Ch. 336, L. 2017, was a severability clause.

Section 19, Ch. 351, L. 2017, was a severability clause.

Section 13, Ch. 364, L. 2017, was a severability clause.

Section 30, Ch. 367, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 291 in (3) inserted "50-1-115" in list of statutory references. Amendment effective July 1, 2015, and terminates June 30, 2021.

Chapter 368 inserted "53-6-1304" in list of statutory references. Amendment effective on occurrence of contingency and terminates June 30, 2019.

Chapter 383 in (3) inserted "85-25-102" in list of statutory references. Amendment effective on occurrence of contingency.

Chapter 385 in (3) inserted "20-26-617" in list of statutory references. Amendment effective July 1, 2015.

Chapter 422 inserted "17-7-215" in list of statutory references. Amendment effective July 1, 2015, and terminates June 30, 2021.

Chapter 423 in (3) inserted "22-3-116" and "22-3-117" in list of statutory references. Amendment effective May 5, 2015, and terminates June 30, 2025.

Chapter 427 in (3) inserted "37-50-209" in list of statutory references. Amendment effective October 1, 2015, and terminates September 30, 2019.

Chapters 432 and 433 in (3) inserted "20-9-517" and "20-9-520" in list of statutory references. Amendments effective May 5, 2015.

Chapter 457 in (3) inserted "20-9-905" in list of statutory references. Amendment effective January 1, 2016, and terminates December 31, 2023.

Preamble: The preamble attached to Ch. 383, L. 2015, provided: "WHEREAS, Libby Dam, located in Lincoln County, Montana, is the fourth dam constructed under the Columbia River Treaty, which the Canadian government and the United States government entered into in 1964, and is located on the Kootenai River, which is the third largest tributary to the Columbia River and contributes almost 20% of the total water in the lower Columbia River; and

WHEREAS, Libby Dam was dedicated on August 24, 1975, and spans the Kootenai River 17 miles upstream from the town of Libby, Montana; and

WHEREAS, Lake Koocanusa, the reservoir behind Libby Dam, extends 90 miles north of the dam, with 48 miles of Lake Koocanusa located in Lincoln County and the remainder in British Columbia, Canada; and

WHEREAS, Libby Dam, in Montana's northwest corner, and three dams in Canada were constructed to protect downstream areas from flooding, and Libby Dam holds back an average of 5,800,000 acre-feet of water; and

WHEREAS, economic benefits have been derived from the storage of these floodwaters and the coordinated, timely release of those waters through generation of electricity, irrigation, navigation, and recreation; and

WHEREAS, the construction of Libby Dam placed many thousands of acres of land in Lincoln County underwater, leading to decreased real property tax revenues for the county and a loss of timber sales and wildlife and fish habitat, among other losses; and

WHEREAS, the Canadian government was compensated for construction of the dams and storage of floodwaters through a sharing of dollars on electricity from additional power generated at downstream dams and hydropower generating facilities, leading to the formation of the Columbia Basin Trust; and

WHEREAS, citizens of Lincoln County did not participate in the negotiations for the terms of the Columbia River Treaty and no compensation has been received by Lincoln County; and

WHEREAS, the renegotiation of the treaty is currently being considered, and there is a possibility that compensation could be provided to Lincoln County as a result of federal legislation, litigation, determination of regulations, and the renegotiation of the treaty; and

WHEREAS, the purpose of this legislation is to address how, if the compensation is paid directly to the state instead of to Lincoln County, the compensation should be distributed."

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date of the reference to 53-9-113 imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

Nonseverability — Code Commissioner Correction: Section 26, Ch. 368, L. 2015, provided: "Except as provided in subsection (2), it is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

(2) If [section 19 or 20] is held unconstitutional, all other parts are valid."

Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that "[section 19 or 20]" should be replaced with "[section 19 or 21]" [25-3-106 or 27-2-205].

Effective Date — Code Commissioner Correction: Section 27(2), Ch. 368, L. 2015, provided: "[Sections 11, 19, 20, and 21] and this section are effective on passage and approval." Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that the reference to "[Sections 11, 19, 20, and 21]" should have been to "[Sections 11, 19, 21, and 23]" [53-6-1316, 25-3-106, 27-2-205, and section 23, a noncodified transition section].

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2013 Amendments — Composite Section: Chapter 17 in (3) deleted "50-4-623" from list of statutory references. Amendment effective July 1, 2013.

Chapter 17 in (3) deleted "17-3-112" from list of statutory references. Amendment effective on occurrence of contingency.

Chapter 244 in (3) inserted "22-1-327" in list of statutory references. Amendment effective July 1, 2015, and terminates July 1, 2017.

Chapter 368 in (3) inserted "76-13-150" in list of statutory references. Amendment effective May 1, 2013.

Chapter 413 in (3) inserted "2-15-247", "39-1-105", "53-1-215", and "53-2-208" in list of statutory references. Amendment effective May 6, 2013, and terminates June 30, 2015.

2011 Amendments — Composite Section — Coordination: Chapter 57 in (3) inserted "85-20-1504" in list of statutory references. Amendment effective March 25, 2011.

Chapter 58 in (3) inserted "30-10-1004" in list of statutory references. Amendment effective March 25, 2011, and terminates June 30, 2017.

Chapter 61 in (3) inserted "76-13-416" in list of statutory references; and made minor changes in style. Amendment effective July 1, 2011, and terminates June 30, 2019.

Chapter 147 in (3) inserted "85-20-1505" in list of statutory references. Amendment effective April 8, 2011.

Chapter 339 in (3) inserted "81-1-112; 81-7-106" in list of statutory references. Amendment effective July 1, 2011, and terminates June 30, 2017.

The amendment to this section made by sec. 7, Ch. 411, L. 2011, was rendered void by sec. 14(3), Ch. 411, L. 2011, a coordination section.

Termination of Reference: Section 47, Ch. 19, L. 2011, amended section 8, Ch. 330, L. 2009, to terminate the inclusion of 87-1-621 on June 30, 2013.

Severability: Section 13, Ch. 58, L. 2011, was a severability clause.

Section 6, Ch. 147, L. 2011, was a severability clause.

Applicability: Section 15, Ch. 58, L. 2011, provided: "[This act] applies to final orders issued on or after [the effective date of this act]." Effective March 25, 2011.

2009 Amendments — Composite Section: Chapter 103 in (3) inserted "44-4-1101" in list of statutory references. Amendment effective April 1, 2009.

Chapter 227 in (3) inserted "10-1-108" in list of statutory references. Amendment effective April 16, 2009.

Chapter 264 in (3) deleted "15-23-706" from list of statutory references. Amendment effective July 1, 2009.

Chapter 330 in (3) inserted "87-1-621" in list of statutory references. Amendment effective July 1, 2009.

Chapter 374 in (3) inserted "53-9-113" in list of statutory references. Amendment effective July 1, 2009, and terminates June 30, 2015.

Chapter 390 in (3) inserted "81-10-103" in list of statutory references. Amendment effective October 1, 2009.

Chapter 426 in (3) deleted "17-7-304", "23-4-202; 23-4-204; 23-4-302; 23-4-304", "44-1-504", "53-6-703", "80-5-510", and "87-1-513" from list of statutory references. Amendment effective July 1, 2009.

Chapter 427 in (3) inserted "87-1-230" in list of statutory references. Amendment effective May 4, 2009, and terminates June 30, 2013.

Chapter 441 in (3) deleted "76-13-150" from list of statutory references. Amendment effective May 5, 2009.

Chapter 442 in (3) inserted "90-6-331" in list of statutory references. Amendment effective July 1, 2009, and terminates June 30, 2019.

Chapter 484 in (3) inserted "90-1-504" in list of statutory references. Amendment effective May 9, 2009.

Chapter 485 in (3) inserted "87-1-603" in list of statutory references. Amendment effective May 10, 2009.

Chapter 489 in (3) inserted "17-3-112" in list of statutory references. Amendment effective May 14, 2009.

Termination: Section 1, Ch. 186, L. 2009, amended section 17, Ch. 593, L. 2005, to extend the termination date of the inclusion of 15-31-906 from January 1, 2010, to January 1, 2015.

Retroactive Applicability — Applicability: Section 6, Ch. 264, L. 2009, provided: "(1) [This act] applies retroactively, as provided in 1-2-109, to coal produced and sold after December 31, 2007.

(2) [This act] applies to coal gross proceeds taxes distributed for fiscal years beginning after June 30, 2009."

Severability: Section 12, Ch. 485, L. 2009, was a severability clause.

2007 September Special Session Amendment: Chapter 2 in (3) inserted "76-13-150" in list of statutory references. Amendment effective July 1, 2008, and terminates June 30, 2009.

2007 Special Session Amendment: Chapter 6 in (3) inserted "section 2, Chapter 6, Special Laws of May 2007" in list of statutory references. Amendment effective June 1, 2007, and terminates July 1, 2008.

2007 Amendments — Composite Section: Chapter 89 in (3) inserted "15-39-110" in list of statutory references. Amendment effective March 30, 2007.

Chapter 121 in (3) deleted "15-1-113" from list of statutory references. Amendment effective April 5, 2007.

Chapter 230 in (3) inserted "7-4-2502" in list of statutory references. Amendment effective July 1, 2007.

Chapter 247 in (3) inserted "77-1-108" in list of statutory references. Amendment effective April 26, 2007.

Chapter 305 in (3) inserted "19-20-607" in list of statutory references. Amendment effective July 1, 2007.

Chapter 306 in (3) inserted "19-21-203" in list of statutory references. Amendment effective July 1, 2007.

Chapter 308 in (3) inserted "10-1-1202" in list of statutory references. Amendment effective July 1, 2007.

Chapter 309 in (3) inserted "5-11-120" in list of statutory references. Amendment effective July 1, 2007.

Chapter 311 in (3) inserted "10-1-1303" in list of statutory references. Amendment effective July 1, 2007.

Chapter 327 in (3) inserted "15-1-218" in list of statutory references. Amendment effective July 1, 2007.

Chapter 432 in (3) deleted "15-38-202" from list of statutory references. Amendment effective July 1, 2007.

Clarification of 2005 Contingent Termination: Section 73, Ch. 44, L. 2007, amended sec. 14, Ch. 464, L. 2005, a termination date section, in order to clarify that the amendments to 19-6-709, the insertion of the reference to [section 1] [19-6-410] in 17-7-502, and [section 1] [19-6-410] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709. Amendment effective October 1, 2007.

Retroactive Applicability: Section 4, Ch. 121, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to reimbursement payments after December 31, 2001."

Legislative Findings: Section 1, Ch. 230, L. 2007, provided: "The legislature finds that:

(1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;

(2) the county attorney workloads vary greatly from county to county;

(3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation."

2005 Amendments — Composite Section: Chapter 223 in (3) deleted "2-15-151" from list of statutory references and inserted "90-1-115" in list of statutory references. Amendment effective December 31, 2006.

Chapter 314 in (3) inserted "23-4-105", "23-4-202", "23-4-204", "23-4-302", and "23-4-304" in list of statutory references. Amendment effective July 1, 2007.

Chapter 324 in (3) deleted "16-11-404" from list of statutory references and inserted "16-11-509" in list of statutory references. Amendment effective July 1, 2005.

Chapter 327 in (3) deleted "23-5-631" from list of statutory references. Amendment effective July 1, 2005.

Chapter 421 in (3) inserted "44-1-504" in list of statutory references. Amendment effective January 1, 2006.

Chapter 464 in (3) inserted "19-6-404" and "19-6-410" in list of statutory references. Amendment effective July 1, 2005.

Chapter 482 in (3) inserted "41-5-2011" in list of statutory references. Amendment effective April 28, 2005.

Chapter 524 in (3) inserted "15-70-601" in list of statutory references. Amendment effective July 1, 2005.

Chapter 525 in (3) inserted "15-70-369" in list of statutory references. Amendment effective April 28, 2005.

Chapter 581 in (3) inserted "5-11-407" in list of statutory references. Amendment effective July 1, 2005.

Chapter 588 in (3) inserted "90-1-205" in list of statutory references. Amendment effective July 1, 2005.

Chapter 593 in (3) inserted "15-31-906" in list of statutory references. Amendment effective May 6, 2005, and terminates January 1, 2010.

Chapter 600 in (3) inserted "10-2-603" in list of statutory references. Amendment effective July 1, 2005.

Chapter 602 in (3) inserted "60-11-115" in list of statutory references. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Retroactive Applicability: Section 6, Ch. 482, L. 2005, provided "[This act] applies retroactively, within the meaning of 1-2-109, to unexpended funds in the accounts established under 41-5-130(6) on June 30, 2004."

Section 6, Ch. 581, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003."

Severability: Section 14, Ch. 593, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 43 in (3) inserted "69-3-870" in list of statutory references. Amendment effective February 26, 2003.

Chapter 140 in (3) inserted "53-24-108" in list of statutory references. Amendment effective July 1, 2003.

Chapter 353 in (3) inserted "53-1-109" in list of statutory references. Amendment effective October 1, 2003.

Chapter 355 in (3) inserted "77-2-362" in list of statutory references. Amendment effective April 17, 2003.

Chapter 397 in (3) inserted "16-11-404" in list of statutory references. Amendment effective April 17, 2003.

Chapter 481 in (3) deleted "90-6-710" from list of statutory references. Amendment effective July 1, 2005.

Chapter 522 in (3) substituted "15-36-332" for "15-36-324" in list of statutory references. Amendment effective April 26, 2003.

Chapter 533 in (3) inserted "61-3-415" in list of statutory references. Amendment effective July 1, 2003.

Modification of Termination Date: Section 135, Ch. 114, L. 2003, amended sec. 17, Ch. 414, L. 2001, by changing the termination of the reference to 2-15-151 from December 31, 2006, to June 30, 2005.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

Section 17, Ch. 397, L. 2003, was a severability clause.

Retroactive Applicability: Section 21, Ch. 397, L. 2003, provided: "The legislature intends that [section 13 and 15] [16-11-404 and 17-7-502] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act]." Effective April 17, 2003.

Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2002 Amendments — Composite Section: Chapter 10 in (3) inserted "20-9-622" in list of statutory references. Amendment effective August 16, 2002.

Chapter 13 in (3) deleted "23-5-136" from list of statutory references. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendments — Composite Section: Chapter 7 in (3) deleted "15-34-115" from list of statutory references. Amendment effective October 1, 2001.

Chapter 414 in (3) inserted "2-15-151" in list of statutory references. Amendment effective April 28, 2001, and terminates December 31, 2006.

Chapter 500 in (3) inserted "15-1-113" in list of statutory references. Amendment effective January 1, 2002.

Chapter 554 in (3) inserted "20-9-534" in list of statutory references and deleted "81-5-111" from list of statutory references. Amendment effective July 1, 2001.

Chapter 567 in (3) inserted "80-5-510" in list of statutory references. Amendment effective October 1, 2001.

Chapter 574 in (3) inserted "15-1-121" in list of statutory references and deleted "15-31-702", "16-1-404", "16-1-406", "16-1-411", "19-6-709", "23-5-610", "67-3-205", and "77-1-505" from list of statutory references. Amendment effective July 1, 2001.

Chapter 585 in (3) deleted "3-5-901" from list of statutory references. Amendment effective July 1, 2002.

Chapter 594 in (3) inserted "17-3-241" in list of statutory references. Amendment effective January 1, 2002.

Applicability: Section 16, Ch. 414, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Saving Clause: Section 14, Ch. 567, L. 2001, was a saving clause.

2000 Amendment: Chapter 10 in (3) inserted "15-35-108" and "90-6-710" in list of statutory references; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2005.

1999 Amendments — Composite Section: Chapter 51 in former temporary version in (3) deleted "20-8-111" from list of statutory references and inserted "77-1-505".

In former July 1, 2008, version in (3) substituted "16-1-406" for "[16-1-406]" and deleted "15-30-195", "17-5-404", "17-5-804", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "82-11-136", "85-1-220", "90-7-220", and "90-7-221" from list of statutory references; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 83 inserted "80-11-518" in list of statutory references. Amendment effective March 16, 1999.

Chapter 360 in (3) inserted "19-20-604" in list of statutory references. Amendment effective July 1, 1999.

Chapter 389 in (3) deleted "15-30-195", "16-11-308", "20-8-111", "39-71-907", "39-71-2321", "77-1-131", "80-2-103", "85-20-402", "90-3-301", "90-4-215", and "90-6-331" from list of statutory references and in former temporary version inserted "77-1-505". Amendment effective July 1, 1999.

Chapter 497 in (3) deleted "15-38-202" from list of statutory references. Amendment effective July 1, 2014. (Amendment rendered ineffective by Ch. 432, L. 2007.)

Chapter 554 in (3) deleted "15-36-325" from list of statutory references. Amendment effective January 1, 2000.

Chapter 563 in (3) inserted "15-34-115" and "90-3-1003" in list of statutory references. Amendment effective July 1, 1999.

1999 Purported Amendments: Section 22, Ch. 285, L. 1999, purported to insert references in (3) to sec. 1 and sec. 26, but sec. 1 and sec. 26 were voided by sec. 170(2), Ch. 584, L. 1999, a coordination section.

Chapter 426 purported to insert a reference in (3) to sec. 20, but sec. 20 was voided by sec. 170(1)(a)(i), Ch. 584, L. 1999, a coordination section.

Chapter 556 purported to insert a reference in (3) to sec. 15, but sec. 15 was voided by sec. 170(1)(b), Ch. 584, L. 1999, a coordination section.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Section 36, Ch. 556, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

1997 Amendments: Chapter 42 in (3) deleted "17-5-424" from list of statutory references. Amendment effective March 12, 1997.

Chapter 276 in (3) deleted "39-71-2504" from list of statutory references. Amendment effective July 1, 1997.

(Temporary version) Chapter 422 in (3) deleted "16-1-410", "17-5-404", "17-5-424", "17-5-804", "17-6-201", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "76-12-123", "82-11-136", "85-1-220", "90-3-301", "90-7-220", and "90-7-221" from list of statutory references and inserted "16-1-406". Amendment effective July 1, 1997.

(Version effective July 1, 2008) In (3) deleted "15-1-111", "20-8-111", and "76-12-123" from list of statutory references and inserted "77-1-505". Amendment effective July 1, 2008.

Chapter 445 in (3) deleted "19-9-1007" from list of statutory references. Amendment effective July 1, 1997.

Chapter 461 in (3) inserted "77-1-131" in list of statutory references. Amendment terminates October 1, 2003.

Chapter 466 in (3) inserted "15-36-324" and "15-36-325" in list of statutory references. Amendment effective July 1, 1997.

Chapter 469 in (3) inserted "22-3-1004" in list of statutory references. Amendment effective May 1, 1997.

Chapter 480 in (3) inserted "42-2-105" in list of statutory references.

Chapter 523 in (3) inserted "87-1-513" in list of statutory references.

Chapter 532 in (3) deleted "2-9-202", "2-18-812", "17-6-201", and "19-2-502" from list of statutory references and inserted "15-36-324", "15-36-325", "17-3-222", "19-3-319", "19-9-702", "19-13-604", and "19-13-1006 (deleted pursuant to sec. 39(2)(b), Ch. 532, L. 1997.)". Amendment effective July 1, 1997.

Chapter 549 in (3) deleted "90-3-301" from list of statutory references. Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 276, L. 1997, provided: "WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, terminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of $355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included $129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as $50 million each year; and

WHEREAS, the surplus of $231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to $109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated $200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated $127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, the State Fund shall, no later than June 30, 1998, transfer $63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to policyholders; and

WHEREAS, the $20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and cancelled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the $20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to Haag v. Montana Schools Group Insurance Authority, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for accepting or denying a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with the time limitations does not constitute acceptance of the claim."

Severability: Section 32, Ch. 276, L. 1997, was a severability clause.

Section 21, Ch. 469, L. 1997, was a severability clause.

Section 172, Ch. 480, L. 1997, was a severability clause.

Code Commissioner Corrections: (1) Chapter 422 (version effective July 1, 2008) in (3) the Code Commissioner inserted the bracketed cite to 16-1-406 and deleted the reference to 16-1-410. The cite to 16-1-406 was amended into the temporary version of this section and the reference to 16-1-410 was deleted from the temporary version but apparently through error 16-1-406 was not amended into the permanent version and 16-1-410 was not deleted.

(2) Chapter 532 repealed 19-18-513 and 19-18-606. The citations to the sections were inadvertently not stricken from this section. Pursuant to the authority contained in sec. 314, Ch. 42, L. 1997, the Code Commissioner has deleted the references to the repealed sections.

Termination: Section 5, Ch. 461, L. 1997, provided: "[This act] terminates October 1, 2003."

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Coordination: Pursuant to sec. 39(1)(b), Ch. 532, L. 1997, a coordination section, a reference to 19-3-319 was included in the list of statutory references in subsection (3) of 17-7-502.

Pursuant to sec. 39(2), Ch. 532, L. 1997, a coordination section, the internal reference to 19-13-1006 in 17-7-502 was removed.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendments: Chapter 18 in (3) deleted "15-25-123" and "19-15-101" from list of statutory references.

Chapter 29 in (3) inserted "15-30-195" in list of statutory references. Amendment effective July 1, 1995, and terminates July 1, 2001.

Chapter 176 in (3) inserted "10-3-310" in list of statutory references.

Chapter 291 in (3) inserted "20-8-107" in list of statutory references. Amendment effective March 30, 1995.

Chapter 429 in (3) deleted "20-26-1403" from list of statutory references.

Chapter 439 in (3) inserted "16-11-308" in list of statutory references.

Chapter 442 in (3) deleted "17-5-704" from list of statutory references. Amendment effective July 1, 1995.

Chapter 446 in (3) deleted "15-25-123" from list of statutory references. Amendment effective January 1, 1996.

Chapter 451 in (3) deleted "15-36-112" from list of statutory references. Amendment effective January 1, 1996.

Chapter 502 in (3) inserted "53-6-703" in list of statutory references. Amendment effective July 1, 1995.

Chapter 509 in (3) deleted "15-25-123", "17-5-704", "17-6-409", "20-4-109", "23-2-823", "27-12-206", "61-2-107", "75-5-507", "77-1-808", and "80-11-310" from list of statutory references. Amendment effective July 1, 1995.

Chapter 526 in (3) inserted "50-4-623" in list of statutory references. Amendment effective April 25, 1995.

Chapter 553 in (3) inserted "75-6-214" in list of statutory references. Amendment effective April 27, 1995.

Chapter 557 in (3) inserted "90-7-221" in list of statutory references. Amendment effective April 26, 1995.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 10 in (3) inserted "15-70-101" in list of statutory references. Amendment effective December 20, 1993.

Chapter 36 in (3) deleted "20-6-406" from list of statutory references. Amendment effective July 1, 1994.

Retroactive Applicability: Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendments: Chapter 46 in (3) inserted "17-6-201" in list of statutory references.

Chapter 69 in (3) inserted "80-2-222" in list of statutory references. Amendment effective February 22, 1993.

Chapter 107 in (3) inserted "17-3-106" and "17-6-101" in list of statutory references. Amendment effective July 1, 1993.

Chapter 108 in (3) inserted "81-5-111" in list of statutory references.

Chapter 127 in (3) inserted "60-2-220" in list of statutory references.

Chapter 195 in (3) deleted "61-5-121" from list of statutory references.

Chapter 234 in (3) inserted "5-13-403" in list of statutory references. Amendment effective March 31, 1993.

Chapter 265 in (3) inserted "19-2-502" in and deleted "19-5-404", "19-8-504", "19-9-702", and "19-13-604" from list of statutory references. Amendment effective July 1, 1993.

Chapter 330 in (3) inserted "3-5-901" in list of statutory references. Amendment effective April 13, 1993.

Chapter 389 in (3) inserted "50-40-206" in list of statutory references.

Chapter 395 in (3) inserted "32-1-537" in list of statutory references.

Chapter 415 in (3) inserted "50-5-232" in list of statutory references.

Chapter 450 in (3) deleted "19-8-504" from list of statutory references. Amendment effective July 1, 1993.

Chapter 452 in (3) inserted "80-4-416" in list of statutory references. Amendment effective July 1, 1993.

Chapter 492 in (3) inserted "61-2-107" in list of statutory references. Amendment effective July 1, 1993.

Chapter 526 in (3) inserted "20-26-1403" in list of statutory references. Amendment effective April 24, 1993.

Chapter 534 in (3) inserted "90-14-107" in list of statutory references. Amendment effective April 24, 1993, and terminates July 1, 1995.

Chapter 555 in (3) inserted "39-71-503; 39-71-907" in list of statutory references. Amendment effective July 1, 1993.

Chapter 578 in (3) inserted "23-2-823" in list of statutory references.

Chapter 581 in (3) deleted "13-37-304" from list of statutory references. Amendment effective April 28, 1993.

Chapter 605 in (3) deleted "15-70-101" from list of statutory references. Amendment effective July 1, 1993.

Chapter 613 in (3) inserted "15-38-202" in list of statutory references. Amendment effective July 1, 1993.

Chapter 625 in (3) inserted "18-11-112" in list of statutory references. Amendment effective July 1, 1993.

Chapter 630 in (3) inserted "39-71-2321" in list of statutory references. Amendment effective July 1, 1993.

Chapter 635 in (3) inserted "85-2-707" (renumbered 85-10-402) in list of statutory references.

Purported 1993 Amendment — Coordination: Section 13(1), Ch. 352, L. 1993, provided: "If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void." House Bill No. 92 was approved as Ch. 625, L. 1993, and contained the provisions alluded to in the coordination instruction. Chapter 352 inserted references in the (3) list of statutory references to sections 4 and 5 of Ch. 352, L. 1993, which were enacted but subsequently rendered void by the enactment of Ch. 625, L. 1993. The effect was that this section, although purportedly amended by sec. 11, Ch. 352, was not actually amended by that chapter.

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-817(4)] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' retirement system [now game wardens' and peace officers' retirement system] who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Severability: Section 12, Ch. 534, L. 1993, was a severability clause.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Severability: Section 15, Ch. 630, L. 1993, was a severability clause.

Saving Clause: Section 16, Ch. 630, L. 1993, was a saving clause.

Preamble: The preamble attached to Ch. 10, Sp. L. January 1992, provided: "WHEREAS, Chapter 823, Laws of 1991, provided, among other things, for adjustment payments to retirees of state, local, and teacher retirement systems who are also Montana residents; and

WHEREAS, the first adjustment payments were intended to be made for the 1991 tax year and to be payable to retirees by June 1, 1992; and

WHEREAS, the language of section 5, Chapter 823, Laws of 1991, which provides for the payment of the retirement adjustments by June 1 of each year, read together with the May 24, 1991, effective date of Chapter 823 created confusion and a question of whether the adjustment payments were required to be paid beginning June 1, 1991, for the 1990 tax year, which was not the intended result; and

WHEREAS, the additional, unintended payments have not been made at this time; and

WHEREAS, the impact on the general fund of beginning the adjustment payments a year earlier than intended is estimated to be approximately $2.9 million; and

WHEREAS, this act is intended as a curative amendment to Chapter 823, Laws of 1991, to clarify that the intent of the 52nd Legislature in enacting Chapter 823, Laws of 1991, was to make the first adjustment payments beginning June 1, 1992.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to amend the effective date and applicability date of Chapter 823, Laws of 1991."

Effective Date — Nonretroactive Applicability: Section 1, Ch. 10, Sp. L. January 1992, provided that the amendment to this section that inserted a reference to 19-15-101 in (3) was effective July 1, 1991, and removed the provision that made the section apply retroactively to tax years beginning after December 31, 1990. Amendment effective January 21, 1992.

1991 Amendments: Chapter 16 in (3) deleted reference to section 13, House Bill No. 861, Laws of 1985; and made minor changes in style.

Chapter 344 in (3) inserted reference to 19-5-404. Amendment effective April 4, 1991.

Chapter 370 in (3) inserted reference to 85-1-220. Amendment effective July 1, 1991.

Chapter 394 in (3) inserted reference to 20-26-1503. Amendment effective July 1, 1991.

Chapter 493 in (3) inserted reference to 37-43-204. Amendment effective April 20, 1991.

Chapter 495 in (3) inserted reference to 20-4-109. Amendment effective July 1, 1991.

Chapter 567 in (3) inserted reference to 19-6-709. Amendment effective July 1, 1991.

Chapter 571 in (3) deleted reference to 90-4-613. Amendment effective April 23, 1991.

Chapter 575 in (3) inserted reference to 80-11-310. Amendment effective July 1, 1991.

Chapter 600 in (3) inserted reference to 75-5-507. Amendment effective July 1, 1991.

Chapter 602 in (3) inserted reference to 17-6-409. Amendment effective July 1, 1991.

Chapter 609 in (3) inserted reference to 77-1-808. Amendment effective March 1, 1992.

Chapter 641 in (3) inserted reference to 15-23-706. Amendment effective July 1, 1991.

Chapter 647 in (3) inserted references to 23-5-136 and 23-5-631. Amendment effective July 1, 1991.

Chapter 690 in (3) inserted references to 44-12-206 and 44-13-102. Amendment effective July 1, 1991.

Chapter 701 in (3) deleted reference to 61-2-406. Amendment effective July 1, 1991.

Chapter 748 in (3) inserted reference to 22-3-811. Amendment effective May 15, 1991, and terminates June 30, 1993, pursuant to sec. 18, Ch. 748, L. 1991.

Chapter 787 in (3) inserted references to 17-5-704 and 17-7-304. Amendment effective July 1, 1991.

Chapter 819 in (3) inserted reference to 90-7-220. Amendment effective May 24, 1991.

Chapter 823 in (3) inserted reference to 19-15-101. Amendment effective July 1, 1991, pursuant to sec. 1, Ch. 10, Sp. L. January 1992.

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account." The statutory appropriation contained in 19-6-709 was deleted by Ch. 574, L. 2001.

1989 Special Session Amendments: Chapter 10 in (3) inserted reference to 15-1-111. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

Chapter 11 in (3) inserted reference to 20-9-361. Amendment effective July 1, 1990.

1989 Amendments: Chapter 62 in (3) inserted reference to 61-5-121. Amendment effective March 10, 1989.

Chapter 262 in (3) inserted reference to 27-12-206. Amendment effective January 1, 1990.

Chapter 316 in (3) deleted references to 90-3-302 and 90-3-412. Amendment effective March 24, 1989.

Chapter 324 in (3) inserted reference to 61-2-406. Amendment effective July 1, 1989.

Chapter 408 in (3) inserted reference to 23-5-1016 (renumbered 23-7-301). Amendment effective April 3, 1989.

Chapter 473 in (3) inserted reference to 90-4-613. Amendment effective April 8, 1989.

Chapter 528 in (3) inserted reference to 75-11-313. Amendment effective July 1, 1989.

Chapter 530 in (3) inserted reference to 82-11-161. Amendment effective July 1, 1989.

Chapter 628 in (3) deleted references to 20-4-109, 33-31-212, 33-31-401, 75-7-305, 80-2-228, and 90-15-103. Amendment effective July 1, 1989.

Chapter 642 in (3) inserted references to 23-5-306, 23-5-409, and 23-5-612.

Chapter 672 in (3) inserted references to 15-37-117 and 90-6-331. Amendment effective May 16, 1989.

Chapter 678 in (3) inserted reference to 75-5-1108. Amendment effective July 1, 1989.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendments: Inclusion of the following sections in subsection (3) was made by the cited 1987 session law chapters: 23-5-1027 (renumbered 23-7-402) by Ch. 161; 53-6-150 by Ch. 164; 82-11-136 by Ch. 265; 67-3-205 by Ch. 453; sec. 1, Ch. 454, L. 1987, by Ch. 454; 33-31-212 and 33-31-401 by Ch. 457; 76-12-123 by Ch. 460; 90-3-412 by Ch. 461; 20-4-109 by Ch. 465; 15-25-123 by Ch. 563; 23-5-610 by Ch. 603; 15-65-121 by Ch. 607; 39-71-2504 by Ch. 664; 90-9-306 by Ch. 665; and 90-4-215 by HB 621. Section 23-5-1027 (renumbered 23-7-402) was inserted to reflect codification instructed by sec. 28, Ch. 669, L. 1985. Chapter 603 deleted reference to 23-5-612.

Code Commissioner Correction: Section 21, Ch. 461, L. 1987, erroneously referred to sec. 7, Ch. 461, L. 1987, as the section of the chapter providing a statutory appropriation. The statutory appropriation is actually contained in sec. 12, Ch. 461, L. 1987, codified as 90-3-412 (now repealed). The Code Commissioner has inserted the correct reference in subsection (3) to reflect the chapter content.

Severability: Section 27, Ch. 401, L. 1987, was a severability section.

1985 Amendments: In (3) Ch. 244 inserted reference to 75-7-305; Ch. 395 inserted reference to 90-15-103; Ch. 635 inserted reference to 10-4-301; Ch. 688 inserted reference to 37-51-501; Ch. 701 inserted references to 90-3-301 and 90-3-302; Ch. 720 inserted reference to 23-5-612; HB 861 inserted references to 17-5-424 and Sec. 13, HB 861; HB 922 inserted reference to 75-1-1101.

2019 Amendments — Composite Section: Chapter 343 in (3) deleted 90-3-1003 from list of statutory references. Amendment effective July 1, 2019.

Chapter 352 in (3) inserted "15-31-1004" and "15-31-1005" in list of statutory references. Amendment effective July 1, 2019.

Chapter 354 in (3) deleted 37-51-501 from list of statutory references. Amendment effective February 1, 2021.

Chapter 376 in (3) inserted "76-13-151" in list of statutory references. Amendment effective May 8, 2019.

Chapter 415 in (3) deleted 53-6-1304 from list of statutory references. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency. However, because the original inclusion of the reference to 53-6-1304 was scheduled to terminate at the same time that 53-6-1304 terminated, the reference to 53-6-1304 would not be reinserted and the contingent termination of this amendment is effectively ineffective.

Chapter 434 in (3) inserted "81-7-123" in list of statutory references. Amendment effective July 1, 2019.

Chapter 453 in (3) inserted "5-13-404" in list of statutory references. Amendment effective May 10, 2019.

Chapter 455 in (3) inserted "67-1-309" in list of statutory references. Amendment effective July 1, 2019.

Chapter 465 in (3) inserted "85-2-526" in list of statutory references. Amendment effective July 1, 2019, and terminates July 1, 2023.

Chapter 477 in (3) inserted "10-3-802" in list of statutory references. Amendment effective July 1, 2019, and terminates June 30, 2023

Applicability: Section 20, Ch. 352, L. 2019, provided: "(1) Except as provided in subsection (2), [this act] applies to tax years beginning after December 31, 2020.

(2) The tax credit in [section 7] [15-31-1007] applies after June 30, 2019, as provided in [section 7(1)] [15-31-1007(1)]."

Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date of the reference to 37-50-209 imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

Section 11, Ch. 343, L. 2019, amended sec. 10, Ch. 10, Sp. L. May 2000, sec. 12, Ch. 343, L. 2019, amended sec. 3, Ch. 481, L. 2003, and sec. 14, Ch. 343, L. 2019, amended sec. 2, Ch. 459, L. 2009, to extend the termination date of the reference to 15-35-108 imposed by Ch. 10, Sp. L. May 2000, to June 30, 2027. Effective May 7, 2019.

Section 1, Ch. 408, L. 2019, amended sec. 5, Ch. 422, L. 2015, by extending the termination date imposed by Ch. 422 to June 30, 2029. Effective May 9, 2019.

Severability: Section 18, Ch. 352, L. 2019, was a severability clause.

Section 44, Ch. 415, L. 2019, was a severability clause.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2017 Amendments — Composite Section — Code Commissioner Correction: Chapter 32 in (3) deleted "15-70-601" from list of statutory references. Amendment effective July 1, 2017.

Chapter 55 inserted "37-54-113" in list of statutory references. Amendment effective March 1, 2017. Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner inserted parenthetical language to clarify that the reference to 37-54-113 terminates on the date that 37-54-113 terminates. See also sec. 40, Ch. 3, L. 2019, which terminated the reference to 37-54-113 on June 30, 2023.

Chapter 77 in (3) inserted "16-11-119" in list of statutory references. Amendment effective July 1, 2017.

Chapter 106 in (3) inserted "10-2-807" in list of statutory references. Amendment effective March 27, 2017.

Chapter 122 in (3) inserted "10-3-1304" in list of statutory references. Amendment effective March 30, 2017, and terminates September 30, 2025.

Chapter 247 in (3) inserted "75-26-308" in list of statutory references. Amendment effective May 3, 2017.

Chapter 250 in (3) inserted "61-3-321" in list of statutory references. Amendment effective July 1, 2017.

Chapter 267 in (3) inserted "15-70-130" in list of statutory references. Amendment effective July 1, 2017.

Chapter 284 in (3) inserted "81-1-113" in list of statutory references. Amendment effective May 4, 2017, and terminates June 30, 2023.

Chapter 312 in (3) inserted "80-11-1006" in list of statutory references. Amendment effective July 1, 2017.

Chapter 326 in (3) inserted "69-4-527" in list of statutory references. Amendment effective July 1, 2017.

Chapter 336 in (3) deleted "20-9-517" and "20-9-520" from list of statutory references. Amendment effective July 1, 2017.

Chapter 351 in (3) inserted "19-3-320" in list of statutory references. Amendment effective July 1, 2017.

Chapter 360 in (3) inserted "76-22-109" in list of statutory references. Amendment effective May 8, 2017.

Chapter 364 in (3) inserted "53-6-148" in list of statutory references. Amendment effective July 1, 2017.

Chapter 367 in (3) substituted "10-4-304" for "10-4-301" in list of statutory references. Amendment effective July 1, 2018.

Chapter 374 in (3) inserted "76-17-103" in list of statutory references. Amendment effective July 1, 2017, and terminates June 30, 2027.

Extension of Termination Date: Section 55, Ch. 151, L. 2017, amended sec. 16, Ch. 58, L. 2011, by extending the termination date of the reference to 30-10-1004 imposed by Ch. 58 to June 30, 2021. Effective April 4, 2017.

Section 1, Ch. 213, L. 2017, amended sec. 5, Ch. 442, L. 2009, by extending the termination date of the reference to 90-6-331 imposed by Ch. 442 to June 30, 2027. Effective April 20, 2017.

Section 5, Ch. 284, L. 2017, amended sec. 13, Ch. 339, L. 2011, by extending the termination date of the references to 81-1-112 and 81-7-106 imposed by Ch. 339 to June 30, 2023. Effective May 4, 2017.

Section 1, Ch. 340, L. 2017, amended sec. 5, Ch. 244, L. 2013, by extending the termination date of the reference to 22-1-327 imposed by Ch. 244 to July 1, 2023. Effective May 7, 2017.

Contingent Voidness: Section 2, Ch. 340, L. 2017, as amended by sec. 32, Ch. 429, L. 2017, a coordination section, provided: "If the certified unaudited general fund revenue and transfers into the general fund received in fiscal year 2017 are less than $2,217,000,000, as determined by the state treasurer on or before August 15, 2017, the statutory appropriations in 22-1-327 for fiscal years 2018 and 2019 are void." On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was $2,139,414,715.40.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that the amendment to this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

Saving Clause: Section 9, Ch. 55, L. 2017, was a saving clause.

Section 9, Ch. 247, L. 2017, was a saving clause.

Section 22, Ch. 326, L. 2017, was a saving clause.

Section 29, Ch. 367, L. 2017, was a saving clause.

Severability: Section 10, Ch. 55, L. 2017, was a severability clause.

Section 23, Ch. 326, L. 2017, was a severability clause.

Section 26, Ch. 336, L. 2017, was a severability clause.

Section 19, Ch. 351, L. 2017, was a severability clause.

Section 13, Ch. 364, L. 2017, was a severability clause.

Section 30, Ch. 367, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 291 in (3) inserted "50-1-115" in list of statutory references. Amendment effective July 1, 2015, and terminates June 30, 2021.

Chapter 368 inserted "53-6-1304" in list of statutory references. Amendment effective on occurrence of contingency and terminates June 30, 2019.

Chapter 383 in (3) inserted "85-25-102" in list of statutory references. Amendment effective on occurrence of contingency.

Chapter 385 in (3) inserted "20-26-617" in list of statutory references. Amendment effective July 1, 2015.

Chapter 422 inserted "17-7-215" in list of statutory references. Amendment effective July 1, 2015, and terminates June 30, 2021.

Chapter 423 in (3) inserted "22-3-116" and "22-3-117" in list of statutory references. Amendment effective May 5, 2015, and terminates June 30, 2025.

Chapter 427 in (3) inserted "37-50-209" in list of statutory references. Amendment effective October 1, 2015, and terminates September 30, 2019.

Chapters 432 and 433 in (3) inserted "20-9-517" and "20-9-520" in list of statutory references. Amendments effective May 5, 2015.

Chapter 457 in (3) inserted "20-9-905" in list of statutory references. Amendment effective January 1, 2016, and terminates December 31, 2023.

Preamble: The preamble attached to Ch. 383, L. 2015, provided: "WHEREAS, Libby Dam, located in Lincoln County, Montana, is the fourth dam constructed under the Columbia River Treaty, which the Canadian government and the United States government entered into in 1964, and is located on the Kootenai River, which is the third largest tributary to the Columbia River and contributes almost 20% of the total water in the lower Columbia River; and

WHEREAS, Libby Dam was dedicated on August 24, 1975, and spans the Kootenai River 17 miles upstream from the town of Libby, Montana; and

WHEREAS, Lake Koocanusa, the reservoir behind Libby Dam, extends 90 miles north of the dam, with 48 miles of Lake Koocanusa located in Lincoln County and the remainder in British Columbia, Canada; and

WHEREAS, Libby Dam, in Montana's northwest corner, and three dams in Canada were constructed to protect downstream areas from flooding, and Libby Dam holds back an average of 5,800,000 acre-feet of water; and

WHEREAS, economic benefits have been derived from the storage of these floodwaters and the coordinated, timely release of those waters through generation of electricity, irrigation, navigation, and recreation; and

WHEREAS, the construction of Libby Dam placed many thousands of acres of land in Lincoln County underwater, leading to decreased real property tax revenues for the county and a loss of timber sales and wildlife and fish habitat, among other losses; and

WHEREAS, the Canadian government was compensated for construction of the dams and storage of floodwaters through a sharing of dollars on electricity from additional power generated at downstream dams and hydropower generating facilities, leading to the formation of the Columbia Basin Trust; and

WHEREAS, citizens of Lincoln County did not participate in the negotiations for the terms of the Columbia River Treaty and no compensation has been received by Lincoln County; and

WHEREAS, the renegotiation of the treaty is currently being considered, and there is a possibility that compensation could be provided to Lincoln County as a result of federal legislation, litigation, determination of regulations, and the renegotiation of the treaty; and

WHEREAS, the purpose of this legislation is to address how, if the compensation is paid directly to the state instead of to Lincoln County, the compensation should be distributed."

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date of the reference to 53-9-113 imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

Nonseverability — Code Commissioner Correction: Section 26, Ch. 368, L. 2015, provided: "Except as provided in subsection (2), it is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

(2) If [section 19 or 20] is held unconstitutional, all other parts are valid."

Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that "[section 19 or 20]" should be replaced with "[section 19 or 21]" [25-3-106 or 27-2-205].

Effective Date — Code Commissioner Correction: Section 27(2), Ch. 368, L. 2015, provided: "[Sections 11, 19, 20, and 21] and this section are effective on passage and approval." Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that the reference to "[Sections 11, 19, 20, and 21]" should have been to "[Sections 11, 19, 21, and 23]" [53-6-1316, 25-3-106, 27-2-205, and section 23, a noncodified transition section].

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

2013 Amendments — Composite Section: Chapter 17 in (3) deleted "50-4-623" from list of statutory references. Amendment effective July 1, 2013.

Chapter 17 in (3) deleted "17-3-112" from list of statutory references. Amendment effective on occurrence of contingency.

Chapter 244 in (3) inserted "22-1-327" in list of statutory references. Amendment effective July 1, 2015, and terminates July 1, 2017.

Chapter 368 in (3) inserted "76-13-150" in list of statutory references. Amendment effective May 1, 2013.

Chapter 413 in (3) inserted "2-15-247", "39-1-105", "53-1-215", and "53-2-208" in list of statutory references. Amendment effective May 6, 2013, and terminates June 30, 2015.

2011 Amendments — Composite Section — Coordination: Chapter 57 in (3) inserted "85-20-1504" in list of statutory references. Amendment effective March 25, 2011.

Chapter 58 in (3) inserted "30-10-1004" in list of statutory references. Amendment effective March 25, 2011, and terminates June 30, 2017.

Chapter 61 in (3) inserted "76-13-416" in list of statutory references; and made minor changes in style. Amendment effective July 1, 2011, and terminates June 30, 2019.

Chapter 147 in (3) inserted "85-20-1505" in list of statutory references. Amendment effective April 8, 2011.

Chapter 339 in (3) inserted "81-1-112; 81-7-106" in list of statutory references. Amendment effective July 1, 2011, and terminates June 30, 2017.

The amendment to this section made by sec. 7, Ch. 411, L. 2011, was rendered void by sec. 14(3), Ch. 411, L. 2011, a coordination section.

Termination of Reference: Section 47, Ch. 19, L. 2011, amended section 8, Ch. 330, L. 2009, to terminate the inclusion of 87-1-621 on June 30, 2013.

Severability: Section 13, Ch. 58, L. 2011, was a severability clause.

Section 6, Ch. 147, L. 2011, was a severability clause.

Applicability: Section 15, Ch. 58, L. 2011, provided: "[This act] applies to final orders issued on or after [the effective date of this act]." Effective March 25, 2011.

2009 Amendments — Composite Section: Chapter 103 in (3) inserted "44-4-1101" in list of statutory references. Amendment effective April 1, 2009.

Chapter 227 in (3) inserted "10-1-108" in list of statutory references. Amendment effective April 16, 2009.

Chapter 264 in (3) deleted "15-23-706" from list of statutory references. Amendment effective July 1, 2009.

Chapter 330 in (3) inserted "87-1-621" in list of statutory references. Amendment effective July 1, 2009.

Chapter 374 in (3) inserted "53-9-113" in list of statutory references. Amendment effective July 1, 2009, and terminates June 30, 2015.

Chapter 390 in (3) inserted "81-10-103" in list of statutory references. Amendment effective October 1, 2009.

Chapter 426 in (3) deleted "17-7-304", "23-4-202; 23-4-204; 23-4-302; 23-4-304", "44-1-504", "53-6-703", "80-5-510", and "87-1-513" from list of statutory references. Amendment effective July 1, 2009.

Chapter 427 in (3) inserted "87-1-230" in list of statutory references. Amendment effective May 4, 2009, and terminates June 30, 2013.

Chapter 441 in (3) deleted "76-13-150" from list of statutory references. Amendment effective May 5, 2009.

Chapter 442 in (3) inserted "90-6-331" in list of statutory references. Amendment effective July 1, 2009, and terminates June 30, 2019.

Chapter 484 in (3) inserted "90-1-504" in list of statutory references. Amendment effective May 9, 2009.

Chapter 485 in (3) inserted "87-1-603" in list of statutory references. Amendment effective May 10, 2009.

Chapter 489 in (3) inserted "17-3-112" in list of statutory references. Amendment effective May 14, 2009.

Termination: Section 1, Ch. 186, L. 2009, amended section 17, Ch. 593, L. 2005, to extend the termination date of the inclusion of 15-31-906 from January 1, 2010, to January 1, 2015.

Retroactive Applicability — Applicability: Section 6, Ch. 264, L. 2009, provided: "(1) [This act] applies retroactively, as provided in 1-2-109, to coal produced and sold after December 31, 2007.

(2) [This act] applies to coal gross proceeds taxes distributed for fiscal years beginning after June 30, 2009."

Severability: Section 12, Ch. 485, L. 2009, was a severability clause.

2007 September Special Session Amendment: Chapter 2 in (3) inserted "76-13-150" in list of statutory references. Amendment effective July 1, 2008, and terminates June 30, 2009.

2007 Special Session Amendment: Chapter 6 in (3) inserted "section 2, Chapter 6, Special Laws of May 2007" in list of statutory references. Amendment effective June 1, 2007, and terminates July 1, 2008.

2007 Amendments — Composite Section: Chapter 89 in (3) inserted "15-39-110" in list of statutory references. Amendment effective March 30, 2007.

Chapter 121 in (3) deleted "15-1-113" from list of statutory references. Amendment effective April 5, 2007.

Chapter 230 in (3) inserted "7-4-2502" in list of statutory references. Amendment effective July 1, 2007.

Chapter 247 in (3) inserted "77-1-108" in list of statutory references. Amendment effective April 26, 2007.

Chapter 305 in (3) inserted "19-20-607" in list of statutory references. Amendment effective July 1, 2007.

Chapter 306 in (3) inserted "19-21-203" in list of statutory references. Amendment effective July 1, 2007.

Chapter 308 in (3) inserted "10-1-1202" in list of statutory references. Amendment effective July 1, 2007.

Chapter 309 in (3) inserted "5-11-120" in list of statutory references. Amendment effective July 1, 2007.

Chapter 311 in (3) inserted "10-1-1303" in list of statutory references. Amendment effective July 1, 2007.

Chapter 327 in (3) inserted "15-1-218" in list of statutory references. Amendment effective July 1, 2007.

Chapter 432 in (3) deleted "15-38-202" from list of statutory references. Amendment effective July 1, 2007.

Clarification of 2005 Contingent Termination: Section 73, Ch. 44, L. 2007, amended sec. 14, Ch. 464, L. 2005, a termination date section, in order to clarify that the amendments to 19-6-709, the insertion of the reference to [section 1] [19-6-410] in 17-7-502, and [section 1] [19-6-410] terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709. Amendment effective October 1, 2007.

Retroactive Applicability: Section 4, Ch. 121, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to reimbursement payments after December 31, 2001."

Legislative Findings: Section 1, Ch. 230, L. 2007, provided: "The legislature finds that:

(1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;

(2) the county attorney workloads vary greatly from county to county;

(3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation."

2005 Amendments — Composite Section: Chapter 223 in (3) deleted "2-15-151" from list of statutory references and inserted "90-1-115" in list of statutory references. Amendment effective December 31, 2006.

Chapter 314 in (3) inserted "23-4-105", "23-4-202", "23-4-204", "23-4-302", and "23-4-304" in list of statutory references. Amendment effective July 1, 2007.

Chapter 324 in (3) deleted "16-11-404" from list of statutory references and inserted "16-11-509" in list of statutory references. Amendment effective July 1, 2005.

Chapter 327 in (3) deleted "23-5-631" from list of statutory references. Amendment effective July 1, 2005.

Chapter 421 in (3) inserted "44-1-504" in list of statutory references. Amendment effective January 1, 2006.

Chapter 464 in (3) inserted "19-6-404" and "19-6-410" in list of statutory references. Amendment effective July 1, 2005.

Chapter 482 in (3) inserted "41-5-2011" in list of statutory references. Amendment effective April 28, 2005.

Chapter 524 in (3) inserted "15-70-601" in list of statutory references. Amendment effective July 1, 2005.

Chapter 525 in (3) inserted "15-70-369" in list of statutory references. Amendment effective April 28, 2005.

Chapter 581 in (3) inserted "5-11-407" in list of statutory references. Amendment effective July 1, 2005.

Chapter 588 in (3) inserted "90-1-205" in list of statutory references. Amendment effective July 1, 2005.

Chapter 593 in (3) inserted "15-31-906" in list of statutory references. Amendment effective May 6, 2005, and terminates January 1, 2010.

Chapter 600 in (3) inserted "10-2-603" in list of statutory references. Amendment effective July 1, 2005.

Chapter 602 in (3) inserted "60-11-115" in list of statutory references. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Retroactive Applicability: Section 6, Ch. 482, L. 2005, provided "[This act] applies retroactively, within the meaning of 1-2-109, to unexpended funds in the accounts established under 41-5-130(6) on June 30, 2004."

Section 6, Ch. 581, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appropriations made after January 1, 2003."

Severability: Section 14, Ch. 593, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 43 in (3) inserted "69-3-870" in list of statutory references. Amendment effective February 26, 2003.

Chapter 140 in (3) inserted "53-24-108" in list of statutory references. Amendment effective July 1, 2003.

Chapter 353 in (3) inserted "53-1-109" in list of statutory references. Amendment effective October 1, 2003.

Chapter 355 in (3) inserted "77-2-362" in list of statutory references. Amendment effective April 17, 2003.

Chapter 397 in (3) inserted "16-11-404" in list of statutory references. Amendment effective April 17, 2003.

Chapter 481 in (3) deleted "90-6-710" from list of statutory references. Amendment effective July 1, 2005.

Chapter 522 in (3) substituted "15-36-332" for "15-36-324" in list of statutory references. Amendment effective April 26, 2003.

Chapter 533 in (3) inserted "61-3-415" in list of statutory references. Amendment effective July 1, 2003.

Modification of Termination Date: Section 135, Ch. 114, L. 2003, amended sec. 17, Ch. 414, L. 2001, by changing the termination of the reference to 2-15-151 from December 31, 2006, to June 30, 2005.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

Section 17, Ch. 397, L. 2003, was a severability clause.

Retroactive Applicability: Section 21, Ch. 397, L. 2003, provided: "The legislature intends that [section 13 and 15] [16-11-404 and 17-7-502] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act]." Effective April 17, 2003.

Section 21, Ch. 522, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002."

Saving Clause: Section 19, Ch. 522, L. 2003, was a saving clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2002 Amendments — Composite Section: Chapter 10 in (3) inserted "20-9-622" in list of statutory references. Amendment effective August 16, 2002.

Chapter 13 in (3) deleted "23-5-136" from list of statutory references. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendments — Composite Section: Chapter 7 in (3) deleted "15-34-115" from list of statutory references. Amendment effective October 1, 2001.

Chapter 414 in (3) inserted "2-15-151" in list of statutory references. Amendment effective April 28, 2001, and terminates December 31, 2006.

Chapter 500 in (3) inserted "15-1-113" in list of statutory references. Amendment effective January 1, 2002.

Chapter 554 in (3) inserted "20-9-534" in list of statutory references and deleted "81-5-111" from list of statutory references. Amendment effective July 1, 2001.

Chapter 567 in (3) inserted "80-5-510" in list of statutory references. Amendment effective October 1, 2001.

Chapter 574 in (3) inserted "15-1-121" in list of statutory references and deleted "15-31-702", "16-1-404", "16-1-406", "16-1-411", "19-6-709", "23-5-610", "67-3-205", and "77-1-505" from list of statutory references. Amendment effective July 1, 2001.

Chapter 585 in (3) deleted "3-5-901" from list of statutory references. Amendment effective July 1, 2002.

Chapter 594 in (3) inserted "17-3-241" in list of statutory references. Amendment effective January 1, 2002.

Applicability: Section 16, Ch. 414, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Saving Clause: Section 14, Ch. 567, L. 2001, was a saving clause.

2000 Amendment: Chapter 10 in (3) inserted "15-35-108" and "90-6-710" in list of statutory references; and made minor changes in style. Amendment effective May 22, 2000, and terminates June 30, 2005.

1999 Amendments — Composite Section: Chapter 51 in former temporary version in (3) deleted "20-8-111" from list of statutory references and inserted "77-1-505".

In former July 1, 2008, version in (3) substituted "16-1-406" for "[16-1-406]" and deleted "15-30-195", "17-5-404", "17-5-804", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "82-11-136", "85-1-220", "90-7-220", and "90-7-221" from list of statutory references; and made minor changes in style. Amendment effective March 15, 1999.

Chapter 83 inserted "80-11-518" in list of statutory references. Amendment effective March 16, 1999.

Chapter 360 in (3) inserted "19-20-604" in list of statutory references. Amendment effective July 1, 1999.

Chapter 389 in (3) deleted "15-30-195", "16-11-308", "20-8-111", "39-71-907", "39-71-2321", "77-1-131", "80-2-103", "85-20-402", "90-3-301", "90-4-215", and "90-6-331" from list of statutory references and in former temporary version inserted "77-1-505". Amendment effective July 1, 1999.

Chapter 497 in (3) deleted "15-38-202" from list of statutory references. Amendment effective July 1, 2014. (Amendment rendered ineffective by Ch. 432, L. 2007.)

Chapter 554 in (3) deleted "15-36-325" from list of statutory references. Amendment effective January 1, 2000.

Chapter 563 in (3) inserted "15-34-115" and "90-3-1003" in list of statutory references. Amendment effective July 1, 1999.

1999 Purported Amendments: Section 22, Ch. 285, L. 1999, purported to insert references in (3) to sec. 1 and sec. 26, but sec. 1 and sec. 26 were voided by sec. 170(2), Ch. 584, L. 1999, a coordination section.

Chapter 426 purported to insert a reference in (3) to sec. 20, but sec. 20 was voided by sec. 170(1)(a)(i), Ch. 584, L. 1999, a coordination section.

Chapter 556 purported to insert a reference in (3) to sec. 15, but sec. 15 was voided by sec. 170(1)(b), Ch. 584, L. 1999, a coordination section.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Section 36, Ch. 556, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 37, Ch. 556, L. 1999, was a severability clause.

1997 Amendments: Chapter 42 in (3) deleted "17-5-424" from list of statutory references. Amendment effective March 12, 1997.

Chapter 276 in (3) deleted "39-71-2504" from list of statutory references. Amendment effective July 1, 1997.

(Temporary version) Chapter 422 in (3) deleted "16-1-410", "17-5-404", "17-5-424", "17-5-804", "17-6-201", "19-19-205", "20-9-361", "32-1-537", "50-5-232", "50-40-206", "53-6-150", "60-2-220", "76-12-123", "82-11-136", "85-1-220", "90-3-301", "90-7-220", and "90-7-221" from list of statutory references and inserted "16-1-406". Amendment effective July 1, 1997.

(Version effective July 1, 2008) In (3) deleted "15-1-111", "20-8-111", and "76-12-123" from list of statutory references and inserted "77-1-505". Amendment effective July 1, 2008.

Chapter 445 in (3) deleted "19-9-1007" from list of statutory references. Amendment effective July 1, 1997.

Chapter 461 in (3) inserted "77-1-131" in list of statutory references. Amendment terminates October 1, 2003.

Chapter 466 in (3) inserted "15-36-324" and "15-36-325" in list of statutory references. Amendment effective July 1, 1997.

Chapter 469 in (3) inserted "22-3-1004" in list of statutory references. Amendment effective May 1, 1997.

Chapter 480 in (3) inserted "42-2-105" in list of statutory references.

Chapter 523 in (3) inserted "87-1-513" in list of statutory references.

Chapter 532 in (3) deleted "2-9-202", "2-18-812", "17-6-201", and "19-2-502" from list of statutory references and inserted "15-36-324", "15-36-325", "17-3-222", "19-3-319", "19-9-702", "19-13-604", and "19-13-1006 (deleted pursuant to sec. 39(2)(b), Ch. 532, L. 1997.)". Amendment effective July 1, 1997.

Chapter 549 in (3) deleted "90-3-301" from list of statutory references. Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 276, L. 1997, provided: "WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, terminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of $355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included $129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as $50 million each year; and

WHEREAS, the surplus of $231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to $109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated $200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated $127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, the State Fund shall, no later than June 30, 1998, transfer $63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to policyholders; and

WHEREAS, the $20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the $20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to Haag v. Montana Schools Group Insurance Authority, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for accepting or denying a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with the time limitations does not constitute acceptance of the claim."

Severability: Section 32, Ch. 276, L. 1997, was a severability clause.

Section 21, Ch. 469, L. 1997, was a severability clause.

Section 172, Ch. 480, L. 1997, was a severability clause.

Code Commissioner Corrections: (1) Chapter 422 (version effective July 1, 2008) in (3) the Code Commissioner inserted the bracketed cite to 16-1-406 and deleted the reference to 16-1-410. The cite to 16-1-406 was amended into the temporary version of this section and the reference to 16-1-410 was deleted from the temporary version but apparently through error 16-1-406 was not amended into the permanent version and 16-1-410 was not deleted.

(2) Chapter 532 repealed 19-18-513 and 19-18-606. The citations to the sections were inadvertently not stricken from this section. Pursuant to the authority contained in sec. 314, Ch. 42, L. 1997, the Code Commissioner has deleted the references to the repealed sections.

Termination: Section 5, Ch. 461, L. 1997, provided: "[This act] terminates October 1, 2003."

Applicability: Section 173, Ch. 480, L. 1997, provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 7, and Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Coordination: Pursuant to sec. 39(1)(b), Ch. 532, L. 1997, a coordination section, a reference to 19-3-319 was included in the list of statutory references in subsection (3) of 17-7-502.

Pursuant to sec. 39(2), Ch. 532, L. 1997, a coordination section, the internal reference to 19-13-1006 in 17-7-502 was removed.

Saving Clause: Section 14, Ch. 549, L. 1997, was a saving clause.

1995 Amendments: Chapter 18 in (3) deleted "15-25-123" and "19-15-101" from list of statutory references.

Chapter 29 in (3) inserted "15-30-195" in list of statutory references. Amendment effective July 1, 1995, and terminates July 1, 2001.

Chapter 176 in (3) inserted "10-3-310" in list of statutory references.

Chapter 291 in (3) inserted "20-8-107" in list of statutory references. Amendment effective March 30, 1995.

Chapter 429 in (3) deleted "20-26-1403" from list of statutory references.

Chapter 439 in (3) inserted "16-11-308" in list of statutory references.

Chapter 442 in (3) deleted "17-5-704" from list of statutory references. Amendment effective July 1, 1995.

Chapter 446 in (3) deleted "15-25-123" from list of statutory references. Amendment effective January 1, 1996.

Chapter 451 in (3) deleted "15-36-112" from list of statutory references. Amendment effective January 1, 1996.

Chapter 502 in (3) inserted "53-6-703" in list of statutory references. Amendment effective July 1, 1995.

Chapter 509 in (3) deleted "15-25-123", "17-5-704", "17-6-409", "20-4-109", "23-2-823", "27-12-206", "61-2-107", "75-5-507", "77-1-808", and "80-11-310" from list of statutory references. Amendment effective July 1, 1995.

Chapter 526 in (3) inserted "50-4-623" in list of statutory references. Amendment effective April 25, 1995.

Chapter 553 in (3) inserted "75-6-214" in list of statutory references. Amendment effective April 27, 1995.

Chapter 557 in (3) inserted "90-7-221" in list of statutory references. Amendment effective April 26, 1995.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 10 in (3) inserted "15-70-101" in list of statutory references. Amendment effective December 20, 1993.

Chapter 36 in (3) deleted "20-6-406" from list of statutory references. Amendment effective July 1, 1994.

Retroactive Applicability: Section 22, Ch. 10, Sp. L. November 1993, provided that this section applies retroactively to July 1, 1993.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendments: Chapter 46 in (3) inserted "17-6-201" in list of statutory references.

Chapter 69 in (3) inserted "80-2-222" in list of statutory references. Amendment effective February 22, 1993.

Chapter 107 in (3) inserted "17-3-106" and "17-6-101" in list of statutory references. Amendment effective July 1, 1993.

Chapter 108 in (3) inserted "81-5-111" in list of statutory references.

Chapter 127 in (3) inserted "60-2-220" in list of statutory references.

Chapter 195 in (3) deleted "61-5-121" from list of statutory references.

Chapter 234 in (3) inserted "5-13-403" in list of statutory references. Amendment effective March 31, 1993.

Chapter 265 in (3) inserted "19-2-502" in and deleted "19-5-404", "19-8-504", "19-9-702", and "19-13-604" from list of statutory references. Amendment effective July 1, 1993.

Chapter 330 in (3) inserted "3-5-901" in list of statutory references. Amendment effective April 13, 1993.

Chapter 389 in (3) inserted "50-40-206" in list of statutory references.

Chapter 395 in (3) inserted "32-1-537" in list of statutory references.

Chapter 415 in (3) inserted "50-5-232" in list of statutory references.

Chapter 450 in (3) deleted "19-8-504" from list of statutory references. Amendment effective July 1, 1993.

Chapter 452 in (3) inserted "80-4-416" in list of statutory references. Amendment effective July 1, 1993.

Chapter 492 in (3) inserted "61-2-107" in list of statutory references. Amendment effective July 1, 1993.

Chapter 526 in (3) inserted "20-26-1403" in list of statutory references. Amendment effective April 24, 1993.

Chapter 534 in (3) inserted "90-14-107" in list of statutory references. Amendment effective April 24, 1993, and terminates July 1, 1995.

Chapter 555 in (3) inserted "39-71-503; 39-71-907" in list of statutory references. Amendment effective July 1, 1993.

Chapter 578 in (3) inserted "23-2-823" in list of statutory references.

Chapter 581 in (3) deleted "13-37-304" from list of statutory references. Amendment effective April 28, 1993.

Chapter 605 in (3) deleted "15-70-101" from list of statutory references. Amendment effective July 1, 1993.

Chapter 613 in (3) inserted "15-38-202" in list of statutory references. Amendment effective July 1, 1993.

Chapter 625 in (3) inserted "18-11-112" in list of statutory references. Amendment effective July 1, 1993.

Chapter 630 in (3) inserted "39-71-2321" in list of statutory references. Amendment effective July 1, 1993.

Chapter 635 in (3) inserted "85-2-707" (renumbered 85-10-402) in list of statutory references.

Purported 1993 Amendment — Coordination: Section 13(1), Ch. 352, L. 1993, provided: "If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void." House Bill No. 92 was approved as Ch. 625, L. 1993, and contained the provisions alluded to in the coordination instruction. Chapter 352 inserted references in the (3) list of statutory references to sections 4 and 5 of Ch. 352, L. 1993, which were enacted but subsequently rendered void by the enactment of Ch. 625, L. 1993. The effect was that this section, although purportedly amended by sec. 11, Ch. 352, was not actually amended by that chapter.

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-817(4)] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' retirement system [now game wardens' and peace officers' retirement system] who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

Severability: Section 12, Ch. 534, L. 1993, was a severability clause.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Severability: Section 15, Ch. 630, L. 1993, was a severability clause.

Saving Clause: Section 16, Ch. 630, L. 1993, was a saving clause.

Preamble: The preamble attached to Ch. 10, Sp. L. January 1992, provided: "WHEREAS, Chapter 823, Laws of 1991, provided, among other things, for adjustment payments to retirees of state, local, and teacher retirement systems who are also Montana residents; and

WHEREAS, the first adjustment payments were intended to be made for the 1991 tax year and to be payable to retirees by June 1, 1992; and

WHEREAS, the language of section 5, Chapter 823, Laws of 1991, which provides for the payment of the retirement adjustments by June 1 of each year, read together with the May 24, 1991, effective date of Chapter 823 created confusion and a question of whether the adjustment payments were required to be paid beginning June 1, 1991, for the 1990 tax year, which was not the intended result; and

WHEREAS, the additional, unintended payments have not been made at this time; and

WHEREAS, the impact on the general fund of beginning the adjustment payments a year earlier than intended is estimated to be approximately $2.9 million; and

WHEREAS, this act is intended as a curative amendment to Chapter 823, Laws of 1991, to clarify that the intent of the 52nd Legislature in enacting Chapter 823, Laws of 1991, was to make the first adjustment payments beginning June 1, 1992.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to amend the effective date and applicability date of Chapter 823, Laws of 1991."

Effective Date — Nonretroactive Applicability: Section 1, Ch. 10, Sp. L. January 1992, provided that the amendment to this section that inserted a reference to 19-15-101 in (3) was effective July 1, 1991, and removed the provision that made the section apply retroactively to tax years beginning after December 31, 1990. Amendment effective January 21, 1992.

1991 Amendments: Chapter 16 in (3) deleted reference to section 13, House Bill No. 861, Laws of 1985; and made minor changes in style.

Chapter 344 in (3) inserted reference to 19-5-404. Amendment effective April 4, 1991.

Chapter 370 in (3) inserted reference to 85-1-220. Amendment effective July 1, 1991.

Chapter 394 in (3) inserted reference to 20-26-1503. Amendment effective July 1, 1991.

Chapter 493 in (3) inserted reference to 37-43-204. Amendment effective April 20, 1991.

Chapter 495 in (3) inserted reference to 20-4-109. Amendment effective July 1, 1991.

Chapter 567 in (3) inserted reference to 19-6-709. Amendment effective July 1, 1991.

Chapter 571 in (3) deleted reference to 90-4-613. Amendment effective April 23, 1991.

Chapter 575 in (3) inserted reference to 80-11-310. Amendment effective July 1, 1991.

Chapter 600 in (3) inserted reference to 75-5-507. Amendment effective July 1, 1991.

Chapter 602 in (3) inserted reference to 17-6-409. Amendment effective July 1, 1991.

Chapter 609 in (3) inserted reference to 77-1-808. Amendment effective March 1, 1992.

Chapter 641 in (3) inserted reference to 15-23-706. Amendment effective July 1, 1991.

Chapter 647 in (3) inserted references to 23-5-136 and 23-5-631. Amendment effective July 1, 1991.

Chapter 690 in (3) inserted references to 44-12-206 and 44-13-102. Amendment effective July 1, 1991.

Chapter 701 in (3) deleted reference to 61-2-406. Amendment effective July 1, 1991.

Chapter 748 in (3) inserted reference to 22-3-811. Amendment effective May 15, 1991, and terminates June 30, 1993, pursuant to sec. 18, Ch. 748, L. 1991.

Chapter 787 in (3) inserted references to 17-5-704 and 17-7-304. Amendment effective July 1, 1991.

Chapter 819 in (3) inserted reference to 90-7-220. Amendment effective May 24, 1991.

Chapter 823 in (3) inserted reference to 19-15-101. Amendment effective July 1, 1991, pursuant to sec. 1, Ch. 10, Sp. L. January 1992.

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account." The statutory appropriation contained in 19-6-709 was deleted by Ch. 574, L. 2001.

1989 Special Session Amendments: Chapter 10 in (3) inserted reference to 15-1-111. Amendment effective July 25, 1989, and applies to tax years beginning after December 31, 1989.

Chapter 11 in (3) inserted reference to 20-9-361. Amendment effective July 1, 1990.

1989 Amendments: Chapter 62 in (3) inserted reference to 61-5-121. Amendment effective March 10, 1989.

Chapter 262 in (3) inserted reference to 27-12-206. Amendment effective January 1, 1990.

Chapter 316 in (3) deleted references to 90-3-302 and 90-3-412. Amendment effective March 24, 1989.

Chapter 324 in (3) inserted reference to 61-2-406. Amendment effective July 1, 1989.

Chapter 408 in (3) inserted reference to 23-5-1016 (renumbered 23-7-301). Amendment effective April 3, 1989.

Chapter 473 in (3) inserted reference to 90-4-613. Amendment effective April 8, 1989.

Chapter 528 in (3) inserted reference to 75-11-313. Amendment effective July 1, 1989.

Chapter 530 in (3) inserted reference to 82-11-161. Amendment effective July 1, 1989.

Chapter 628 in (3) deleted references to 20-4-109, 33-31-212, 33-31-401, 75-7-305, 80-2-228, and 90-15-103. Amendment effective July 1, 1989.

Chapter 642 in (3) inserted references to 23-5-306, 23-5-409, and 23-5-612.

Chapter 672 in (3) inserted references to 15-37-117 and 90-6-331. Amendment effective May 16, 1989.

Chapter 678 in (3) inserted reference to 75-5-1108. Amendment effective July 1, 1989.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

1987 Amendments: Inclusion of the following sections in subsection (3) was made by the cited 1987 session law chapters: 23-5-1027 (renumbered 23-7-402) by Ch. 161; 53-6-150 by Ch. 164; 82-11-136 by Ch. 265; 67-3-205 by Ch. 453; sec. 1, Ch. 454, L. 1987, by Ch. 454; 33-31-212 and 33-31-401 by Ch. 457; 76-12-123 by Ch. 460; 90-3-412 by Ch. 461; 20-4-109 by Ch. 465; 15-25-123 by Ch. 563; 23-5-610 by Ch. 603; 15-65-121 by Ch. 607; 39-71-2504 by Ch. 664; 90-9-306 by Ch. 665; and 90-4-215 by HB 621. Section 23-5-1027 (renumbered 23-7-402) was inserted to reflect codification instructed by sec. 28, Ch. 669, L. 1985. Chapter 603 deleted reference to 23-5-612.

Code Commissioner Correction: Section 21, Ch. 461, L. 1987, erroneously referred to sec. 7, Ch. 461, L. 1987, as the section of the chapter providing a statutory appropriation. The statutory appropriation is actually contained in sec. 12, Ch. 461, L. 1987, codified as 90-3-412 (now repealed). The Code Commissioner has inserted the correct reference in subsection (3) to reflect the chapter content.

Severability: Section 27, Ch. 401, L. 1987, was a severability section.

1985 Amendments: In (3) Ch. 244 inserted reference to 75-7-305; Ch. 395 inserted reference to 90-15-103; Ch. 635 inserted reference to 10-4-301; Ch. 688 inserted reference to 37-51-501; Ch. 701 inserted references to 90-3-301 and 90-3-302; Ch. 720 inserted reference to 23-5-612; HB 861 inserted references to 17-5-424 and Sec. 13, HB 861; HB 922 inserted reference to 75-1-1101.

Attorney General's Opinions

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992).

CHAPTER 8
DISBURSEMENT AND EXPENDITURE

Part 1
Limits on Disbursements and Expenditures

17-8-101. Appropriation and disbursement of money from treasury.

Compiler's Comments

2019 Amendment: Chapter 185 in (2) near beginning substituted "custodial fund type" for "agency fund type". Amendment effective July 1, 2019.

2013 Amendment: Chapter 120 in (5) deleted former last sentence that read: "The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section"; and in (7) substituted "legislative fiscal analyst" for "legislative finance committee" and inserted last sentence requiring report to be provided in electronic format. Amendment effective July 1, 2013.

2009 Amendment: Chapter 225 in (8) in second sentence after "fund that" substituted "is required by law to transfer money to the general fund or to any other appropriated fund" for "transfers its ending fund balance to the general fund"; and made minor changes in style. Amendment effective April 16, 2009.

2001 Amendments — Composite Section: Chapter 34 in (2) near beginning of introductory clause after "internal service fund type" substituted "private purpose trust fund type" for "expendable trust fund type". Amendment effective July 1, 2001.

Chapter 569 in (2)(b) at end after "disbursement" inserted "if a subclass is established on the state financial system". Amendment effective July 1, 2001.

1999 Amendment: Chapter 20 in (8) inserted second sentence providing that an enterprise fund that transfers its ending balance to the general fund is subject to appropriation; and made minor changes in style. Amendment effective February 17, 1999.

Applicability: Section 5, Ch. 20, L. 1999, provided: "[This act] applies to fiscal years beginning on or after July 1, 2001."

1997 Amendments: Chapter 42 in (1), at beginning, deleted "Except as provided in subsection (5)"; at beginning of (2) inserted "Subject to the provisions of subsection (8)"; at beginning of former (3) deleted "Subject to the provisions of subsection (8)"; in (7), in first sentence after "service fund", deleted "created after July 1, 1995"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 347 in (1), near end after "subsection (3)", substituted "may" for "must"; deleted former (6) that read: "The office of budget and program planning shall include in the budget submitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (1), at beginning, substituted "For purposes of complying with Article VIII, section 14, of the Montana constitution" for "Except as provided in subsection (5)"; in (2), near middle after "expendable trust fund type", substituted "agency fund type, and" for "nonexpendable trust fund type, pension trust fund type" and near end, after "donation", deleted "and agency fund type"; inserted (2)(a) allowing payment by appropriation; inserted (3) regarding the pension trust fund type; in (4), at beginning, deleted "Subject to the provisions of subsection (8)"; in (7), at beginning of first sentence, substituted "The creation of" for "Any" and after "service fund" deleted "created after July 1, 1995"; in (8) inserted second sentence requiring that payment of funds into an internal service fund be authorized by law; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 556 in (1), at beginning, inserted exception clause and after "donation)" deleted "the enterprise fund type, the internal service fund type"; in (2) inserted "enterprise fund type, internal service fund type"; in (3) inserted "Subject to the provisions of subsection (8)"; inserted (5) regarding deposits in internal service fund type; inserted (6) regarding submissions to Legislature; inserted (7) regarding new accounts in enterprise fund or internal service fund; inserted (8) requiring appropriation of funds; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 433 near beginning of (1), after "fund type", inserted exception clause; in (2), near middle after "pension trust fund type", inserted "the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation"; inserted (4) regarding interagency transfer authority to expend appropriated money; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (1), inserted "type" after "fund" in four places; and in (2) substituted "debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, and agency fund type" for "debt service fund and the trust and agency fund".

1981 Amendment: Substituted new names for treasury funds because of name changes in Ch. 28, L. 1981; deleted former subsection (2) relating to appropriations from the old revolving fund.

Attorney General's Opinions

Appropriations — Legislative Control Over Marketing Assessment Funds: Although the control of the Legislature over appropriations to state agencies is based upon broad constitutional provisions, certain money may either be exempt from the appropriation process or the purposes for which that money may be appropriated may be limited by statute. Thus, the Legislature may control appropriations from the Wheat Marketing and Research Account, but those appropriations are subject to the statutorily stated purposes of the Account. Any attempt by the Legislature in an appropriation bill to alter the purposes for which appropriations from the Account are made is subject to the constitutional restriction that the purpose of legislation must be clearly stated in the title of the bill. 39 A.G. Op. 3 (1981).

17-8-103. Expenditures in excess of appropriation unlawful — conditions in appropriation acts.

Compiler's Comments

1983 Amendments: Chapter 536, near middle of (1), substituted ", including any approved, authorized, and valid budget amendment," for "or authorized budget amendment"; and at end of (1) made similar change.

Subsection (2) was enacted by sec. 1, Ch. 693, L. 1983. The codification instruction was to include sec. 1, Ch. 693 as an integral part of Title 17, ch. 8. The Code Commissioner codified section as subsection (2) of this section because of close coherence of the subject matter.

Preamble: The preamble to Ch. 693, L. 1983, which enacted subsection (2) provided: "WHEREAS, Article VIII, Section 12, Constitution of Montana requires the legislature to insure by law the strict accountability of all revenue received and money spent by state and local governments; and

WHEREAS, Article VIII, Section 14, Constitution of Montana prohibits the payment of money, except for interest on the public debt, from the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer."

Case Notes

Additional Expenditures: Under former law, mandate was issued by the Supreme Court to compel State Board of Public Welfare to present to the state Board of Examiners forthwith written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County. State ex rel. Kidder v. Fouse, 137 M 483, 353 P2d 755 (1960).

17-8-104. Civil penalties and remedies for violation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (1)(a), deleted from first sentence a provision that the listed persons violating 17-8-103 are guilty of a misdemeanor punishable by $50 to $500, 30 days to 6 months in jail, or both, and inserted second sentence listing how complaint may be brought; in second sentence of (1)(b) changed phraseology and inserted "the legislature by joint resolution"; inserted (2) allowing combining of certain complaints; and inserted (3) allowing single or combination remedies and penalties.

17-8-105. Definitions applicable to expenditure limitation.

Compiler's Comments

1983 Amendment: In introductory clause of (2), substituted "special revenue fund type" for "earmarked fund" and substituted "capital projects fund type" for "bond proceeds and insurance clearance fund".

17-8-106. Expenditure limitation — exception.

Attorney General's Opinions

Expenditure Limits Not Extended to Future Biennial Budget Cycles: A County Commissioner questioned whether this section (enacted 1981) limited the power of subsequent Legislatures to appropriate funds by establishing a cap on expenditures in the 1981 budget biennium and for future biennial budget cycles. The Attorney General noted that, consistent with constitutional design, the Legislature lacks the power to pass a law that purports to establish binding legislative spending policy for future Legislatures. Each Legislature is vested with full legislative power, and there is no cap on state spending in the Montana Constitution. Thus, the 1981 enactment of this section placed no enforceable limits on the spending power of subsequent Legislatures. 51 A.G. Op. 4 (2005).

17-8-107. Limitations on spending deferred inflows of resources — exception — definition.

Compiler's Comments

2015 Amendment: Chapter 7 in (1) and (2) substituted "inflows of resources" for "revenue"; in (1) deleted second sentence that read: "For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year"; and inserted (3) defining "deferred inflows of resources". Amendment effective February 13, 2015.

1987 Amendment: At beginning of (1) inserted exception clause; and inserted (2) exempting costs of publication of magazine of western history.

17-8-108. Prohibited uses of public funds.

Compiler's Comments

Effective Date: Section 4, Ch. 491, L. 2023, provided: "[This act] is effective July 1, 2023."

Part 2
Claims

Part Attorney General's Opinions

Penalties for Fraudulent Benefits Claim — Specific Remedy Controlling Over General Remedy: Although 17-8-231 (now repealed) appears to provide a penalty for fraudulent claiming of unemployment insurance benefits, that statute is a general one which provides a penalty in conflict with the more specific penalty provided under 39-51-3201. Because the more particular statute must control to the extent of any inconsistency, the Department of Labor and Industry is limited to recovery of those amounts of benefits wrongfully received by the claimant. The Department may not sue a claimant for all benefits paid to the claimant or for the additional penalty provided in 17-8-231 (now repealed), but may disqualify the claimant under 39-51-3201 from receipt of future benefits. 40 A.G. Op. 21 (1983).

17-8-201. Authorizations for disbursements — submission of claim to department of administration.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), at end, substituted "the department shall notify the agency of any disapproved claim" for "all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: At end of (1), after "administration", deleted "and must bear the signature of the authorizing officer or employee". Amendment effective March 14, 1989.

Retroactive Applicability: Section 3, Ch. 87, L, 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to claims submitted electronically to the department of administration on or after January 1, 1989."

17-8-202. Preaudit and transmittal of claims.

Compiler's Comments

1997 Amendment: Chapter 48 in (2), in second sentence, substituted "the agency shall transmit" for "the department shall audit it and, if it is a valid claim, transmit"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendments: Chapter 87 at beginning of second sentence of (1), after "However", deleted "all state agencies shall submit copies of all claims to", in third sentence, after "documents", inserted "that support claims", and made minor change in phraseology. Amendment effective March 14, 1989.

Chapter 353 at beginning of (2) substituted "An office or entity of the executive, legislative, or judicial branch of state government" for "The department".

Retroactive Applicability: Section 3, Ch. 87, L, 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to claims submitted electronically to the department of administration on or after January 1, 1989."

1985 Amendment: In second sentence of (2), before "claim", deleted "liquidated"; and deleted former (3) that read: "An unliquidated claim submitted to the department shall be transmitted to the board of examiners to be processed as provided by law."

17-8-211. Notice required for assignment of claims against state.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "department of administration" or "department" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

No Application of Statute to Leases — Time for Filing — Prejudice Required: Where the State executed a 6-year lease of certain communications equipment with the plaintiff's assignor in 1973 and, prior to notice of the assignment of the lease to the plaintiff, unilaterally terminated the lease in 1977, the court did not err in holding the State liable for damages for termination of the lease. The State cannot rely for a defense upon the failure of the assignor to give notice of the assignment to the State because: (1) 17-8-211(1) applies to assignments of "claims", not leases; (2) the statute does not require filing within a time certain, and filing was eventually made prior to suit; and (3) the State can claim no prejudice, as it had actual notice of the assignment. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 378 (1981).

17-8-242. Interest assessed on amounts due.

Case Notes

Claim Against the State — Employee Health Benefits Plan — Interest Calculated From Time of Court Decision Declaring Provision Unenforceable: The plaintiff's right to recover prejudgment interest did not vest until the Supreme Court's decision in Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 Mont. 423, 218 P.3d 475 (BCBS), which held for the first time that the state employee health benefits plan's coordination of benefits provision violated Montana's made-whole laws. The coordination of benefits provision at issue was enforceable under Montana law until the BCBS decision. Thus, the particular day on which the plaintiff's right to recover vested was 30 days after the Supreme Court's remittitur in BCBS. Diaz v. St., 2016 MT 270, 385 Mont. 220, 383 P.3d 206.

17-8-244. Exemptions.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) at end inserted "brought before a government agency or before a court. Interest in a proceeding subject to this subsection is governed by 18-1-404"; deleted former (4) that read: "(4) contracts entered into before October 1, 1983"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1995 Amendment: Chapter 530 inserted (2) providing that payment is timely if paid within 60 days after withdrawal of the product from bailment; and made minor changes in style. Amendment effective April 25, 1995, and terminates June 30, 1997.

Part 3
Warrants

17-8-301. State money — how expended by treasurer.

Compiler's Comments

1995 Amendment: Chapter 325 throughout section substituted "state treasurer" for "state auditor"; in second sentence of (1), after "upon the", substituted "state treasury" for "state treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In (1), at end of first sentence and near middle of second sentence, inserted references to authorization of electronic funds transfer; enacted (2) defining electronic funds transfer; and made minor changes in grammar, phraseology, and form. Amendment effective March 15, 1989.

17-8-302. Order in which warrants are drawn.

Compiler's Comments

Code Commissioner Correction: This section was not amended by Ch. 325, L. 1995. However, pursuant to the authority contained in sec. 73, Ch. 18, L. 1995, the Code Commissioner has substituted "treasurer's office" for "auditor's office" to conform to the function transfer contained in Ch. 325, L. 1995.

17-8-303. Warrants — presentation and cancellation.

Compiler's Comments

2011 Amendment: Chapter 82 in (2) in last sentence substituted "1 year" for "4 years"; and in (3) at beginning deleted "Three years and". Amendment effective July 1, 2011.

2007 Amendment: Chapter 46 in (2) in three places and in (3) in two places substituted reference to stale-dated warrant for reference to canceled warrant; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 34 in (2) near end of first sentence after "separate" substituted "private purpose trust fund account" for "expendable trust fund account". Amendment effective July 1, 2001.

1997 Amendment: Chapter 124 in (3), at end of first sentence, substituted "Title 70, chapter 9, part 8" for "Title 70, chapter 9, parts 1 through 3" and at end of second sentence substituted "70-9-815" for "70-9-310". Amendment effective July 1, 1997.

Severability: Section 33, Ch. 124, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 5 in first sentence of (2), near end, substituted reference to expendable trust fund account for reference to agency fund account; and made minor changes in style. Amendment effective January 26, 1995.

Chapter 325 throughout section substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of social and rehabilitation services"; at end of (2), after "warrant", deleted "in lieu thereof"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Retroactive Applicability: Section 11, Ch. 5, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 1994."

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Near end of (1)(a) substituted "6 months" for "1 year"; and near beginning of (3) inserted "and 6 months". Amendment effective March 15, 1989.

1987 Amendment: Inserted (1) requiring payment within specified time limits; in (1)(a), at beginning, inserted exception clause; inserted (1)(b) referring to warrants issued for Department of Social and Rehabilitation Services; and in (2) inserted reference to subsection (1).

Costs of Changes: Section 2, Ch. 84, L. 1987, provided: "The department of social and rehabilitation services [now department of public health and human services] is responsible for all costs associated with the changes to the existing warrant writing system and computer programs to implement the requirement that warrants funded to any extent with federal money be presented for payment within 180 days after the date of issue."

17-8-304. Payment and registry.

Compiler's Comments

1995 Amendment: Chapter 40 in (1) deleted former second sentence that read: "All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease"; and made minor changes in style.

17-8-305. Cost accounting for warrant.

Compiler's Comments

1995 Amendments: Chapter 325 near beginning substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 473 deleted former second and third sentences that read: "No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund"; in second sentence, after "collected for", substituted "operation of the state warrant system must" for "new or unforeseen programs may", after "credit of" substituted "an internal service fund" for "a state special revenue fund account", and at end substituted "state warrant system" for "new program"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to revolving fund.

17-8-306. Issuance of replacement warrant.

Compiler's Comments

2007 Amendment: Chapter 46 throughout section in six places before "warrant" substituted "replacement" for "duplicate"; in (1) at end of second sentence after "original" deleted "except that it must have plainly printed across its face the word "duplicate""; in (3) near middle after "indemnify" inserted "and hold harmless" and deleted former second sentence and (3)(a) and (3)(b) that read: "An indemnity agreement is not required if:

(a) the payee is:

(i) the United States government;

(ii) a state of the United States;

(iii) any agency, instrumentality, or officer of the United States government or of a state, county, city, consolidated government, town, district, or other political subdivision of a state or any officer thereof; or

(b) the owner or custodian is the state of Montana or any agency or officer of the state"; and made minor changes in style. Amendment effective October 1, 2007.

1997 Amendments: Chapter 48 in (1) deleted third sentence that read: "A duplicate warrant may not be issued or delivered unless the person entitled to receive it deposits with the state treasurer a bond in double the amount for which the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant"; deleted former (2) that read: "(2) A bond of indemnity is not required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) the owner or custodian is the state of Montana or any agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state treasurer has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and that as a result a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19;

(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26; or

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed"; in (2) substituted language concerning duplicate warrant and stop payment for "Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), a stop-payment order must be placed on the original warrant by the state treasurer"; in (3), in first sentence after "applies", substituted "for the issuance of a duplicate warrant" for "under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l)" and at end of (3) inserted "An indemnity agreement is not required if"; inserted (3)(a) and (3)(b) providing for when an indemnity agreement is not required for governmental entities; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 243 in (2)(k), before "student loan program", deleted "guaranteed"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 325 throughout section substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 5 inserted (2)(l) providing exemption from indemnity bond requirement for a state agency that approves the issuance of duplicate warrant and assumes the risk of cashing original warrant; in (3) and (4) inserted reference to subsection (2)(l); and made minor changes in style. Amendment effective December 16, 1993.

1991 Amendment: In (2)(e) increased amount from $100 to $300; inserted (2)(j) to require no indemnity bond of a public retiree; inserted (2)(k) to require no indemnity bond of a student financial aid recipient; and in (3) and (4) inserted references to subsections (2)(j) and (2)(k). Amendment effective March 20, 1991.

1987 Amendment: Inserted (2)(d) authorizing State Auditor to waive bond of indemnity in certain cases; and conformed internal references in (3) and (4).

1985 Amendment: Inserted (2)(h) exempting vendor or contractor doing business with state from indemnity bond requirement; and in (3) and (4) inserted reference to (2)(h).

17-8-308. Payment of interest — land grant warrants.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

17-8-311. Payments to local government entities — notice.

Compiler's Comments

2005 Amendment: Chapter 432 in (2)(a) near beginning inserted reference to state treasurer; inserted (2)(b) allowing payment by electronic funds transfer at the discretion of the state agency or treasurer if the entity receiving the payment has the technology; in (3) inserted three references to the state treasurer; and made minor changes in style. Amendment effective April 28, 2005.

17-8-312. Charges for services or supplies among agencies — valid claim.

Compiler's Comments

Effective Date: Section 14, Ch. 569, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 4
False Claims

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

Applicability: Section 14, Ch. 465, L. 2005, provided: "[This act] applies to causes of action arising after [the effective date of this act]." Effective October 1, 2005.

17-8-402. Definitions.

Compiler's Comments

2013 Amendment: Chapter 388 in definition of claim after "services" inserted clause concerning contracts and titles, in (a) inserted "or other representative", in (b) substituted "person" for "recipient", substituted "is to be spent or used on a governmental entity's behalf or to advance a governmental program or interest and if the governmental entity" for "issued from or was provided by a governmental entity", and inserted (b)(i) and (b)(ii) concerning governmental entity payment or reimbursement; inserted definitions of material, obligation, and state; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 in definition of government attorney deleted former (a) that read: "(a) the chief attorney for a governmental entity", after "general" deleted "with respect to the state", and after "except" inserted "for complaints involving"; in definition of knowingly inserted (b) providing that a specific intent to defraud is not required; in definition of person at end inserted "or other legal or business entity"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-403. False claims — procedures — penalties.

Compiler's Comments

2015 Amendment: Chapter 348 in (6)(b) substituted "2-6-1003" for "Title 2, chapter 6". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2013 Amendment: Chapter 388 in (1) in first sentence substituted "$5,500" for "$5,000" and "$11,000" for "$10,000" and after "sustains" deleted "because of the person's act"; in (1)(a) after "presented" deleted "to an officer or employee of the governmental entity"; in (1)(b) substituted "statement material to a false or fraudulent claim" for "statement to get a false or fraudulent claim paid or approved by the governmental entity"; in (1)(c) substituted current text for "conspires to defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity"; in (1)(d) substituted "knowingly delivers or causes to be delivered less than all of the property or money" for "with the intent to defraud the governmental entity or to willfully conceal the property, delivers or causes to be delivered less property or money than the amount for which the person receives a certificate or receipt"; in (1)(e) inserted "completely"; in (1)(g) substituted current text for "knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors"; in (2) substituted "$5,500" for "$5,000" and "$11,000" for "$10,000" and after "governmental entity sustains" deleted "because of the person's act"; inserted (6) concerning dismissal of actions and production of records; in (7) substituted current text for former text that read: "A person may not file a complaint or civil action:

(a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;

(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;

(c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or

(d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time"; inserted (8) and (9) concerning civil penalties and rights to conduct action; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 in (1) at beginning inserted exception clause, after "person" deleted "causing damages in excess of $500 to a governmental entity", after "liable" substituted language providing for civil penalty, damages, and costs for former language that read: "as provided in 17-8-410 and 17-8-411, for any of the following acts", in (1)(a), (1)(b), and (1)(c) after "false" inserted "or fraudulent", in (1)(d) after "entity and" substituted "with the intent to defraud the governmental entity or to willfully conceal property, delivers or causes" for "knowingly delivering or causing", in (1)(e) after "entity and" substituted "with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers" for "knowingly making or delivering" and after "receipt" substituted "without knowing that the information on the receipt is true" for "that falsely represents the property used or to be used", and in (1)(h) in three places after "false" inserted "or fraudulent" and near middle after "claim" inserted "or that the claim is fraudulent"; in (2)(a) substituted "shall assess a civil penalty of not less than $5,000 and not more than $10,000 for each act specified in this section, plus not less than two times" for "shall assess not less than two times", and after "act" deleted "along with costs and attorney fees, and may impose a civil penalty of up to $10,000 for each act. The court may not assess a civil penalty"; inserted (2)(b) providing for a person's liability to a governmental entity for expenses, costs, and attorney fees; in (5) at beginning substituted "person" for "private citizen"; in (5)(c) near middle after "unless the" substituted "person" for "private citizen"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-404. Limitation of actions.

Compiler's Comments

2013 Amendment: Chapter 388 inserted (3) concerning governmental entity intervention. Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 in (1) after "civil action" deleted "may not be", after "17-8-406" inserted "must be brought by the later of"; in (1)(a) at beginning substituted "6 years after the date on which the violation was committed" for "more than"; in (1)(b) near beginning substituted "when facts material to the right of action are known or reasonably should have been known by the official" for "on which an official", and at end deleted "discovers the act or"; in (2) at beginning inserted "In no event may an action brought pursuant to subsection (1)(b) be brought" and at end substituted "violation was committed" for "act occurred, whichever occurs first"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-405. Investigation and civil action by government attorney.

Compiler's Comments

2009 Amendment: Chapter 64 after "attorney" substituted "shall" for "may" and at end inserted "against any person who has violated or is violating 17-8-403"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-406. Complaint by person — civil action.

Compiler's Comments

Code Commissioner Correction: In (2) and (4) substituted "Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s)" for "Rule 4D" to reflect revisions adopted by Supreme Court Order No. AF 07-0157 dated April 26, 2011.

2009 Amendment: Chapter 64 in (1) substituted language authorizing a person to bring a suit for a violation of 17-8-403, requiring the suit to be in the governmental entity's name, and placing restrictions on dismissal of the action for former language that read: "A private citizen may file with the government attorney a notice alleging a violation of 17-8-403 against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations"; inserted (2) requiring copy of complaint and other material to be served on government attorney and requiring complaint to be sealed and not served until the court orders; in (3) in first sentence near beginning after "receiving" deleted "a notice and", after "complaint" inserted "and the material evidence and information", after "elect to" deleted "file a civil action and" and inserted language authorizing government attorney to proceed or decline to proceed with action, inserted second sentence providing that person bringing action may conduct action if government attorney declines, and in third sentence inserted "The government attorney" and at end substituted "during which the complaint remains under seal" for "for filing an action"; inserted (4) providing that defendant is not required to respond to complaint until 20 days after complaint is unsealed and served; in (5) in first sentence after "government attorney" substituted "proceeds with the action, the government attorney has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action" for "files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action" and inserted second sentence providing that a person bringing the action may continue as a party to the action; deleted former (4) that read: "(4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under 17-8-410 and 17-8-411 as if the government attorney had not intervened"; inserted (6)(a) regarding provision of certain copies to the government attorney or governmental entity by a person if the government attorney elects not to proceed with the action; inserted (6)(b) allowing the court to permit the attorney to intervene in the action; in (7) at beginning substituted "When a person" for "After a private citizen", after "civil action" inserted "pursuant to this section", and substituted "no person other than the government attorney may intervene or bring a related action" for "no other private citizen may file a civil action"; inserted (8) allowing the court to impose limitations on the person's participation; and made minor changes in style. Amendment effective July 1, 2009.

17-8-407. Dismissal of civil action.

Compiler's Comments

2009 Amendment: Chapter 64 near beginning after "dismiss a" deleted "private citizen's", after "civil action" substituted "notwithstanding the objection of the person who initiated the action if the government attorney has notified the person" for "for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney", and after "dismiss and" substituted "the court has given the person" for "must be given"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-410. Distribution of damages and civil penalty.

Compiler's Comments

2021 Amendment: Chapter 340 in (6) after "not awarded to the person" deleted "and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss"; inserted second sentence concerning distribution of remaining damages and civil penalties, and inserted last two sentences concerning reimbursement to the trust fund or program and proportionate distribution; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 388 in (5) substituted "planned and initiated the violation" for "planned, initiated, or knowingly participated in the violation". Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 deleted former (1) that read: "If an action is settled or the governmental entity or private citizen prevails in an action:

(a) filed by a governmental entity under 17-8-406(2) and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(b) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;

(c) and if a private citizen referred to in subsection (1)(a) or (1)(b) participated in the act or acts found to be in violation of 17-8-403, an award of damages and civil penalty to the private citizen are at the discretion of the court" and inserted (1) concerning percentage of the proceeds recovered and collected that is to be received by the person; inserted (2) providing guidelines for court award not to exceed 10%; inserted (3) requiring that any payment to a person bringing an action be made from settlement proceeds and providing that expenses, fees, and costs be awarded against the defendant; inserted (4) providing that if the government attorney does not proceed with an action the person bringing the action is entitled to not less than 25% or more than 30% of proceeds plus expenses; inserted (5) providing for reduction of amount to the person bringing an action if the person participated in the violation; in (6) near beginning after "awarded to" substituted "the person" for "a private citizen"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-411. Costs and attorney fees.

Compiler's Comments

2013 Amendment: Chapter 388 in fourth sentence after "entitled to" deleted "an amount or"; in fifth sentence after "attorney fees" deleted "which must be equitably apportioned against the person who brought the action and the governmental entity if a person and a governmental entity were coplaintiffs"; and inserted last sentence concerning defendant's fees and costs. Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 in first sentence at beginning substituted "The governmental entity that" for "A governmental entity in an action in which its attorney"; in second sentence after "outside counsel" substituted "is engaged by a government attorney" for "represents a governmental entity", after "awarded" substituted "to that counsel" for "to a governmental entity", after "incurred" deleted "by the governmental entity"; near beginning of fourth sentence substituted "person" for "private citizen", after "entitled to" inserted "an amount or reasonable expenses that the court finds to have been necessarily incurred, plus"; in fifth sentence at beginning substituted "A defendant in a civil action brought pursuant to this part" for "A person who is the subject of a civil action and", before "reasonable" substituted "defendant's" for "person's", after "against the" substituted "person who brought the action" for "private citizen", and after "if a" substituted "person" for "private citizen"; and made minor changes in style. Amendment effective July 1, 2009.

17-8-412. Retaliatory actions prohibited — remedies.

Compiler's Comments

2013 Amendment: Chapter 388 in (1) and (2) after "private entity" inserted "or person" and after "employee" inserted "agent, or contractor"; in (2) substituted "employment, agency, or contract because of the disclosure by the employee, agent, or contractor" for "employment because of the employee's disclosure"; deleted former (3) that read: "(3)(a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;

(ii) back pay plus interest on the back pay;

(iii) compensation for any special damages sustained as a result of the discrimination; and

(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

(b) An employee may file an action for the relief provided in this subsection (3)"; inserted (3) through (5) concerning relief and deadlines for civil actions; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

2009 Amendment: Chapter 64 in subsections (1), (2), and (3)(a) near beginning after "governmental entity" inserted "or private entity". Amendment effective July 1, 2009.

17-8-413. Settlement by government attorney.

Compiler's Comments

Effective Date: Section 13, Ch. 64, L. 2009, provided that this section is effective July 1, 2009.

17-8-416. Reporting.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 43, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 10, Ch. 388, L. 2013, provided: "[This act] is effective July 1, 2013."

Saving Clause: Section 8, Ch. 388, L. 2013, was a saving clause.

Severability: Section 9, Ch. 388, L. 2013, was a severability clause.

Applicability: Section 11, Ch. 388, L. 2013, provided: "[This act] applies to proceedings begun on or after July 1, 2013."

TITLE 18
PUBLIC CONTRACTS

CHAPTER 1
PUBLIC CONTRACTS GENERALLY

Chapter Case Notes

Cost of Overrun — Material Issue of Reliance on Plans: Kalispell argued that contract documents plainly advised all bidders to make their own determination as to the amount of material to be moved and not to rely on the figures on the city's plans and specifications. By entering into the contract, the bidders allegedly bound themselves to do the rough grading at the price bid and should get no additional compensation for overrun. However, the District Court rejected the city's argument that the plaintiffs' complaint, therefore, failed to state a claim and that there could be no issues of material fact before the District Court. Based on a recent line of cases from the Supreme Court, the District Judge determined that the fact finder had to hear the evidence in order to find whether or not the contractors justifiably relied on the plans. Stenerson v. Kalispell, 193 M 8, 629 P2d 773, 38 St. Rep. 938 (1981), followed in Clark Bros. Contractors v. St., 218 M 490, 710 P2d 41, 42 St. Rep. 1765 (1985).

Part 1
Preferences and General Matters

18-1-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 181 deleted definition of Montana-made that read: ""Montana-made" means manufactured or produced in this state and made with the:

(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or

(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401"; in definition of public agency inserted (ii) providing that a public agency does not include a political subdivision for the purposes of 18-1-102(1)(b); and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 inserted definition of written; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1987 Amendment: Inserted definitions of goods, Montana-made, nonresident bidder, public agency, and resident bidder.

18-1-102. State contracts to lowest bidder — reciprocity.

Compiler's Comments

2005 Amendment: Chapter 574 in (1) in introductory clause near end inserted exception clause. Amendment effective October 1, 2005.

2001 Amendment: Chapter 181 in (1) at beginning deleted "Except as provided in subsection (1)(b)"; in (1)(b) substituted language requiring a public agency to award a public contract without regard to residency unless a nonresident's state or country allows a preference for residents for former language that read: "a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) The transportation commission or the department of transportation may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:

(A) the equal and fair treatment of bids originating in the United States and in the foreign country;

(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(c) (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

(ii) However, a combination of preferences under this subsection (1)(c) may not exceed 5%"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendment: Chapter 306 at beginning of (1) inserted exception clause; inserted (1)(b) prohibiting department of transportation and transportation commission from entering into contracts for highway construction projects with bidders not headquartered in United States unless reciprocity agreement in place; and made minor changes in style. Amendment effective April 14, 1999.

Contingent Voidness: Section 3, Ch. 306, L. 1999, provided: "Contingent voidness. (1) If the federal government notifies the state in writing that the enforcement of [this act] places at risk this state's eligibility to receive federal funds for highway projects, then the bracketed language in [this act] is void pursuant to subsection (2).

(2) The bracketed language in [this act] is void on the date that the director of the department of transportation certifies to the governor in writing that the director has received written notice of the federal government's intention to terminate allocation of highway funds to Montana because of the enforcement of [this act]." On April 13, 1999, the federal government notified the state that the provisions of Senate Bill No. 330 (Ch. 306, L. 1999) are contrary to federal highway laws. On March 3, 2000, the director of the department of transportation certified to the governor that the written notice was received.

1991 Amendment: In (1)(a)(i) deleted language that gave a resident bidder preference over nonresident bidders equal to the greater of 3% or the percentage of preference the nonresident bidder would receive against nonresident bidders in his state of residence and inserted language allowing no preference except against a nonresident bidder from any state or country enforcing a preference for resident bidders. Amendment effective February 19, 1991.

1987 Amendment: Substituted existing text (see 1987 Session Law) for former text that read: "(1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or

produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

1985 Amendment: Inserted (3) referring to preference percentage of nonresident bidder's state of residence.

Case Notes

Misapplication of State Law Not Basis for Claim of Denial of Equal Protection: ISC argued that its allegations that the Department of Administration had applied the Montana Procurement Act in a discriminatory fashion in not awarding ISC a contract supported its claim that it had been denied equal protection. The Supreme Court held that ISC's claim failed because at most, it amounted to an allegation that state law was misapplied in an individual case and did not constitute invidious discrimination in violation of the equal protection clause. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

No Property Right Created When Government's Award of Contract Is Discretionary: ISC argued that the Department of Administration had violated its right to due process when the Department did not award ISC a contract that had been put out for bid. The Supreme Court held that a property right that would support a due process claim is not created when a state agency is not required to award a contract on a sufficiently objective basis. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Contractor Not Allowed to Submit Bid — Inability to Show Bid Would Have Been Lowest: Petri attempted to submit a hand-carried, written bid to state officials for a painting contract at Montana State University (now Montana State University-Bozeman). Petri arrived at the site of the bid opening several minutes after the announced closing of the time for submitting bids. As a result, the bid was rejected. The Supreme Court held that Petri cannot prove a violation of MSU's statutory duty to accept the lowest bid because he could not prove that the bid would have been the lowest given the fact that it was rejected from consideration by MSU. Petri v. Mont. St. Univ., 260 M 392, 860 P2d 154, 50 St. Rep. 1133 (1993).

Janitorial and Maintenance Services: Although this section provides percentage preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for Capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Bd. of Examiners, 153 M 220, 456 P2d 278 (1969).

"Responsible Bidder" Interpreted: The term "responsible bidder" as used in the phrase "lowest responsible bidder" does not refer to pecuniary responsibility only but includes judgment, skill, ability, capacity, and integrity. The officers entrusted with the duty of awarding a contract to the lowest responsible bidder must exercise official discretion in determining the question. They cannot be compelled by mandamus to award a contract to a particular bidder merely because he has offered the lowest bid or tendered a sufficient bond. State ex rel. Eaves v. Rickards, 16 M 145, 40 P 216 (1895).

Attorney General's Opinions

Acquisition of Resident Status for Preference Purposes: A joint venture may qualify for resident status as a partnership enterprise for purposes of the preference under this section, but 18-1-103 requires that a majority of the venture's partners must have been Montana residents for at least 1 year immediately prior to the involved bidding in order to acquire resident status. (See 2001 amendment.) 42 A.G. Op. 107 (1988).

Restriction of Competitive Bidding Process by Resident Bidder's Preference Prohibited: Both the federal circular A-102 (1981), incorporated into the regulations of the U.S. Department of Housing and Urban Development, and subsection (2)(b) of this section prohibit restriction of the competitive bidding process by resident bidder's preference for state and local contracts funded in part by grants-in-aid from that agency. 42 A.G. Op. 35 (1987), partially overruling 37 A.G. Op. 59 (1977).

Preference for Resident Bidder Construed: When a bid letting involves a resident using out-of-state materials, a resident using in-state materials, and a nonresident as the three lowest bidders, the resident bidder preference would not require awarding the bid to the resident using in-state materials if his bid was more than 3% higher than the lowest responsible nonresident bidder. (See 1991 and 2001 amendments.) 40 A.G. Op. 79 (1984).

Preference for Resident Contractors — Federal Funding: A county water and sewer district is required to apply a 3% preference to the lowest responsible resident bidder with respect to the entire contract cost regardless of the source of funds. (See 2001 amendment.) 37 A.G. Op. 59 (1977).

Service Contracts: Contracts for the preparation and service of meals need not be awarded by competitive bidding. 29 A.G. Op. 49 (1962).

18-1-103. Resident defined.

Compiler's Comments

2001 Amendment: Chapter 181 in (1) near beginning after "18-1-102" deleted "18-1-111"; in (2) near beginning inserted "limited liability company"; deleted former (4) that read: "(4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, 18-1-111, and this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 42 in (1) and (4) substituted "18-1-111, and this section" for "18-1-103, and 18-1-111"; and made minor changes in style. Amendment effective March 12, 1997.

1987 Amendments: Chapter 284 in (1) and (4) inserted reference to 18-1-111.

Chapter 370 in (1) and (4) deleted reference to 18-1-112.

Chapter 512 in (4), after "purchase of", substituted "goods" for "products, materials, supplies, or equipment", after "offered" substituted "goods" for "materials, supplies, or equipment", and in middle of sentence substituted "Montana-made is" for "manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be".

Attorney General's Opinions

Acquisition of Resident Status for Preference Purposes: A joint venture may qualify for resident status as a partnership enterprise for purposes of the preference under 18-1-102, but this section requires that a majority of the venture's partners must have been Montana residents for at least 1 year immediately prior to the involved bidding in order to acquire resident status. (See 2001 amendment.) 42 A.G. Op. 107 (1988).

18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.

Compiler's Comments

2001 Amendment: Chapter 483 throughout section substituted references to department of labor and industry for references to department of commerce; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 558 in (1), after "certain contractors", deleted "issued public contractor's licenses under the provisions of Title 37, chapter 71"; in (2), in two places, and in (3), before "public contractor", deleted "licensed"; and made minor changes in style. Amendment effective April 26, 1995.

1985 Amendment: In three places substituted "department of commerce" for "department of revenue"; and in first sentence substituted "Title 37, chapter 71" for "Title 15, chapter 50".

Case Notes

Challenge of Issuance of Certificate: Under 18-1-104 (repealed and replaced by this section), a resident contractor had standing to challenge, by original application for a Writ of Mandate, the validity of the residency certificate issued by Department of Revenue (now Department of Labor and Industry) to a nonresident contractor. Since the resident was not a party to or given notice of administrative proceedings awarding the certificate of residency, he had no administrative remedies to exhaust. State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), distinguished in ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Insufficient Affidavit: Under 18-1-104 (repealed and replaced by this section), a foreign corporation which stated that it would use Montana products and materials "insofar as they are available" and that it would use Montana labor "except for selected supervisory personnel" did not qualify for certification as a resident contractor. State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973).

18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 506, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 and 2] [2-18-111 and 18-1-110] direct the commissioner of labor and industry to adopt rules to implement [sections 1 and 2] [2-18-111 and 18-1-110]. It is the intent of the legislature that the rules also be designed to assist the commissioner of labor and industry to enforce the provisions of [sections 1 and 2] [2-18-111 and 18-1-110] and to investigate complaints of any violations of law, as provided in [sections 1 and 2] [2-18-111 and 18-1-110]."

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Case Notes

Conditions of Tribal Affiliation Applicable to Indian Hiring Preference — Status of Individual Indian Not Controlling: Schmasow claimed that the Native American Center (NAC) should have hired her as executive director pursuant to an Indian employment preference provision, 25 U.S.C. 450e(b), that was contained in the NAC's contract with the Indian Health Service. The NAC instead hired Shield, another Indian, but Schmasow contended that Shield did not qualify for the employment preference because he was a member of the Little Shell Chippewa Tribe, which is not a federally recognized tribe listed by the U.S. Secretary of the Interior under 25 U.S.C. 479a-1. The District Court concluded that Shield was eligible for the preference, and Schmasow appealed. In affirming the District Court, the Supreme Court held that in order to satisfy the definitions of Indian and Indian tribe in the preference law, one must establish that the hired person's tribe is itself eligible for the health care benefits and that the status of an individual Indian is not controlling. The Little Shell Chippewa Tribe fits the definition of Indian tribe because it is part of an Indian community that receives federal Indian funding for special programs and services, even though it is not a federally recognized tribe. Because Shield was an enrolled member of the Little Shell Chippewa Tribe, he satisfied the definition of Indian and was eligible for the hiring preference. Schmasow v. Native Am. Center, 1999 MT 49, 293 M 382, 978 P2d 304, 56 St. Rep. 198 (1999).

18-1-111. Impartiality to be shown in letting contracts.

Compiler's Comments

2001 Amendment: Chapter 181 near middle inserted "not provided for by law" and at end deleted "and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders as defined in 18-1-103 over nonresident bidders." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1987 Amendment: At end of section, after "resident bidders", substituted "as defined in 18-1-103" for "of the state".

18-1-114. Rules.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 512, L. 1987, provided: "A statement of intent is required for this bill because section 7 [18-1-114] authorizes the department of administration to adopt rules necessary to administer the preferences provided in Title 18, chapter 1, part 1. The legislature intends that the rules should prevent bidders from circumventing the preference provisions by creating business entities specifically to obtain residency status or to gain an award of a public contract for goods after being disqualified for submitting a false affidavit. The rules should also specify the contents of an affidavit to be submitted by a bidder as required under section 6 [18-1-113]."

Administrative Rules

ARM 2.5.502 Bid, proposal, and contract performance security.

18-1-118. Access to records of contracting entities.

Compiler's Comments

1997 Amendment: Chapter 377 inserted (2) regarding conditions for transfer of public money or property to a private foundation or organization; and inserted (3) clarifying that the Legislative Auditor is not permitted to audit the financial records of private donors. Amendment effective July 1, 1997, and terminates July 1, 2001.

Termination Date: Section 4, Ch. 377, L. 1997, provided: "[This act] terminates July 1, 2001."

1995 Amendment: Chapter 545 in first sentence, near middle after "auditor", deleted "and the legislative fiscal analyst" and at end of second sentence, after "Title 5", substituted "chapter" for "chapters 12 and". Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

Effective Date: Section 22, Ch. 787, L. 1991, provided that this section is effective July 1, 1991.

Part 2
Bid Security

18-1-201. Requirement for bidder's security.

Compiler's Comments

1985 Amendment: At beginning of (2) inserted exception clause.

Administrative Rules

ARM 2.5.502 Bid, proposal, and contract performance security.

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 20-9-204, 20-10-125, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Competitive Bidding — Contract Formed by Execution of Written Instrument, Not by Award of Project — No Requirement That State Be Notified of Bidding Error Prior to Award of Project: After E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a highway project, but before the actual contract was signed, Oftedal notified the state that $789,000 in errors had been discovered. Oftedal requested that the bid be withdrawn or that the contract amount be adjusted upward, but the requests were denied. Oftedal appealed, but the District Court held that Oftedal did not give timely notice of the mistakes prior to the acceptance of the bid, so equitable relief was unavailable under 28-2-1611. The Supreme Court disagreed and reversed. As a matter of law, no contract for performance of the highway project was formed by the award of the project, prior to execution of the written contract, so there could be no requirement that the state have knowledge of Oftedal's unilateral mistake prior to the award of the project. No notice of the mistake was necessary at that time to obtain equitable relief under 28-2-1611. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002), distinguishing Baker v. St., 218 M 235, 707 P2d 20 (1985).

Equitable Relief Available to Correct Inadvertent Bidding Errors in Revising Highway Construction Project: Contractor E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a Montana highway project. Because Oftedal's was the lowest bid, the state awarded the contract to Oftedal, but upon later investigation, Oftedal determined that the bid contained several errors amounting to $789,000, and requested that the bid be withdrawn. The request was denied, so Oftedal requested an upward revision of the bid to reflect the mistakes. Even if the contract amount was revised upward to reflect the errors, Oftedal's bid would still have been lowest. Although the state recognized that Oftedal had made an unintended mistake, the request for upward revision was also denied, in part because the Federal Highway Administration would not allow any federal money to be used to cover any state cost over Oftedal's original bid. To avoid losing its substantial bid bond, Oftedal signed the contract under protest for the original amount and petitioned the District Court for equitable relief under 28-2-1611 through an upward revision of the contract sum. The District Court denied relief and granted summary judgment to the state. Oftedal appealed to the Supreme Court, seeking an upward revision to reflect the amount of the error and an order for specific performance of the revised contract. The Supreme Court found that equitable relief was appropriate because of mistake, and remanded to the District Court with instructions to reform the contract to reflect the true intentions of the parties. The mistakes in this case were inadvertent, and even though some negligence might have been inherent in the mistakes, they could not be said to preclude equitable relief when viewed in light of the parties' agreed assessment of the nature of the errors. Negligence of the party creating the mistake is not necessarily a bar to judicial reformation of a contract. Under 28-2-1612, for the purpose of revising a contract, a court must presume that all parties intended to make an equitable and conscientious agreement, and it could not be presumed that either party intended Oftedal to incur the hardship of supplying $789,000 of work and material to the state without compensation. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Public Contracts Subject to Fundamental Contract Analysis — Public Bidding and Contract Modification Statutes Not Inherently Inconsistent: Public contracts are not necessarily exempt from fundamental contract analysis because competitive bidding statutes were established for the benefit of the public rather than to establish the rights of bidders. Nothing in the competitive bidding statutes places public contracts out of reach of remedies at law or the equitable relief provided under 28-2-1611 if a party is otherwise qualified for relief under the terms of the statute. Further, public bidding statutes and contract modification statutes are not inherently inconsistent, so 28-2-1611 may be applied to public contracts. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

18-1-202. Advertisement for bid to specify required security.

Compiler's Comments

1995 Amendment: Chapter 51 in (1)(b), near beginning, substituted "security" for "money or bank instrument"; in (3), near end after "distinctly specify that", substituted "a bid bond or other form of security specified in 18-1-203 constitutes" for "lawful moneys of the United States or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor shall constitute"; and made minor changes in style. Amendment effective February 9, 1995.

Case Notes

Competitive Bidding — Contract Formed by Execution of Written Instrument, Not by Award of Project — No Requirement That State Be Notified of Bidding Error Prior to Award of Project: After E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a highway project, but before the actual contract was signed, Oftedal notified the state that $789,000 in errors had been discovered. Oftedal requested that the bid be withdrawn or that the contract amount be adjusted upward, but the requests were denied. Oftedal appealed, but the District Court held that Oftedal did not give timely notice of the mistakes prior to the acceptance of the bid, so equitable relief was unavailable under 28-2-1611. The Supreme Court disagreed and reversed. As a matter of law, no contract for performance of the highway project was formed by the award of the project, prior to execution of the written contract, so there could be no requirement that the state have knowledge of Oftedal's unilateral mistake prior to the award of the project. No notice of the mistake was necessary at that time to obtain equitable relief under 28-2-1611. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002), distinguishing Baker v. St., 218 M 235, 707 P2d 20 (1985).

18-1-203. Form of security.

Compiler's Comments

2003 Amendment: Chapter 203 inserted (1)(b) excluding requirement for bid bond, guaranty bond, or surety bond; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 51 in (1), at beginning, deleted "Except as provided in subsection (4)" and deleted reference to subsection (a) of 18-1-202(1); in (1)(b) substituted "federally chartered or state-chartered bank insured by the federal deposit insurance corporation" for "a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana"; in (1)(c), near beginning, substituted "guaranty bond, or surety bond" for "or bonds" and inserted second sentence requiring the carrying of an investment grade rating of one or more nationally recognized independent rating agencies; deleted former (2) that read: "(2) Except as provided in subsection (4), in all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above"; near middle of (2), after "bid bonds", inserted "financial guaranty bonds, or surety bonds"; deleted (4) that read: "(4) The provisions of this section do not apply to bonds issued under Title 17, chapter 5, part 8"; and made minor changes in style. Amendment effective February 9, 1995.

1983 Amendment: In (1) and (2), inserted exception at beginning; and inserted (4) exempting general obligation bonds.

18-1-204. Forfeiture — bidder's liability — waiver.

Compiler's Comments

1987 Amendment: In (1), at beginning, inserted exception clause; and inserted (3) allowing Department to waive forfeiture of bid security in construction contracts.

Part 3
Prepayment of Public Contractors

18-1-301. Contractor withdrawals — deposit of obligations.

Compiler's Comments

1999 Amendment: Chapter 222 in (1) in two places substituted "state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district" for "state of Montana or any department, agency, or political subdivision thereof"; inserted (3) requiring accrued interest in accounts of deposit to be paid to contractors; inserted (4) allowing subcontractors to participate in making required deposit obligations and to receive pro rata share of earned interest; and made minor changes in style. Amendment effective July 1, 1999.

Applicability: Section 5, Ch. 222, L. 1999, provided: "[This act] applies to contracts entered into after July 1, 1999."

1985 Amendment: In (1) at end of lead-in, substituted "the contracting agency" for "the treasurer of the state of Montana".

18-1-302. Servicing of deposited obligations.

Compiler's Comments

1985 Amendment: Near beginning substituted "the contracting agency" for "the treasurer of the state of Montana".

18-1-303. Interest or income on deposits to contractor.

Compiler's Comments

1985 Amendment: At beginning of (1) substituted "The contracting agency" for "The treasurer of the state of Montana"; and in (2) after "bonds", substituted "the contracting agency or the designated custodian, pursuant to 18-1-302" for "the treasurer of the state of Montana".

Part 4
Contract Actions Against the State

18-1-401. Jurisdiction.

Case Notes

Waiver of State Immunity — Applies Only to Express Contracts: Although 18-1-404 appears to provide a specific waiver of the state's immunity as to all contract actions, express or implied, the section is ambiguous when read and construed in conjunction with other provisions in part 4, specifically this section which expressly grants District Courts jurisdiction over only express contract actions. Legislative history demonstrates that the Legislature intended to waive only the state's immunity as to express contracts. Section 18-1-404 does not subject the state to liability on implied contracts. Peretti v. St., 238 M 239, 777 P2d 329, 46 St. Rep. 1235 (1989).

18-1-402. Administrative procedures — exhaustion — time limitations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Defamation and Tortious Interference Claims Rooted in Tort Despite Employment Relationship — Statute of Limitations Governing State Contracts Did Not Apply: A university soccer coach was dismissed after an investigation involving his university-issued cell phone revealed text and telephone communications that were allegedly with agents of an escort service. The dismissal was covered by local and national news outlets, and some articles included information from the coach's personnel file and cell phone. The coach sued the university, alleging violation of his right of privacy, defamation, and breach of contract in his initial complaint and substituting claims for tortious interference, negligence, and invasion of privacy in an amended complaint. The District Court found that the 1-year statute of limitations in 18-1-402 applied because the coach's claims all sounded in contract, and so the complaint was untimely filed. On appeal, the Supreme Court found that the coach's right of privacy, invasion of privacy, and negligence claims all arose out of his contract-based employment relationship with the university and thus were contractual claims subject to the 1-year statute of limitations. However, it found that his claims for defamation and tortious interference were tort-based. It found that the university's duty to not commit the acts alleged by the coach arose independently from its employment relationship with the coach and would have existed even in the absence of such a contractual relationship. Because those claims sounded in tort, the longer statute of limitations in 27-2-204 applied and those claims were not barred. Plakorus v. Univ. of Mont., 2020 MT 312, 402 Mont. 263, 477 P.3d 311.

Implied Warranty — Plans and Specifications: A contractor can rely on plans and specifications and need not verify them. The owner warrants and is responsible for the accuracy of the descriptions in the plans and specifications of the contract. The contract impliedly warrants that the plans are suitable and accurate. The implied warranty is as much a part of the contract as the express terms and is subject to the statute of limitations pertaining to the contract. Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Commencement of Period of Limitations: A claim or dispute arises at the time the state submits a final estimate to the contractor for his approval or rejection. Zook Bros. Constr. Co. v. St., 171 M 64, 556 P2d 911 (1976), followed in Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Estoppel: The state led the contractor to believe that his claim would receive timely attention and would be reviewed by the state pending an administrative decision on its merits. The contractor relied on the assurances, and the state is therefore foreclosed from raising a Statute of Limitations defense. Zook Bros. Constr. Co. v. St., 171 M 64, 556 P2d 911 (1976), followed in Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

Attorney General's Opinions

Application of One-Year Statute of Limitations in Contract Actions Against the State: Three separate periods of limitation apply to disputes arising from express contracts with state agencies. (1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within 90 days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in District Court. (2) A contractor who timely submits his dispute to an agency having an administrative procedure but who fails to bring an action in District Court within 1 year after a final adverse decision by the agency is barred from litigating his claim in District Court. (3) In cases where no settlement procedure is provided by a contracting agency, a 1-year Statute of Limitations, commencing at the time the cause of action arises, applies. 37 A.G. Op. 40 (1977).

18-1-403. Stipulations restricting enforcement void.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Contract Forum Selection Clauses Void: A Montana distributor sued an out-of-state manufacturer in Montana court for tort and contract claims arising from their agreement which provided that Minnesota would be the sole forum for such disputes. The District Court denied defendant's motion to dismiss. The Supreme Court affirmed and held that the forum selection clause was void under 28-2-708 because it restricted the parties from enforcing their contract rights. State ex rel. Polaris Indus., Inc. v. District Court, 215 M 110, 695 P2d 471, 42 St. Rep. 220 (1985), followed in Keystone, Inc. v. Triad Sys. Corp., 1998 MT 326, 292 M 229, 971 P2d 1240, 55 St. Rep. 1321 (1998).

18-1-404. Liability of state — interest — costs.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(b) at beginning of third sentence substituted "If the contract is subject to a good faith dispute brought before a government agency or before a court" for "For the purposes of this section" and at end substituted "decision by the government agency or court" for "judgment", in fourth sentence near middle substituted "decision" for "judgment", and inserted fifth sentence providing that a contract not subject to a good faith dispute is subject to an interest rate governed by 17-8-242. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendment: Chapter 413 in (1)(b) and (2) inserted sentence providing for retroactive applicability. Amendment effective April 21, 1999.

1997 Amendment: Chapter 508 in (1)(a), near end after "is not liable", deleted "for interest prior to or after judgment or"; inserted (1)(b) concerning liability of state for interest on contract payment; in third sentence of (2), after "The costs must", deleted "not"; inserted (3) concerning contracts governed by Title 19; and made minor changes in style. Amendment effective May 1, 1997.

Case Notes

Claim Against the State — Employee Health Benefits Plan — Interest Calculated From Time of Court Decision Declaring Provision Unenforceable: The plaintiff's right to recover prejudgment interest did not vest until the Supreme Court's decision in Blue Cross & Blue Shield of Mont. v. Mont. St. Auditor & Comm'r of Ins., 2009 MT 318, 352 Mont. 423, 218 P.3d 475 (BCBS), which held for the first time that the state employee health benefits plan's coordination of benefits provision violated Montana's made-whole laws. The coordination of benefits provision at issue was enforceable under Montana law until the BCBS decision. Thus, the particular day on which the plaintiff's right to recover vested was 30 days after the Supreme Court's remittitur in BCBS. Diaz v. St., 2016 MT 270, 385 Mont. 220, 383 P.3d 206.

No State Prosecutorial Immunity for Actions of County Attorney: McDaniel was sentenced to 20 years for burglary, with the sentence suspended subject to several conditions. About 4 months after sentencing, McDaniel tested positive for drugs, and the probation officer elected to initiate an intervention hearing, where an agreement was entered into in lieu of a formal violation being filed. Upon learning of the intervention hearing, the County Attorney filed a petition to revoke McDaniel's suspended sentence based on McDaniel's drug use. McDaniel moved to dismiss on grounds that in filing the revocation petition, the state breached the agreement. The District Court granted McDaniel's motions, and the revocation petition was dismissed. McDaniel subsequently filed an action against the state for damages, claiming that the state breached the written agreement and deprived McDaniel of property in violation of due process. The state asserted that because the County Attorney was acting within the scope of his duties as an agent of the state when filing the revocation petition, the state was entitled to prosecutorial immunity. The District Court agreed and granted the state's motion for summary judgment. On appeal, the state contended that prosecutorial immunity should be extended to include county and state governments employing prosecutors who are named as defendants in tort actions. However, for the state to extend the County Attorney's immunity to itself, the state must establish that the County Attorney could raise prosecutorial immunity as a defense if the claims were brought against the County Attorney rather than the state. Here, the County Attorney was not a party to the intervention agreement, so there was no factual or legal basis for McDaniel to bring a contract-based claim against the County Attorney, and absent a basis for the prosecutor to assert prosecutorial immunity, there was no basis for the state to extend immunity to itself. The Legislature intended to waive state immunity as to express contracts, so it was incongruous for the state to assert immunity as a defense to the alleged contract violation. The Supreme Court reversed. McDaniel v. St., 2009 MT 159, 350 M 422, 208 P3d 817 (2009).

Moratory Interest on Borrowed Funds Not Recoverable: Relying upon the accuracy of plans supplied by the state, Martel Construction (Martel) contracted with the state to construct a new highway bridge to replace one originally built in 1936. In preparing its plans, the state had relied on plans used to construct the 1936 bridge, incorrectly believing that those plans represented the elevation and dimensions needed for the new bridge. As a result of this error, Martel was required to perform extra work not contemplated under the contract. The District Court awarded Martel damages for the actual construction costs for the extra work performed and damages for "moratory interest" or the interest paid on funds borrowed to finance the extra work. The Supreme Court reversed the portion of the ruling allowing recovery of "moratory interest", holding that the state is not liable for prejudgment or postjudgment interest unless the interest is part of actual damages resulting from the state's breach of contract. Martel Constr., Inc. v. St., 249 M 507, 817 P2d 677, 48 St. Rep. 812 (1991).

Waiver of State Immunity — Applies Only to Express Contracts: Although this section appears to provide a specific waiver of the state's immunity as to all contract actions, express or implied, the section is ambiguous when read and construed in conjunction with other provisions in part 4, specifically 18-1-401 that expressly grants District Courts jurisdiction over only express contract actions. Legislative history demonstrates that the Legislature intended to waive only the state's immunity as to express contracts. This section does not subject the state to liability on implied contracts. Peretti v. St., 238 M 239, 777 P2d 329, 46 St. Rep. 1235 (1989).

Findings of Court in Error — No Waiver of Indemnity Reimbursement From State: Appellant contracted with the state to build a segment of highway. Respondent subcontracted with appellant to do certain concrete work on bridges. The state designed cuts through a mountainous area that were too steep and had to be redone for stability. This delayed the project and the availability of concrete, increasing costs of construction. Appellant entered a supplemental agreement with the state that purported to waive claims for extra costs. The Supreme Court reversed the lower court finding that this provision precluded appellant from indemnity reimbursement from the state for extra money paid to respondent because of the delay. Under the waiver provision, the contractor could still claim expenses from conditions not within the knowledge of the parties at execution of the agreement. Unavailability of concrete because of delay was such a condition. The court noted that the judgment against the state was subject to 18-1-404. E.F. Matelich Constr. Co. v. Goodfellow Bros., Inc., 217 M 29, 702 P2d 967, 42 St. Rep. 1004 (1985).

Constitutionality of Limitation of Interest: In an action in which the plaintiff was awarded damages for the unilateral and unlawful termination of a lease of certain communications equipment by the state, the trial court did not err in holding the limitation of interest on judgments in contract actions constitutional. The transcripts of the Constitutional Convention debates show that the purpose of the delegates in adopting Art. II, sec. 18, was to limit nonimmunity to torts committed by the state. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Contractual Liability for Attorney Fees — Fees Not "Costs" Absent Bad Faith: Where the State executed a 6-year lease of certain communications equipment with the plaintiff in a lease providing that the State would pay the lessor for "legal expenses" incurred as a result of any default by the State and unilaterally terminated the lease 3 years later, the trial court did not err in holding the State liable for attorney fees under the indemnity provisions in the lease. A reading of the applicable statutes indicates that liability for attorney fees can arise from contract but cannot be awarded as "costs" absent bad faith on the State's part. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Exclusive Jurisdiction in District Court: Appellees were students enrolled in a 2-year aviation technology program at the Missoula Technical Center, a vocational-technical center operated by the state. Because of budget cutbacks, the program was terminated after the first year. The students sued for damages in federal District Court, alleging that the termination of the program violated their rights of equal protection and due process. The District Court held the state had contracted with the students to provide 2 years of instruction and that termination constituted a breach of that contract. The court then ruled that the breach violated the students' due process rights. The U.S. Court of Appeals reversed, saying that the 11th amendment to the United States Constitution explicitly withholds from the U.S. courts jurisdiction over suits brought against a state by citizens of another state or another country. Also, the 11th amendment has always been interpreted to provide that an unconsenting state is immune from suits brought in federal courts by her own citizens, unless the state waives such immunity. Article 2, sec. 18, Mont. Const., waives state immunity from suit. The U.S. Court of Appeals held that in order to waive immunity from suit in federal courts, Art. II, sec. 18, Mont. Const., would expressly have to extend to federal suits, which it does not. The District Court had concluded that alternate jurisdiction could lie under 18-1-404, but that provision holding the state liable on contracts grants Montana state District Courts exclusive jurisdiction over such contract disputes. St. v. Peretti, 661 F2d 756 (9th Cir. 1981).

No Sovereign Immunity in Contract Actions: An action arising out of a contract is an action for injury to property; therefore the state, counties, towns, and all other local governmental entities have no sovereign immunity in contract actions. Peretti v. St. Bd. of Education, 464 F. Supp. 784 (D.C. Mont. 1979).

Contract Action Against State: In a contract action against the state, the same rules of construction apply as in contract actions between private parties. Sornsin Constr. Co. v. St., 180 M 248, 590 P2d 125 (1978).

Failure of Corporation to Possess Articles of Incorporation: The failure of a corporation to possess articles of incorporation until 21 days after the execution of the contract with the state does not constitute an illegal purpose which would void the agreement from its inception. On the contrary, this defect rendered the contract voidable at the state's option. Mont. Ass'n of Underwriters v. Dept. of Administration, 172 M 211, 563 P2d 577 (1977).

Law Review Articles

Recovering Attorney Fees Under Montana Statutory Law, Williams, 46 Mont. L. Rev. 119 (1985).

Contract Damages in Montana Part II: Reliance and Restitution, Burnham, 45 Mont. L. Rev. 1 (1984).

Contract Damages in Montana Part I: Expectancy Damages, Burnham, 44 Mont. L. Rev. 1 (1983).

18-1-412. Service of process upon attorney general.

Compiler's Comments

Code Commissioner Correction: Substituted "Rule 4(l)" for "Rule 4D(2)(h)" to reflect revisions adopted by Supreme Court Order No. AF 07-0157 dated April 26, 2011.

18-1-413. Litigation — compromise.

Compiler's Comments

1999 Amendment: Chapter 451 in first sentence after "litigation" inserted "under this part", in second sentence after "any suit" substituted "under this part" for "thereon", and inserted third sentence applying the provisions of 2-4-603(1) to an arbitration, compromise, or settlement; and made minor changes in style. Amendment effective April 22, 1999.

Applicability: Section 5, Ch. 451, L. 1999, provided: "[This act] applies to any arbitration, compromise, or settlement of actions entered into on or after [the effective date of this act]." Effective April 22, 1999.

18-1-414. Judgments — payment.

Case Notes

Sole Means to Collect Judgment — Regular Sessions: This section provides the sole means of collecting a judgment against the state in a contractual dispute. The section speaks to appropriations at regular sessions of the Legislature. First Nat'l Bank v. Sourdough Land & Cattle Co., 171 M 390, 558 P2d 654 (1976).

CHAPTER 2
CONSTRUCTION CONTRACTS

Chapter Compiler's Comments

Exemption of Certain Projects — Conditions — Termination: Section 4, Ch. 303, L. 1999, provided: "(1) If the nondenominational chapel project at Montana tech of the university of Montana is authorized in House Bill No. 5, then the design of this project is not subject to the requirements of 18-2-112 or Title 18, chapter 8, part 2.

(2) (a) It is the intent of the legislature, with regard to the classroom-laboratory building authorized in section 4, Chapter 469, Laws of 1997, that the department of administration contract as provided in this subsection (2). The department shall contract for combinations of services, materials, and labor related to innovative building technologies, not otherwise expressly allowed under Title 18, if the innovative technologies:

(i) have the potential to produce energy or operational savings for the state over the life cycle of the building;

(ii) demonstrate the use of recycled material; or

(iii) demonstrate the use of indigenous material for which a new local, regional, or national market may be developed.

(b) The conditions in subsection (2)(a) must specifically apply to individual building systems or components and not to the general contract for construction or for any project service, including design. The terms, guaranties, and conditions related to the innovations must be negotiated by the department in the best interests of the state and must provide that there is no express or implied commitment of state appropriations for construction, operations, or maintenance." Section 6, Ch. 303, L. 1999, provided that sec. 4, Ch. 303, L. 1999, terminates June 30, 2003.

Authorizing Inmate Labor for Construction of Prison Projects — 1989 Capital Projects Bill: Section 22, House Bill No. 777, L. 1989, provided: "For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)]; the department of institutions [now department of corrections] may use inmate labor to construct the projects and is exempt, for the purposes of completing these projects, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements." House Bill No. 777 was successfully challenged in the First Judicial District Court in Cause No. ADV-89-914. The District Court held that the title of the bill did not contain any reference to the substantive change the bill created in state law requirements for competitive bidding and that such a substantive change did not belong in an appropriation bill. A special session of the Legislature was called on May 21, 1990, and House Bill No. 1 was passed allowing for the use of convict labor and exempting the project from competitive bidding requirements.

Chapter Case Notes

Architect Liable for Inadequate Specifications: There was sufficient evidence presented to the District Court to support its findings that the architect's water system specifications for a new school building were inadequate. A contractor is not responsible for errors or defects in the plans and is not liable, absent negligence on his part, when the owner's plans and specifications prove defective. Ace Plumbing & Heating, Inc. v. School District, 204 M 81, 662 P2d 1327, 40 St. Rep. 678 (1983).

Effect of Unanticipated Condition on Contractor's Obligation: Even though a contract incorporates by reference federal, state, or local laws, a contractor is not required to alter construction plans to comply with health standards when the condition to be alleviated is abnormal, unanticipated, or substantially different from those in the contract plans and drawings. Ace Plumbing & Heating, Inc. v. School District, 204 M 81, 662 P2d 1327, 40 St. Rep. 678 (1983).

Contract Made Without License: The District Court erred in concluding that the contract entered into between the parties was illegal and therefore void. Appellant admits that it did not have a public contractor's license as required by statute when it accepted the bid proposal. It admits that it may have violated the law and may be assessed a misdemeanor fine. Nowhere in the statutes is it declared that a contract made without a license is unenforceable or void. Taurman v. Cascade, 192 M 529, 629 P2d 226, 38 St. Rep. 906 (1981).

Part 1
General Provisions

Part Case Notes

Implied Warranty — Plans and Specifications: A contractor can rely on plans and specifications and need not verify them. The owner warrants and is responsible for the accuracy of the descriptions in the plans and specifications of the contract. The contract impliedly warrants that the plans are suitable and accurate. The implied warranty is as much a part of the contract as the express terms and is subject to the statute of limitations pertaining to the contract. Lutey Constr. v. St., 257 M 387, 851 P2d 1037, 50 St. Rep. 321 (1993).

18-2-101. Definitions of building, costs, and construction.

Compiler's Comments

2019 Amendment: Chapter 3 in definition of building in (a)(iv) substituted "18-2-102(2)(e)" for "18-2-102(2)(d)". Amendment effective October 1, 2019.

2009 Amendment: Chapter 439 inserted (2)(b) providing that construction does not include work performed under an energy performance contract; and made minor changes in style. Amendment effective May 5, 2009.

2005 Amendment: Chapter 374 in definition of costs deleted reference to 17-5-401; and made minor changes in style. Amendment effective April 25, 2005.

Saving Clause: Section 8, Ch. 374, L. 2005, was a saving clause.

1999 Amendment: Chapter 470 in introductory clause inserted reference to 18-2-123. Amendment effective October 1, 1999.

Applicability: Section 12, Ch. 470, L. 1999, provided: "[This act] applies to contracts agreed to on or after July 1, 1999."

1997 Amendment: Chapter 392 in (2)(b), after "part of", inserted "an environmental remediation or abandoned mine land reclamation project" and at end inserted "unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed"; and made minor changes in style. Amendment effective April 28, 1997.

1995 Amendment: Chapter 241 in definition of building inserted (c) excluding leased buildings; and made minor changes in style.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1985 Amendments: Chapter 7 inserted (1)(d) referring to buildings constructed with federal or private moneys; and made minor changes in phraseology.

Chapter 372 inserted (4) defining costs.

1983 Amendment: In (3) after "alteration" inserted "repair, maintenance" twice, and after "remodeling", deleted "but does not include the repair or maintenance of an existing building".

1981 Amendment: In (3) substituted definition of construction for "construction includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration".

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in this section, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and 18-2-103 regarding public construction contracts. 42 A.G. Op. 66 (1988).

18-2-102. Authority to construct buildings — reporting requirement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 96, L. 2023. Amendment effective April 18, 2023.

2007 Amendments — Composite Section: Chapter 403 in (1) in exception clause inserted reference to 22-3-1003; and made minor changes in style. Amendment effective May 3, 2007.

Chapter 419 inserted (2)(d) providing that the regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309; and made minor changes in style. Amendment effective May 3, 2007.

1997 Amendment: Chapter 249 in (1), in two places, substituted "$150,000" for "$50,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 241 in (1) inserted second sentence concerning legislative approval of repair and maintenance costs.

1993 Amendment: Chapter 518 in two places in (1) increased "$25,000" to "$50,000"; in (2)(a), after "building", inserted "and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency"; and made minor changes in style. Amendment effective April 24, 1993.

1985 Amendment: Inserted (2)(d) allowing Department of Military Affairs to authorize construction of certain buildings.

Case Notes

Consent by Appropriation — Effect of Statute Allowing Committee Decision on Location of Legislative Chambers: The directive in 5-17-102 (renumbered 2-17-805) to the Capitol Building and Planning Committee (abolished in 1993) to decide the location of legislative chambers belies the contention that the Legislature consented under this section to relocation of the Senate chambers when the Legislature passed an appropriation for a capitol renovation project. Goodover v. Dept. of Administration, 201 M 92, 651 P2d 1005, 39 St. Rep. 1975 (1982).

Consent to Remodeling: This section's provision for legislative consent to "construction" of a building requires legislative consent to a remodeling project that will cost in excess of $25,000 (see 1993 and 1997 amendments), and the consent may take the form of an appropriation of money or a joint resolution. Goodover v. Dept. of Administration, 201 M 92, 651 P2d 1005, 39 St. Rep. 1975 (1982).

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-103 and this section regarding public construction contracts. 42 A.G. Op. 66 (1988).

18-2-103. Supervision of construction of buildings.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 96, L. 2023. Amendment effective April 18, 2023.

2019 Amendment: Chapter 3 in (7) substituted "18-2-102(2)(e)" for "18-2-102(2)(d)". Amendment effective October 1, 2019.

2005 Amendment: Chapter 574 in (1)(c) inserted exception clause. Amendment effective October 1, 2005.

1999 Amendment: Chapter 303 near end of (4) substituted "registered" for "licensed"; and made minor changes in style. Amendment effective April 14, 1999.

1997 Amendment: Chapter 249 in (1) substituted "$150,000" for "$50,000"; in (4), in two places, substituted "$75,000" for "$25,000" and substituted "$25,000" for "$5,000"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 518 in (1) increased "$25,000" to "$50,000"; deleted former last sentence in (1)(c) that read: "However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners"; in (1)(d), after "orders", deleted "up to $25,000. Any change order over $25,000 must be with the consent of the board of examiners. The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration. The board of examiners shall act within 14 working days after processing completion by the department"; in (2) deleted second sentence that read: "However, any powers and duties subject to the approval of the board of examiners may not be delegated"; deleted former (3) that read: "For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required"; in (6) substituted "subsections (1) through (3)" for "subsections (1) through (4)"; and made minor changes in style. Amendment effective April 24, 1993.

1989 Amendment: In (1)(d) increased change order amount from $5,000 to $25,000, provided that change orders over $25,000 must be with the consent of the Board of Examiners, and inserted second sentence that read: "The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration"; and made minor change in phraseology. Amendment effective March 28, 1989.

1985 Amendments: Chapter 7 inserted (8) authorizing Department of Military Affairs to act as contracting agency.

Chapter 137 in (1)(a) substituted present language referring to plans, specifications, and cost estimates for "review and approve all plans and working drawings prepared by architects"; and in (1)(e) before "plans and specifications", substituted "accepted" for "approved".

Chapter 466 in (1)(d) substituted present language referring to change orders for "review and, with the consent of the board of examiners, approve all change orders".

Chapter 467 in (1)(c), at beginning deleted "under the supervision and with the approval of the board of examiners" and inserted last sentence requiring approval of Board of Examiners in certain cases.

Chapter 648 inserted (2) authorizing Department to delegate certain powers and duties; deleted former (4) that read: "The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, repair, maintenance, or improvement, at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana"; in (5) at end of first sentence substituted "costs are $25,000 or less" for "costs are less than $5,000" and inserted second sentence requiring informal bids on certain smaller projects; and in (7) substituted "subsections (1) through (4)" for "subsections (1) through (3)".

1983 Amendments: Chapter 281, at end of (6), substituted "regulation account in the state special revenue fund" for "revolving account in the revolving fund".

Chapter 491 inserted (2) exempting repair and maintenance projects from approval by Board of Examiners; and in (4), after "alteration" inserted "repair, maintenance,".

Case Notes

Lowest Bidder Working Beyond Contract Time — Other Bidder Without Standing to Protest: Appellant bid $440 more than lowest bidder and protested the bid award because the recipient of contract had not completed another public contract on which he was working beyond contract completion time. The District Court dismissed the action for lack of standing. The Supreme Court affirmed since a contract does not exist prior to the acceptance of bid by an agency, depriving appellant of standing under contract theory. The bidding statutes were not enacted for the benefit of competing bidders, but for the public. The court noted that appellant failed to claim standing as a taxpayer and did not seek judicial review under the Montana Administrative Procedure Act. Baker v. St., 218 M 235, 707 P2d 20, 42 St. Rep. 1546 (1985), distinguished in ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Mandamus Against Those Determining Qualifications of Public Contract Bidders: The Department of Administration and Board of Examiners, in determining whether bidders for the construction of a public building are qualified and will perform the contract in conformity with the specifications and terms of the solicitation for bids, as required by 18-2-103, are acting in a discretionary manner, and mandamus may not be used to control their discretion. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Meeting of Minds — Oral Acknowledgment of Part of Written Contract Bid Specifications: The State's solicitation for bids for construction of building provided that the bid acknowledge receipt of any addenda. The State accepted the bid of a contractor that did not make the acknowledgment in its bid. The evidence that the State phoned the contractor regarding two addenda and contractor stated it knew of them and had begun preparation for fulfilling them was adequate to show that contractor had actual knowledge of the addenda and showed there was a meeting of the minds as to their existence and the requirements for fulfillment of their terms. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Public Contract Bid — Submission Binds Bidder: State's solicitation for bids provided that all written addenda would become part of the contract documents, that all bidders would be bound by the addenda, whether or not they were received by the bidder, and that the owner reserved the right to reject all bids and waive any informality or irregularity in any bid. One bid did not acknowledge receipt of certain addenda, though the bidder stated during a phone conversation with the State that he knew of the addenda. The solicitation provisions bound the bidder to full performance of the contract documents, including all addenda, whether received or not, and in submitting its bid the bidder bound itself to the full performance of the contract documents, including the addenda. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Waiver of Irregularities in Bids — Materiality of Irregularity: The State has the right to waive immaterial irregularities in bids for public contracts. Deviations in bids not going to the substance of the bid and irregularities not giving one bidder a substantial advantage over other bidders are types of irregularities that can be waived by the State in awarding contracts. The irregularity was immaterial where lowest bidder failed to acknowledge receipt of addenda put out by the State, though the bidder was required to make such acknowledgment. The bidder stated in a phone conversation with the State that it knew of the addenda, that the addenda required work costing about $55,280, and that the spread between that bidder and the next lowest bidder was $174,000. The defect would have been material and could not have been waived if the bid spread had been less than $55,280. Martel Constr., Inc. v. Bd. of Examiners, 205 M 332, 668 P2d 222, 40 St. Rep. 1340 (1983).

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and this section regarding public construction contracts. 42 A.G. Op. 66 (1988).

18-2-105. General powers and duties of department of administration.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 96, L. 2023. Amendment effective April 18, 2023.

2007 Amendment: Chapter 217 in (4) at beginning inserted "subject to 2-17-135"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 249 in (8) deleted fourth sentence that read: "Any contract award resulting from negotiation is subject to the approval of the board of examiners." Amendment effective July 1, 1997.

1993 Amendment: Chapter 518 inserted (3) authorizing Department to transfer funds and authority to agencies and accept funds and authority from agencies; and made minor changes in style. Amendment effective April 24, 1993.

1985 Amendment: Inserted (7) authorizing negotiation of deductive changes.

Attorney General's Opinions

Buildings — Lease Purchase: The Department of Administration may not dispose of any interest in state lands without the approval of the state Board of Land Commissioners. 35 A.G. Op. 41 (1973).

18-2-106. Pecuniary interest prohibited.

Compiler's Comments

1999 Amendment: Chapter 303 at beginning of (1) substituted "The director of administration and the state architect may not" for "Neither the director of administration nor any employee of the department of administration shall"; inserted (2) concerning employees directly responsible for construction procurement; and made minor changes in style. Amendment effective April 14, 1999.

18-2-107. Deposit of capitol building grant revenue.

Compiler's Comments

2009 Amendment: Chapter 465 in (1) after "77-1-109" deleted "Title 77, chapter 1, part 6, and 77-2-362"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 355 in (1) inserted reference to 77-2-362; and made minor changes in style. Amendment effective April 17, 2003.

Severability: Section 20, Ch. 355, L. 2003, was a severability clause.

1999 Amendment: Chapter 122 in (1) near end inserted reference to 77-1-108. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1), at end, inserted "after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

18-2-108. Compliance with state laws and regulations.

Compiler's Comments

Section Not Codified: Section 82-1918(2), R.C.M. 1947, was not codified in the MCA, as it was redundant with 18-2-108. This subsection has not been repealed and is still valid law. Reference may be made to sec. 8, Ch. 66, L. 1923, as amended by sec. 1, Ch. 496, L. 1973.

Attorney General's Opinions

Buildings — Lease Purchase: The Department of Administration may not dispose of any interest in state lands without the approval of the state Board of Land Commissioners. 35 A.G. Op. 41 (1973).

18-2-111. Policy regarding practice of architecture or engineering — preparation of working drawings by department limited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 96, L. 2023. Amendment effective April 18, 2023.

1995 Amendment: Chapter 470 in (2) increased value of projects that Department may prepare working drawings for from $25,000 to $75,000; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 518 in (1)(b) substituted "18-2-105(7)" for "18-2-105(6)"; and made minor changes in style. Amendment effective April 24, 1993.

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

18-2-112. Appointment of architects and consulting engineers.

Compiler's Comments

1993 Amendments: Chapter 22 in (1), at beginning, inserted exception clause; inserted (2) requiring the Department of Administration to appoint the honors college program building architect nominated by the University of Montana (now University of Montana-Missoula); and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 deleted former second sentence that read: "Such appointment shall be subject to the approval of the state board of examiners"; and made minor changes in style. Amendment effective April 24, 1993.

1983 Amendment: Inserted last sentence exempting repair and maintenance projects from appointment of architect or consulting engineer.

Case Notes

Constitutionality: Section 78-403, R.C.M. 1947 (now repealed), making an appropriation for the employment of an architect to plan office building at the State Capitol, did not violate either Art. XII, sec. 12, or Art. XIII, sec. 2, 1889 Mont. Const. (similar to Art. VIII, sec. 8, 1972 Mont. Const.) Graham v. Bd. of Examiners, 116 M 584, 155 P2d 956 (1945).

18-2-113. Architects on public buildings to be certified.

Compiler's Comments

2007 Amendment: Chapter 11 at end substituted "license granted under Title 37, chapter 65, by the board of architects and landscape architects" for "certificate granted by the board of architects entitling him to practice architecture in this state". Amendment effective July 1, 2007.

18-2-122. Plans to bear seal.

Compiler's Comments

1989 Amendment: Near end inserted "professional" before "land surveyor"; and made minor change in style.

Attorney General's Opinions

Public Buildings — Does Not Apply to Commercial Establishments: "Public" in this section refers only to the buildings of the state and its political subdivisions. Therefore, plans and specifications for construction of privately owned buildings need not bear seals of specified professional persons. 36 A.G. Op. 52 (1976).

18-2-123. Payment of contractors and subcontractors.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Applicability: Section 12, Ch. 470, L. 1999, provided: "[This act] applies to contracts agreed to on or after July 1, 1999."

18-2-124. Construction contract indemnification provisions.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 2
Performance, Labor, and Materials Bonds

Part Case Notes

Federal Court Actions: Title 18, ch. 2, part 2, governs the court remedies in favor of suppliers and materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works. Those sections are the state law to be applied in federal court. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

18-2-201. Security requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 96, L. 2023. Amendment effective April 18, 2023.

2005 Amendment: Chapter 186 in (2)(b) after "bank draft" inserted "or irrevocable letter of credit"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 203 in (1)(a) near end substituted "surety company, licensed in this state" for "licensed surety company"; inserted (1)(b) restricting requiring bond from particular company or producer; in (3) at beginning deleted "Notwithstanding the provisions of subsection (1)", near middle inserted "subject to the provisions of subsection (1)(b)", and at end substituted "governmental entity" for "governmental body"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 112 at end of (4) increased project waiver amount from $25,000 to $50,000. Amendment effective October 1, 1999.

Chapter 303 deleted former (2) that read: "(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk"; and made minor changes in style. Amendment effective April 14, 1999.

1997 Amendment: Chapter 249 in (5), at end, substituted "$25,000" for "$5,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 130 in (3)(b) inserted "certificate of deposit, money market certificate"; in (3)(b)(i) substituted current language relating to federally or state-chartered bank or savings and loan association for "banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana"; inserted (3)(b)(ii) relating to credit union; deleted (3)(c) that read: "(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana"; and made minor changes in style. Amendment effective March 13, 1995.

1993 Amendment: Chapter 236 in (1), near beginning, extended reference to subsection (6); at beginning of (5) inserted exception clause; inserted (6) allowing waiver of certain statutory requirements for school district projects costing less than $7,500; and made minor changes in style. Amendment effective March 31, 1993.

1987 Amendments: Chapter 250 in (1), near beginning in exception clause, inserted "and (5)"; and inserted (5) authorizing contracting agency to waive bonding requirements for projects costing less than $5,000.

Chapter 370 near beginning of (1) changed "18-1-219" to "85-1-219"; and in (3), after "agency", inserted "of".

1985 Amendments — Composite Section: Chapter 147 in (1) at beginning inserted exception clause referring to subsection (4), and near end of lead-in to (a), (b), and (c), after "sufficient bond", deleted "with two or more sureties acceptable to the governmental body letting the contract, or"; and inserted (4) authorizing local government bodies to accept bonds with two or more sureties.

Chapter 498 in (1) at beginning, inserted exception clause referring to 85-1-219.

In (1) the Code Commissioner inserted "of this section" after "subsection (4)" for clarity in distinguishing the exceptions.

1981 Amendment: In (1) near the end of the lead-in to (a), (b), and (c), inserted "acceptable to the governmental body letting the contract" after "sureties" and inserted "licensed" before "surety company"; added (3) authorizing substitutes for performance, labor, and materials bonds; and made minor changes in punctuation.

Case Notes

Material Supplier Held to Be Subcontractor: Under a contract that defined "work" as including construction labor and all materials and equipment incorporated into the construction project, a firm which merely served as a conduit for materials used by a general contractor was held to be a subcontractor, and a supplier of that firm was held entitled to pursue action on the general contractor's bond. Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

Estoppel of Surety: This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of claims covered by the bond. Bower v. Tebbs, 132 M 146, 314 P2d 731 (1957).

Action on Contract — Change of Venue: An action brought by a merchant against a state highway contractor and his bondsman to recover for supplies furnished the former's subcontractor was held to be one upon a contract between the contractor and the state for the benefit of third persons and to be triable in the county in which the person entitled to payment resided or had his place of business. H. Earl Clack Co. v. Staunton, 100 M 26, 44 P2d 1069 (1935).

18-2-202. Failure to require security — waiver.

Compiler's Comments

1995 Amendment: Chapter 130 near middle, after "fails to take", substituted "the security required or authorized by 18-2-201" for "such bond, cash, checks, drafts, money orders, or certificates of deposit as herein required"; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: Near middle, after "municipal corporation", substituted "waives or fails" for "shall fail".

1981 Amendment: Inserted ", cash, checks, drafts, money orders, or certificates of deposit" after "such bond" in the middle of the section.

18-2-203. Amount and terms of security.

Compiler's Comments

1995 Amendment: Chapter 130 at beginning substituted "security" for "bond" and near middle, after "fix and determine the", substituted "amount of the security and the name of the secured party" for "amount of such bond and to whom such bond shall run"; and made minor changes in style. Amendment effective March 13, 1995.

18-2-204. Right of action on security — notice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 130 in (1), in first sentence, substituted "security" for "bond" and after "furnished in the" deleted "prosecution of such", in second sentence substituted "right of action on the security" for "right of action on such bond for any sum whatever", and in model notice substituted "security" for "bond", after "name of the principal and" substituted "name of the person providing the security" for "surety or sureties upon such bond", and at end substituted "the security" for "said bond"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

"Acceptance" — By Whom: The word "acceptance" in this section as used in connection with a state highway contract contemplates a final, complete, and unconditional acceptance. There can be no such acceptance while there is still a dispute as to the amount owing on the contract. It means acceptance by an officer or body, not an engineer. Kirkpatrick v. Douglas, 104 M 212, 65 P2d 1169 (1937).

18-2-205. Effect of dealing with subcontractor.

Compiler's Comments

1995 Amendment: Chapter 130 substituted "the security" for "such bond"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Action Against City: A materialman, the supplier of a contractor who had a public works contract with city, could not hold the city liable for materials and supplies not paid for by contractor but used in performance of contract. C. E. Mitchell & Sons v. Davis, 162 M 221, 511 P2d 316 (1973).

Federal Court Actions: Title 18, ch. 2, part 2, governs the court remedies in favor of suppliers and materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works. Those sections are the state law to be applied in federal court. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

Provender, Materials, or Supplies: Equipment rental comes within the phrase "provender, materials, or supplies" as used in a bond pursuant to this section. Bower v. Tebbs, 132 M 146, 314 P2d 731 (1957).

Action on Contract — Change of Venue: An action brought by a merchant against a state highway contractor and his bondsman to recover for supplies furnished the former's subcontractor was held to be one upon a contract between the contractor and the state for the benefit of third persons and to be triable in the county in which the person entitled to payment resided or had his place of business. H. Earl Clack Co. v. Staunton, 100 M 26, 44 P2d 1069 (1935).

18-2-206. Notice to contractor concerning subcontractor.

Compiler's Comments

1995 Amendment: Chapter 130 throughout section substituted references to security for references to bond; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: In (1), after "first delivery", deleted "of such provender, material, supplies, or provisions" and after "such work" substituted "give a notice of a right of action on the bond" for "deliver or send by certified mail to the contractor a notice in writing stating in substance and effect that"; deleted former (1)(a) and (1)(b) stating content of notice and that bond would be held; inserted (2) detailing notice delivery and content requirements; inserted (3) making prescribed notice exclusive; and made minor changes in phraseology.

Case Notes

Material Supplier Held to Be Subcontractor: Under a contract that defined "work" as including construction labor and all materials and equipment incorporated into the construction project, a firm which merely served as a conduit for materials used by a general contractor was held to be a subcontractor, and a supplier of that firm was held entitled to pursue action on the general contractor's bond. Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Time for Raising Lack of Notice as Defense: In an action by a materialman against a general contractor for material supplied to the subcontractor, the general contractor could not raise the affirmative defense that statutory notice was not given for the first time upon submitting proposed findings of fact and conclusions of law. The materialman alleged that he had complied with all conditions precedent to bringing the suit. The general contractor entered a general denial, and a general denial did not put notice in issue. Treasure St. Indus., Inc. v. Leigland, 151 M 288, 443 P2d 22 (1968).

Waiver of Notice: A materialman brought an action against the general contractor for materials supplied to subcontractor. The general contractor waived the right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to the subcontractor for the job and consented thereto. Treasure St. Indus., Inc. v. Leigland, 151 M 288, 443 P2d 22 (1968), followed in Robintech, Inc. v. White & McNeil Excavating, Inc., 218 M 404, 709 P2d 631, 42 St. Rep. 1690 (1985).

Defense Not Available to Contractor: Plaintiff brought an action against a highway contractor and his surety to recover for supplies furnished to drivers of trucks of a subcontractor who had not received pay therefor. The defense that the subcontractor deducted the amount owing from the wages of the drivers and that he was the agent of the plaintiff in collecting for the supplies did not alter the liability of the contractor and his surety under their contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 72 P2d 1022 (1937).

Subcontractor Agent of Contractor: This section making the giving of notice a condition precedent to the right to proceed to suit does not deprive one of right to maintain an action instituted on the theory that the subcontractor was the agent of the contractor, without having first given notice. The contractor and his surety were liable for the indebtedness incurred to materialman who furnished supplies to subcontractor as the relationship of principal and agent was established by contracts. H. Earl Clack Co. v. Staunton, 105 M 375, 72 P2d 1022 (1937).

18-2-207. Costs — attorney fees.

Compiler's Comments

1995 Amendment: Chapter 130 near beginning substituted "the surety, payor, or other person liable on the security" for "such surety or sureties" and near end substituted "notice required in 18-2-206" for "notice hereinbefore mentioned"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Attorney Fees: Under this section the prevailing plaintiff is entitled to recover as compensation for attorneys such sum as the court shall adjudge reasonable for the institution and prosecution of proceedings against surety. U.S. v. Reliance Ins. Co. of Philadelphia, 227 F. Supp. 939 (D.C. Mont. 1964).

18-2-208. Exceptions.

Compiler's Comments

1995 Amendment: Chapter 130 in (2), after "obligations in", substituted "the security that is considered necessary" for "such bond as may be deemed necessary" and after "contract" deleted "secured thereby"; in (3) substituted "The notice required by 18-2-204 to be given within 90 days after completion" for "Nothing herein referred to with reference to the giving of such notice within 90 days from and after completion"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Supplier of Subcontractor Not Prohibited From Pursuing Claim Against General Contractor's Bond: Luciano supplied pipe supplies to Petroleum Pipe and Supply Company, a subcontractor for Northwest Pipe and Casing Company. Northwest advanced money to Petroleum, and Luciano supplied pipe to Petroleum in advance of payment for the pipe. Petroleum subsequently went bankrupt, and Luciano made a claim against Northwest's bond for the amount owed by Petroleum for advanced supplies. Northwest argued that the language of the statute prohibited a claim by Luciano. The Supreme Court stated that the statute had to be strictly construed in order to ensure that those persons who should be protected by a contractor's bond were in fact protected. The Supreme Court held that Northwest had only loaned money to Petroleum and that although Petroleum would not have been able to sue on the bond, no money had been lent to Luciano and he was entitled to seek recovery from the general contractor's bond for supplies advanced to Petroleum. Luciano v. NW. Pipe & Casing Co., 264 M 148, 870 P2d 99, 51 St. Rep. 196 (1994).

Part 3

Contract Requirements and Restrictions

18-2-301. Bids required — public notice.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 96, L. 2023. Amendment effective April 18, 2023.

1997 Amendments: Chapter 57 inserted (5) providing that state laws governing advertising and competitive bidding do not apply when the Department of Fish, Wildlife, and Parks is preserving or restoring historic buildings it owns in Bannack if certain conditions are met. Amendment effective July 1, 1997.

Chapter 249 in (1), near middle after "amount involved is", substituted "$75,000" for "$25,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 at end of (4) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 518 in (1), near beginning after "unlawful for", deleted "the board of examiners or"; in (3), after "If", substituted "responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state" for "no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder"; and made minor changes in style. Amendment effective April 24, 1993.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

18-2-302. Bid security — waiver — authority to submit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 96, L. 2023. Amendment effective April 18, 2023.

2003 Amendment: Chapter 203 inserted (1)(b) restricting requiring bond from particular company or producer; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 282 inserted (3) requiring bid security to be submitted by individual authorized to submit it and requiring form and content of security to comply with specifications. Amendment effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

1997 Amendment: Chapter 249 in (2), at end, substituted "$25,000" for "$5,000". Amendment effective July 1, 1997.

1995 Amendment: Chapter 130 in (1), near end of second sentence, inserted "a certificate of deposit, a money market certificate"; in (1)(a), after "drawn and issued by a", substituted current language relating to federally chartered or state-chartered bank or savings and loan association for "national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana"; inserted (1)(b) relating to credit union; in (1)(c) substituted "surety company" for "surety corporation"; and made minor changes in style. Amendment effective March 13, 1995.

1987 Amendment: In (1), at beginning, inserted exception clause; and inserted (2) authorizing contracting agency to waive bid security requirements for projects costing less than $5,000.

18-2-303. Construction bids — minimum requirements — effect of failure to comply.

Compiler's Comments

2009 Amendment: Chapter 48 in (1)(c) at beginning after "signature" inserted "including an electronic signature allowed under 60-2-113"; and made minor changes in style. Amendment effective March 23, 2009.

Effective Date: This section is effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

18-2-306. Time of final acceptance and final payment on construction contracts — interest.

Compiler's Comments

2001 Amendment: Chapter 181 in (2) near end of first sentence before "18-1-104" inserted "17-8-242 or" and at end inserted "as applicable"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

Effective Date: This section is effective October 1, 1999.

Applicability: Section 3, Ch. 439, L. 1999, provided: "[This act] applies to contracts entered into after October 1, 1999."

18-2-316. Limit on retainage for public contracts.

Compiler's Comments

Effective Date: Section 4, Ch. 222, L. 1999, provided that this section is effective July 1, 1999.

Applicability: Section 5, Ch. 222, L. 1999, provided: "[This act] applies to contracts entered into after July 1, 1999."

18-2-317. State agency performance contracts — exempt.

Compiler's Comments

Effective Date: Section 14, Ch. 439, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 5, 2009.

Part 4
Special Conditions — Standard Prevailing Rate of Wages

Part Compiler's Comments

Statement of Intent: The statement of intent attached to HB 79 (Ch. 139, L. 1981) provided: "A statement of intent is required for this bill because it grants the Commissioner of Labor and Industry rulemaking authority regarding the preference for Montana labor in public works contracts. This bill intends that the commissioner adopt rules concerning areas such as the use of apprentices, methods of computing standard prevailing wage rates, and geographical areas subject to the rates. The commissioner shall also have the authority to adopt rules as may be needed to ensure that reporting and enforcement measures are complied with."

Part Administrative Rules

Title 24, chapter 17, ARM Prevailing wages for public works projects.

Part Case Notes

Failure to Pay Wage Rates Prescribed in Contract — Employer Liable for Penalties: Contractors appealed from a District Court order, arguing that because wage rates were not adopted in compliance with administrative procedures, inclusion constituted an illegal provision in the contract with which contractors were not required to comply. The Supreme Court held that contractors were legally bound to pay the wage rates agreed to by all parties and contained in a voluntarily executed contract. Lix v. Kenney, 246 M 426, 804 P2d 391, 48 St. Rep. 23 (1991).

Primary Contractor Liable When Subcontractor Defaults: Subcontractor clauses that speak of a continuing obligation to see that the subcontractor abides by the terms and conditions of a collective bargaining agreement established between a primary contractor and union employees, including fringe benefits, if breached by the subcontractor become a legal and enforceable promise to pay on the part of the primary contractor. Sletten Constr. Co. v. Audit Services, Inc., 190 M 123, 619 P2d 177, 37 St. Rep. 1777 (1980).

Part Attorney General's Opinions

Application of Wage Rate to Service Contracts: The provisions of the prevailing wage rate law apply to service contracts entered into by the state, counties, municipalities, or school districts. The term "public works contracts" in 18-2-403(2) includes all contracts subject to the requirements of 18-2-403(1). 42 A.G. Op. 60 (1988).

Workfare — Prevailing Wage for Similar Work: Section 53-3-304 (now repealed) requires that all participants in the "workfare" program receive benefits equal to wages paid at the prevailing rate for similar county work. The prevailing wage as determined under the "Little Davis-Bacon Act" is the most frequent or commonly used rate of pay. The prevailing wage is not necessarily the minimum wage. The county may pay the minimum wage only if similar work, as that done under workfare, has generally been performed for the minimum wage or if the county has never had similar work performed. To determine what is similar work, the county should classify work to be performed under the workfare program with other work closely resembling the type currently being done for the county. 40 A.G. Op. 3 (1983).

18-2-401. Definitions.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in definition of standard prevailing rate of wages in (a)(ii) near middle of first sentence and in (b) near middle after "Retirement" inserted "Income"; and made minor changes in style. Amendment effective October 1, 2009. The amendment by Ch. 277 rendered the amendment by Ch. 2 void.

Chapter 277 in definition of contractor near beginning after "any" inserted "individual"; inserted definition of fringe benefits; deleted former definition of heavy and highway construction wage rates that read: ""Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public"; in definition of standard prevailing rate of wages near end of introductory language after "means" inserted "the rates established as provided in", and substituted (a) through (c) describing standard prevailing rate of wages for building construction services, for heavy construction services and highway construction services, and for nonconstruction services for former (a)(i), (a)(ii), and (b) that read: "(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

2003 Amendment: Chapter 293 in definition of standard prevailing rate of wages in (a)(ii) in second sentence near middle after "performed by" inserted "electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and". Amendment effective April 11, 2003.

2001 Amendment: Chapter 517 in definition of bona fide resident of Montana at beginning of second sentence deleted "Sojourners or"; inserted definitions of contractor and employer; in definition of standard prevailing rate of wages in (a)(ii) at end of first complete sentence after "computed" substituted "by the department based on work performed by Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes" for "from a weighted average wage rate based on all of the hours worked on work", inserted second through fourth full sentences regarding survey information and setting prevailing wages for each craft, and near middle of fifth full sentence after "unless the" substituted "annual survey of construction contractors and the biennial survey of nonconstruction service employers" for "survey of employers"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

1999 Amendments — Composite Section: Chapter 30 in definition of public works contract inserted (b) excluding certain contracts entered into by the department of public health and human services; and made minor changes in style. Amendment effective February 18, 1999.

Chapter 289 in definition of heavy and highway construction wage rates after "department of labor" inserted "and zone pay" and at end inserted reference to staging yards and new or reopened pits; inserted definition of project location; inserted definition of special circumstances; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 496 in definition of public works contract in first sentence after "means a contract for construction services" deleted "or nonconstruction services" and after first "political subdivision" inserted "or for nonconstruction services let by the state, county, municipality, or political subdivision" and inserted second sentence exempting certain schools districts from nonconstruction services job classifications. Amendment effective April 27, 1999.

Effective Date — Applicability: Section 2, Ch. 30, L. 1999, provided: "[This act] is effective on passage and approval [approved February 18, 1999] and applies to contracts entered into on or after [the effective date of this act]."

Section 3, Ch. 289, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]." Effective July 1, 1999.

Section 2, Ch. 496, L. 1999, provided: "[This act] is effective on passage and approval [approved April 27, 1999] and applies to school district contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 522 inserted definitions of construction services, nonconstruction services, and public works contract; deleted definition of labor that read: ""Labor" means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in a state, county, municipal, school district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work"; in definition of standard prevailing rate of wages, in (a)(ii) near beginning of second sentence after "wages", substituted "must be computed from" for "is" and at end inserted "unless the survey of employers in the district does not generate sufficient data" and inserted third through seventh sentences regarding use of alternative methods of wage rate determination; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendment: Chapter 609 in (5), (7)(a)(ii), and (7)(b), after "contributions", inserted "that meet(s) the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor"; in two places in (5), in two places in (7)(a)(i), and in (7)(a)(ii), after "heavy", inserted "and"; in (6), after "remodeling", inserted "work" and after "school" substituted "district, or political subdivision project" for "work"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

1987 Amendment: In (1) inserted "in excess of $25,000", after "construction" deleted "repair, or", and after "maintenance" inserted "or remodeling"; inserted definitions of district, heavy highway construction wage rates, and work of a similar character; in (7)(a) substituted "or "standard prevailing wage"" for "including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed"; inserted (7)(a)(i) referring to heavy highway construction wage rates; in (7)(a)(ii) inserted "other than heavy highway construction wages", in two places substituted "district" for "county or locality", and inserted last sentence concerning weighted average; in (7)(b), in two places, substituted "district" for "county or locality"; and made minor changes in phraseology.

1981 Amendment: Added opening phrase of section providing that definitions apply to part 4; inserted (2) defining Commissioner; and inserted (3) defining Department.

Case Notes

"Heavy or Highway" Construction Construed — "Utility Rights-of-Way" Construed: After receiving complaints about the wages being paid to workers constructing tunnels for heating and electric utilities on the Montana State University-Bozeman campus, the Montana Department of Labor and Industry (DLI) held that the construction projects were "heavy" construction within the meaning of subsection (5) and (7) of this section and that a higher wage should be paid. (Definitions of heavy and highway construction wage rates deleted in 2009 legislation.) The DLI also held that the contracting state agency, the Department of Administration (DA), was liable for back wages. The DA appealed the DLI decision to the District Court, which held that the project was not "heavy" construction because it was not a utility "right-of-way". The Supreme Court held that the District Court erred in applying the definition of "right-of-way" found in 60-1-103 and in holding that a "right-of-way" is only an interest in land. The Supreme Court pointed out that this section sets out a listing of projects that are to be built or constructed. The Supreme Court noted that not only could an interest in land not be "constructed" but that the inclusion of "rights-of-way" in the list of types of projects listed in subsection (5) of this section was not intended by the Legislature, because of the use of the phrase "such as", to be an exclusive list of projects. The Supreme Court therefore held that the tunnels were "utility rights-of-way", that they qualified as "heavy construction" within the meaning of subsection (5) of this section, and that a higher wage should have been paid by the DA. Dept. of Administration v. Ekanger, 284 M 151, 943 P2d 994, 54 St. Rep. 821 (1997).

Little Davis-Bacon Act — No Unconstitutional Delegation by Legislature: Appellant contended that 18-2-401(7)(b) is an unconstitutional delegation of authority from the Legislature to private parties for determination of the prevailing wage rate. The court held that such provision was not applicable to the facts of the case. The case is governed by 18-2-401(7)(a). Montana's Little Davis-Bacon Act authorizes the Commissioner of Labor to establish standard prevailing rates using union contracts and "other information" as guidelines. Therefore, collective bargaining agreements are advisory, but not compulsory, where there is other evidence of prevailing wage rates in the community as there was in the Bozeman area. No unconstitutional delegation of authority has occurred in 18-2-401(7)(a). Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Commissioner to Determine Standard Prevailing Rate of Wages: Plaintiff was awarded the mechanical subcontract on a research laboratory being constructed by the State. The State received a complaint that plaintiff was not paying the "standard prevailing rate" (SPR) of wages. The State investigated and concluded that the complaint was legitimate. Plaintiff commenced a declaratory judgment action, and judgment was entered in his favor. On appeal, the Supreme Court held that the authority to determine the SPR rests exclusively with the Commissioner of Labor and Industry. The District Court was incorrect in allowing the contractor to determine the SPR. The court also held that this was not reversible error since the SPR existed only somewhere in the bureaucracy and plaintiff was unaware of it. Because of this, there was no mutual assent under the contract. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

"Work of a Similar Character" Construed: In interpreting the meaning of the "standard prevailing rate" of wages paid by other contractors for "work of a similar character", the Supreme Court held that "work of a similar character" refers to projects as a whole and not to individual labor. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

18-2-402. Standard prevailing rate of wages.

Compiler's Comments

2013 Amendment: Chapter 373 in (1) in first sentence near middle inserted "including fringe benefits"; in (3) substituted "including fringe benefits, is the greater of" for "may be equal to but not greater than" and at end inserted "or the rate determined by the applicable survey under this part"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 277 in (3) at beginning substituted "wages may be equal to but not greater than the highest applicable rate of wages" for "wage determined to be greater than the applicable rate of wage"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

1987 Amendment: At end of first sentence of (1) substituted "applicable to public works contracts under this part" for "in the county or locality in which the contract is to be performed" and at end of second sentence substituted "on which the rates are based" for "from which rates and jurisdictional areas applicable to public works contracts under this part may be ascertained".

Case Notes

Lease Between City and Finance Company — Public Works Contract: Pollard Finance, Inc., arranged to have a building built on land owned by the city of Bozeman and leased the building to the city. In an action by the Commissioner of Labor for unpaid wages mandated by 18-2-401, et seq., the court held that the lease agreement constituted a public works contract subject to those provisions. There was substantial credible evidence to support the finding by the trial court that the lease was in fact a sale of the building to the city and that this was in effect a public works project. Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Little Davis-Bacon Act — No Unconstitutional Delegation by Legislature: Appellant contended that 18-2-401(7)(b) is an unconstitutional delegation of authority from the Legislature to private parties for determination of the prevailing wage rate. The court held that such provision was not applicable to the facts of the case. The case is governed by 18-2-401(7)(a). Montana's Little Davis-Bacon Act authorizes the Commissioner of Labor to establish standard prevailing rates using union contracts and "other information" as guidelines. Therefore, collective bargaining agreements are advisory, but not compulsory, where there is other evidence of prevailing wage rates in the community as there was in the Bozeman area. No unconstitutional delegation of authority has occurred in 18-2-401(7)(a). Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Commissioner to Determine Standard Prevailing Rate of Wages: Plaintiff was awarded the mechanical subcontract on a research laboratory being constructed by the State. The State received a complaint that plaintiff was not paying the "standard prevailing rate" (SPR) of wages. The State investigated and concluded that the complaint was legitimate. Plaintiff commenced a declaratory judgment action, and judgment was entered in his favor. On appeal, the Supreme Court held that the authority to determine the SPR rests exclusively with the Commissioner of Labor and Industry. The District Court was incorrect in allowing the contractor to determine the SPR. The court also held that this was not reversible error since the SPR existed only somewhere in the bureaucracy and plaintiff was unaware of it. Because of this, there was no mutual assent under the contract. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

"Work of a Similar Character" Construed: In interpreting the meaning of the "standard prevailing rate" of wages paid by other contractors for "work of a similar character", the Supreme Court held that "work of a similar character" refers to projects as a whole and not to individual labor. Thompkins v. Fuller, 205 M 168, 667 P2d 944, 40 St. Rep. 1192 (1983).

18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.

Compiler's Comments

2009 Amendment: Chapter 277 in (2)(b) at end after "benefits" deleted "for health and welfare and pension contributions", deleted former (2)(b)(i) that read: "meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor"; in (3) near middle substituted "standard prevailing wage rates" for "heavy and highway construction wage rates"; in (4)(b) near end after "benefits" deleted "for health and welfare and pension contributions"; deleted former (4)(b)(i) that read: "meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor"; in (5) at end substituted "39-3-409" for "39-3-404"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

2003 Amendment: Chapter 467 at beginning of (4) inserted exception clause; inserted (5) allowing employer who performs public works contract for nonconstruction services to pay disabled employees less than standard prevailing wages if employer conforms with federal Fair Labor Standards Act and pays wages equal to or above state's minimum wage; and made minor changes in style. Amendment effective April 23, 2003.

Effective Date — Applicability: Section 3, Ch. 467, L. 2003, provided: "[This act] is effective on passage and approval [approved April 23, 2003] and applies to contracts entered into on or after [the effective date of this act]."

1999 Amendment: Chapter 289 in (2) after "contracts" inserted "for construction services" and after "highway construction" inserted "that are conducted at the project location or under special circumstances"; at end of (3) substituted "for heavy and highway construction services conducted at the project location or under special circumstances" for "for the project"; inserted (4) requiring certain pay provisions in public works contracts for nonconstruction services; inserted (5) exempting transportation of certain items to or from project location from standard prevailing wages requirement; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 3, Ch. 289, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]." Effective July 1, 1999.

1997 Amendment: Chapter 522 in (1), at beginning after "In", substituted "every public works contract" for "any contract let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state" and near middle, before "contract", inserted "public works"; in (3), at beginning after "every", inserted "public works"; in (4), at beginning after "contract", inserted "other than a public works contract"; in (5), at beginning before "contract" and near middle before "contracts", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendments — Composite Section: Chapter 464 inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; in (4), near beginning after "financed", substituted "from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993" for "in whole or in part by tax-exempt industrial revenue bonds" and at end, after "being performed", inserted "unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 609 in (1), (2), and in two places in (3), after "heavy", inserted "and"; inserted (2)(a) requiring payment of travel allowance; at end of (2)(b) deleted "and travel allowance provisions"; inserted (2)(b)(i) requiring that the standard prevailing wage rate meet federal program criteria; and made minor changes in style. Amendment effective May 3, 1993.

A style change in (5) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Effective Date: Section 3, Ch. 420, L. 1991, provided: "[This act] [18-2-403(4)] is effective July 1, 1991."

1987 Amendment: At beginning of (2) inserted "All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor";

near end of (2) substituted "district" for "county or locality"; inserted (3) requiring payment of heavy highway construction wage rates; and made minor changes in phraseology.

1981 Amendment: Inserted "bid specification and the" between "inserted in the" and "contract" in (1); added (3) shifting obligation to pay standard prevailing wage rate from contractor to public contracting agency in certain situations.

Case Notes

Public Works Project — No Prevailing Wage Provision — Penalties Upheld: The trial court, having found a new building lease to be a sales contract, and thus a public works contract, properly imposed penalties for the city's failure to include a prevailing wage rate provision in the public works contract. Section 39-3-206 provides that if an employer on a public works project is delinquent, his obligation to pay prevailing wages includes a civil penalty. Section 18-2-403 provides that if a provision for the payment of the prevailing wage rate is not included by the public contracting body in the contract with the contractor, then the obligation to pay the prevailing wage is on the public contracting agency. While this section is silent as to shifting penalties, the Supreme Court found that an interpretation of the statute allowing civil penalties against the contracting agency accords with the underlying purpose of the statute to serve as a deterrent. Hunter v. Bozeman, 216 M 251, 700 P2d 184, 42 St. Rep. 784 (1985).

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in this section extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in subsection (2)(b) of this section apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

Application of Wage Rate to Service Contracts: The provisions of the prevailing wage rate law apply to service contracts entered into by the state, counties, municipalities, or school districts. The term "public works contracts" in subsection (2) of this section includes all contracts subject to the requirements of 18-2-403(1). 42 A.G. Op. 60 (1988).

18-2-404. Approval of public works contract — bond.

Compiler's Comments

1997 Amendment: Chapter 522 in (1), near middle after "contracting", deleted "state"; in (2), at beginning after "In all", inserted "public works" and at end, before "contract", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

18-2-406. Posting wage scale and fringe benefits.

Compiler's Comments

2001 Amendment: Chapter 517 at beginning substituted "The contractor performing" for "Contractors, subcontractors, and employers who are performing", after "providing" inserted "construction", near middle after "project or" substituted "staging area" for "work area", after "first day of work" inserted "and continuing for the entire duration of the project", after "all wages" inserted "and fringe benefits", and at end after "employees" deleted "employed on such site or work area"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

18-2-407. Forfeiture for failure to pay standard prevailing rate of wages.

Compiler's Comments

2009 Amendment: Chapter 277 in (2) near end of second sentence after "part 2" deleted "except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

2003 Amendment: Chapter 467 in (1) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective April 23, 2003.

Effective Date — Applicability: Section 3, Ch. 467, L. 2003, provided: "[This act] is effective on passage and approval [approved April 23, 2003] and applies to contracts entered into on or after [the effective date of this act]."

1999 Amendment: Chapter 389 in (1) at end of second sentence substituted "general fund" for "employment security account, as provided in 39-51-409, and must be used for enforcement"; and made minor changes in style. Amendment effective July 1, 1999.

1995 Amendment: Chapter 90 in second sentence of (1) substituted "employment security account, as provided in 39-51-409" for "unemployment insurance administration account, as provided in 39-51-406"; and in three places in (2), after "commissioner of labor", inserted "and industry". Amendment effective March 9, 1995.

1993 Amendment: Chapter 609 in (1), in first sentence after "forfeit to the", substituted remainder of sentence relating to 20% penalty rate, second sentence relating to deposition of money in unemployment insurance administration account, and third sentence requiring forfeiture of wages owed plus $25 a day for underpaying employee for "contracting agency the sum of $25 a day for each worker underpaid"; at end of (2), after "part 2", inserted exception clause; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

1989 Amendment: In middle of last sentence inserted "or the commissioner of labor on behalf of all the underpaid workers"; and made minor change in phraseology. Amendment effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

18-2-409. Montana residents to be employed on state construction contracts.

Compiler's Comments

2003 Amendment: Chapter 564 in (1) near end after "contract" inserted "each contractor shall ensure that" and after "50%" substituted "of the contractor's workers performing labor on the project are bona fide Montana residents" for "of the work must be performed by bona fide Montana residents"; in (2) in third sentence at beginning after "If" deleted "there are two or more contracts and", after "personnel" substituted "each contractor" for "a contractor", after "workers" inserted "on the project", and at end after "residents" deleted "and one or more of the other contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents"; and made minor changes in style. Amendment effective May 5, 2003.

Effective Date — Applicability: Section 2, Ch. 564, L. 2003, provided: "[This act] is effective on passage and approval [approved May 5, 2003] and applies to contracts entered into on or after [the effective date of this act]."

Statement of Intent: The statement of intent attached to Ch. 549, L. 1985, provided: "A statement of intent is required for this bill because section 1 grants rulemaking authority to the commissioner of labor and industry.

The rules should, at a minimum:

(1) provide the most practical method or methods for quantifying the requirement that at least 50% of the workers on a project must be Montana residents so that the quantification method or methods can be applied to contracts and projects to ensure that the requirement is complied with;

(2) include a procedure by which the commissioner will determine whether or not 50% of the workers of a contractor are Montana residents; and

(3) include procedures for investigating complaints and enforcing section 1."

Applicability: Section 4, Ch. 549, L. 1985, provided: "This act applies to state construction contracts for which bids are solicited after the effective date of this act." Effective October 1, 1985.

18-2-411. Creation of prevailing wage rate districts.

Compiler's Comments

2021 Amendment: Chapter 229 inserted (5)(b) providing a method for measuring zone pay; inserted (5)(c) regarding computation of the rate of travel allowances; inserted (6) providing a definition of dispatch city; and made minor changes in style. Amendment effective July 1, 2021.

2013 Amendment: Chapter 373 in (1) decreased prevailing wage rate districts from ten to five. Amendment effective October 1, 2013.

2009 Amendment: Chapter 277 in (1) near beginning after "heavy" inserted "construction services", after "highway construction" inserted "services", near middle after "into" substituted "not more than" for "at least", and after "districts" inserted "for building construction services and nonconstruction services"; in (5) at end of first sentence substituted "this part" for "18-2-401 and 18-2-402"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

2005 Amendment: Chapter 538 in (5) inserted second sentence requiring that the standard prevailing rate of wages for construction services, as determined by the commissioner, must be used for calculating an apprentice's wage; and made minor changes in style. Amendment effective October 1, 2006.

Preamble: The preamble attached to Ch. 538, L. 2005, provided: "WHEREAS, the Legislature has required the creation of at least 10 prevailing wage rate districts in 18-2-411, and these districts cover the entire state and use an annual survey to establish prevailing wage rates; and

WHEREAS, the Department of Labor and Industry has created a separate biennial survey of journeyman's wages in districts outside of Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties for a building construction occupation and has used this wage rate rather than the standard prevailing wage rate as a base for calculating the wages of apprentices, thus duplicating efforts."

1993 Amendment: Chapter 609 in (1), after "heavy", inserted "and". Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in 18-2-403 extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

18-2-412. Method for payment of standard prevailing wage.

Compiler's Comments

2009 Amendment: Chapter 277 in (1)(c) near middle after "fringe benefits" deleted "for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974" and after "travel" substituted "allowances" for "or other bona fide programs approved by the United States department of labor, that is"; and made minor changes in style. Amendment effective July 1, 2009.

Saving Clause: Section 19, Ch. 277, L. 2009, was a saving clause.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Effective Date: Section 11, Ch. 609, L. 1993, provided that this section is effective on passage and approval. Approved May 3, 1993.

18-2-413. Standard prevailing rate of wages for building construction services.

Compiler's Comments

2013 Amendment: Chapter 373 in (4) after "fringe benefits plus" inserted "zone pay, per diem, and"; in (5)(a) before "benefits" inserted "fringe"; in (5)(b)(ii) substituted "then the higher of the collective bargaining agreement rate or the surveyed rate" for "that wage"; inserted (5)(c) regarding department setting prevailing fringe benefits using a weighted average with certain exceptions; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: Section 20, Ch. 277, L. 2009, provided that this section is effective July 1, 2009.

18-2-414. Standard prevailing rate of wages for heavy construction services and for highway construction services — definition.

Compiler's Comments

2013 Amendment: Chapter 373 in (1) after "establish" deleted "from time to time" and at end after "services" inserted "annually"; in (2) after "may" deleted "either"; in (2)(a) after "highway construction services" inserted survey provision for electrical contractors and plumbers; inserted (2)(c) regarding use of combined rates; in (3) in first sentence after "zone pay" inserted "per diem" and after "travel allowances" inserted "if applicable"; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: Section 20, Ch. 277, L. 2009, provided that this section is effective July 1, 2009.

18-2-415. Standard prevailing rate of wages for nonconstruction services — survey.

Compiler's Comments

Effective Date: Section 20, Ch. 277, L. 2009, provided that this section is effective July 1, 2009.

18-2-416. Wages paid to registered apprentices.

Compiler's Comments

2021 Amendment: Chapter 114 inserted (1)(c) regarding the start date for an apprenticeship's rate of wages; and made minor changes in style. Amendment effective March 31, 2021.

Effective Date: Section 20, Ch. 277, L. 2009, provided that this section is effective July 1, 2009.

18-2-417. Wage rate adjustments for multiyear contracts.

Compiler's Comments

Effective Date: Section 20, Ch. 277, L. 2009, provided that this section is effective July 1, 2009.

18-2-418. Wage rates based on project classification.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

18-2-419. Zone pay and per diem.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

18-2-421. Notice.

Compiler's Comments

1997 Amendment: Chapter 522 near beginning of second sentence, after "case of", substituted "public works contracts" for "projects"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification.

Compiler's Comments

2001 Amendment: Chapter 517 in (1) after "contractors and" substituted "employers" for "subcontractors"; inserted (2) requiring that contracts contain a provision requiring each contractor and employer to maintain payroll records; inserted (3) requiring that contracts contain a provision requiring each contractor to post a statement of all wages and fringe benefits; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 4, Ch. 517, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to public works contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 522 at beginning, after "All", substituted "public works contracts and the bid specifications for those contracts" for "bid specifications and contracts for public works projects" and before "prevailing" inserted "standard"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

Attorney General's Opinions

Prevailing Wage Requirements Applicable to Offsite Construction Work — Project Location Indicative of Appropriate Rate: The 1997 amendments to the prevailing wage requirements in 18-2-403 extend to any public works contract, without a work situs limitation. A contractor's offsite fabrication of items for onsite installation constitutes construction within the scope of the term "construction services". Therefore, the prevailing wage requirements in 18-2-403(2)(b) apply to fabrication of materials performed offsite by a contractor for installation or use at the site of construction under a public works contract. With respect to offsite services, the prevailing wage district is the district where the onsite construction occurs. 47 A.G. Op. 12 (1998).

18-2-423. Submission of payroll records.

Compiler's Comments

1993 Amendment: Chapter 609 inserted second sentence requiring employees receiving hourly wage to be paid weekly and third sentence requiring submission of employee payroll records to Department within 5 days of request after complaint filed. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

18-2-424. Enforcement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

18-2-425. Prohibition — project labor agreement.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

18-2-431. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 234, L. 1985, provided: "This bill requires a statement of intent because it expressly delegates rulemaking authority to the commissioner of labor and industry.

Title 18, chapter 2, part 4, MCA, the "Little Davis-Bacon Act", requires that a standard prevailing wage be paid for labor on all public works contracts and that Montana labor receive a preference for employment on all public contracts. The commissioner is given the duty to determine the prevailing wage by locality and to otherwise administer part 4. In early 1983 Judge Bennett found in Townsend Electric, Inc. v. Hunter, et al., first judicial district of Montana (no. 47160), that the commissioner's determinations as to prevailing wage did not have the force of law because the legislature had never granted the commissioner express rulemaking authority to implement part 4. This bill is introduced to clarify that the legislature intends, and has so intended since the adoption of the Little Davis-Bacon Act in 1931, that the commissioner of labor and industry set and enforce prevailing wage rates under that act.

The rulemaking authority expressly delegated to the department of labor and industry by this bill authorizes the department to promulgate the prevailing wage rates as "rules" under the Montana Administrative Procedure Act.

The department is authorized to adopt rules each year establishing the various prevailing wage rates and to adopt rules spelling out the procedures and methods used to arrive at those rates. It is the intent of the legislature that in adopting the rules, the commissioner shall consider the following:

(1) collective bargaining agreements;
(2) federal Davis-Bacon Act rates;
(3) federal Service Contract Act rates;
(4) wage information compiled by the department of labor and industry;
(5) wage surveys, as appropriate and as resources permit; and
(6) other pertinent information."

18-2-432. Penalty for violation.

Compiler's Comments

1999 Amendment: Chapter 78 inserted (1)(b) concerning penalty for gross negligence; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 522 in (1), in two places before "contract", inserted "public works"; in (2), near end before "contracts", inserted "public works"; in (3), near middle before "contract", inserted "public works"; and made minor changes in style. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 9, Ch. 522, L. 1997, was a saving clause.

Severability: Section 10, Ch. 522, L. 1997, was a severability clause.

1993 Amendment: Chapter 609 in two places in (1), after "county", changed "municipal" to "municipality", near middle, after "school", substituted "district, or officer of a political subdivision that" for "officers who have", and at end, after "school", substituted "district, or political subdivision" for "districts"; substituted (2) providing maximum ineligibility of 3 years for labor standards violation for former language that read: "Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court"; in (3), after "county", changed "municipal" to "municipality" and after "school" substituted "district, or political subdivision" for "districts"; and made minor changes in style. Amendment effective May 3, 1993.

Applicability: Section 10, Ch. 609, L. 1993, provided: "[This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993."

Part 5
Alternative Project Delivery Contracts

Part Compiler's Comments

Effective Date: This part is effective October 1, 2005.

18-2-501. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 8, Ch. 96, L. 2023, in definition of publish substituted "7-1-2121, 7-1-4127, and 20-9-204 or the provision of public notice pursuant to 18-2-301" for "7-1-2121, 7-1-4127, 18-2-301, and 20-9-204". Amendment effective April 18, 2023.

Section 1, Ch. 418, L. 2023, in definition of alternative project delivery contract at end inserted "or a comprehensive agreement"; inserted definitions of best value, comprehensive agreement, eligible project, innovative financing delivery, and request for proposals; and made minor changes in style. Amendment effective May 3, 2023, and terminates July 1, 2033.

Modification of Termination Date: Section 7, Ch. 145, L. 2023, amended sec. 6, Ch. 54, L. 2017, by modifying the termination date imposed by Ch. 54 to June 30, 2023. Effective April 18, 2023.

2021 Amendment: Chapter 111 in temporary version inserted (6)(d) regarding the transportation commission; in (9) inserted second sentence excluding the department of transportation from the definition; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendments — Composite Section: Chapter 54 in definition of alternative project delivery contract inserted (b) concerning design-build contracts awarded by the transportation commission; in definition of state agency at end deleted "except that the department of transportation, provided for in 2-15-2501, is not considered a state agency"; and made minor changes in style. Amendment effective October 1, 2017, and terminates December 31, 2024.

Chapter 147 in definition of governing body inserted (c) concerning the trustees of a fire district or the county commissioners or trustees of a fire service area; and made minor changes in style. Amendment effective April 3, 2017.

2009 Amendment: Chapter 29 in definition of governing body inserted (b) including the board of directors of a county water or sewer district as governing bodies; and made minor changes in style. Amendment effective March 20, 2009.

18-2-502. Alternative project delivery contract — authority — criteria.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 418, L. 2023. Amendment effective May 3, 2023, and terminates July 1, 2033.

18-2-503. Alternative project delivery contract — award criteria.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 418, L. 2023. Amendment effective May 3, 2023, and terminates July 1, 2033.

CHAPTER 3
STATE BUILDING LEASES

Part 1
General Provisions

Part Case Notes

No Conflict Between Long-Range Building Statutes and Lease-Option Limitations: The long-range building statutes are not exclusive; therefore, there is no conflict between the long-range building program and the lease-option arrangement for the acquisition of personal property. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

Specific Authority Overriding Lease-Option Limitations: The specific authority given to the Attorney General in 44-10-202 to choose a site for the Montana Law Enforcement Academy overrides the limitations placed on lease-option contracts by this part. Cornwall v. St., 231 M 58, 752 P2d 135, 45 St. Rep. 429 (1988).

18-3-101. Authority to lease with option to purchase.

Compiler's Comments

2019 Amendment: Chapter 202 in (1) at beginning inserted exception clause; inserted (2) regarding exception to two-thirds vote requirement; and made minor changes in style. Amendment effective April 26, 2019.

Department of Administration Required to Develop Plan — Advisory Committee — Section Not Codified: Section 2, Ch. 202, L. 2019, provided: "(1) The department of administration shall develop a plan for a lease contract that provides an option to purchase for a colocated laboratory for facilities that conduct animal testing for pathogens that could impact public health.

(2) The department of administration shall organize an advisory committee composed of the following:

(a) two members of the house of representatives, one from the majority and one from the minority, appointed by the speaker of the house;

(b) two members of the senate, one from the majority and one from the minority, appointed by the committee on committees;

(c) a person appointed by the executive officer of the department of livestock knowledgeable in the veterinary diagnostic laboratory;

(d) a person appointed by the director of the department of fish, wildlife, and parks knowledgeable in the wildlife laboratory;

(e) a person appointed by the director of the department of agriculture knowledgeable in the analytical laboratory; and

(f) two members appointed by the president of Montana state university-Bozeman, one person representing the university and one person representing MSU extension.

(3) The department of administration shall assist the advisory committee in investigating a process to develop a lease contract.

(4) The director of the department of administration may invite additional federal, state, or private stakeholders to participate in the meetings of the advisory committee. The department may request assistance from the legislative fiscal division and the legislative services division regarding past studies and information on the state labs, including the results of the study commissioned by Chapter 352, Laws of 2017.

(5) The department of administration shall report:

(a) on a quarterly basis to the environmental quality council and the economic affairs interim committee about the progress of the advisory committee; and

(b) submit findings to each committee by September 1, 2020." Effective April 26, 2019.

Because the plan required under sec. 2, Ch. 202, L. 2019, must be developed in time to submit findings to the economic affairs interim committee and the environmental quality council by September 1, 2020, the section is construed as temporary and will not be codified.

1997 Amendment: Chapter 455 near end substituted "lease contract" for "rental contract"; and made minor changes in style. Amendment effective April 30, 1997.

18-3-105. Location of building.

Compiler's Comments

1997 Amendment: Chapter 455 in first sentence, at beginning after "building", inserted "authorized pursuant to 18-3-101" and at end substituted "request for proposals" for "call for bids"; in second sentence, after "contract", inserted "entered into pursuant to this chapter"; and made minor changes in style. Amendment effective April 30, 1997.

18-3-110. Requests for proposals.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 489, L. 2023. Amendment effective May 16, 2023.

Preamble: The preamble attached to Ch. 489, L. 2023, provided: "WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds."

1999 Amendment: Chapter 51 in (1) at end of second sentence after "through" substituted "(6)" for "(7)". Amendment effective March 15, 1999.

Effective Date: Section 11, Ch. 455, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

18-3-111. Exemption from construction contract requirements.

Compiler's Comments

Effective Date: Section 11, Ch. 455, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

CHAPTER 4
MONTANA PROCUREMENT ACT

Chapter Compiler's Comments

Severability: Section 52, Ch. 519, L. 1983, was a severability section.

Chapter Administrative Rules

Title 2, chapter 5, subchapters 2 through 6, ARM Regulation of procurement activities — procedures.

Chapter Case Notes

Unfair Practices Act Applicable to State: The Unfair Practices Act, Title 30, ch. 14, part 2, which denounces sales made below cost when the purpose is to injure competitors or destroy competition, is applicable to sales made to the state in the absence of an express exception in favor of those selling to the state. Helena Auto. Dealers Ass'n v. Anderson, 110 M 1, 98 P2d 371 (1940).

Chapter Collateral References

Administration of State Procurement and Contract Management, Performance Audit, Mont. Leg. Audit Div. (November 2018).

Part 1
General Provisions

Part Case Notes

Right of Plaintiff to Sue for Damages for Negligent or Bad Faith Application of Procurement Act: The District Court dismissed ISC's suit against the Department of Administration for negligent or bad faith application of the Montana Procurement Act on the basis that 18-4-242 was the exclusive remedy for ISC and that the statute did not allow such an action. The Supreme Court held that the general remedies provided a plaintiff suing the state under 18-4-131 (now repealed) were not displaced by 18-4-242 and that therefore ISC was entitled to seek damages for negligent or bad faith application of the Act by the Department. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Limitations on State Contracts Inapplicable to Leases: Where the state executed a 6-year lease of certain communications equipment in 1973 and unilaterally terminated the lease in 1977, the trial court did not err in holding that the lease was not subject to the provisions of section 82-1918, R.C.M. 1947 (18-4-102, MCA, now repealed), limiting the terms of certain contracts to 3 years. In determining the intent of the Legislature, the court may look to the context and plain meaning of the statute, the title of certain codified provisions, and the legislative history of the law. These indicia of legislative intent show that the Legislature did not intend section 82-1918, R.C.M. 1947, to apply to the Attorney General's leasing power under 44-2-302. Leaseamerica Corp. of Wis. v. St., 191 M 462, 625 P2d 68, 38 St. Rep. 398 (1981).

Property Included in Purchasing Power: There are variations in the statutes in the descriptions of the articles to be purchased by the state. The court found that it was the intent of the Legislature, in providing for a State Purchasing Agent (now Department of Administration) and defining his duties, to include in those duties the purchase of supplies, materials, services, equipment, tools, and all physical property of every kind required by all offices, departments, boards, commissions, and institutions of the State of Montana. The State Aeronautics Commission (now Department of Transportation) was therefore not authorized to make purchases through its power to contract. Holtz v. Babcock, 143 M 341, 390 P2d 801 (1963).

18-4-122. Purpose.

Compiler's Comments

1997 Amendment: Chapter 443 inserted (9) relating to exclusive remedies for unlawful bid solicitations and contract awards; and made minor changes in style. Amendment effective April 30, 1997.

Preamble: The preamble attached to Ch. 443, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking the remedy; and

WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the Legislature, and persons acting under any statute are considered to be acting in contemplation of the Legislature's power to repeal the statute; and

WHEREAS, it is the intent of the Legislature by enacting [sections 2, 10, and 23] [18-4-122, 18-4-242, and retroactive applicability section] and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability of the remedy of money damages; and

WHEREAS, it is the intent of the Legislature by enacting [section 23] [retroactive applicability section] to make the reversal of the ISC case apply retroactively, unless a complaint was filed in district court prior to January 1, 1992, as provided in [section 23]."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

Case Notes

Bid Proposal Evaluation Including Negotiation of Unresolved Issues — Bid Properly Considered Nonresponsive: Reier Broadcasting Co. (RBC) sought to enter a broadcasting contract with Montana State University-Bozeman (MSU) and asserted that MSU violated administrative rules by finding that RBC's proposal was nonresponsive after the evaluation process was completed. The Supreme Court disagreed. The evaluation process concludes when the parties arrive at a contract, not before, so in this case, the evaluation process and the accompanying rules of engagement included negotiations of unresolved issues as well as discussion pursuant to the administrative rules. A state entity must retain the power to find a proposal nonresponsive when a party refuses to conform to a request for proposals (RFP) or substantially alters its proposal. In order to maximize the state's purchasing power, the Montana Procurement Act allows a state agency to ensure full compliance with an RFP up to the point of entering a contract. RBC's interpretation would defeat the intent of the Act and tie the hands of a state entity in a manner not contemplated by the Act. Here, MSU reviewed RBC's proposal based on evaluation criteria and did not restrict responsibility for determining nonresponsiveness or nonresponsibility of a proposal to the evaluation committee, so MSU's determination that RBC's proposal was nonresponsive was affirmed. In re Contested Hearing of Protest by Reier Broadcasting Co., 2005 MT 347, 330 M 152, 127 P3d 389 (2005).

Award of Contract Under Montana Procurement Act — No Preemption of Other Statutory Requirements: The plaintiff was awarded a state contract to haul goods for the school lunch program. The contract was contingent upon the plaintiff's obtaining a Class C certificate from the Public Service Commission by August 1, 1989. The Commission informed the plaintiff that a public hearing had to be held on issuing the certificate and that the earliest the hearing could be held was August 23, 1989. The plaintiff argued that the policy of the Montana Procurement Act to promote competition preempted 69-12-324, which operates to protect the existing carrier. The Supreme Court ruled that more specific statutes regulating carriers govern over the procurement statutes with respect to carriers. State ex rel. Roberts v. Pub. Ser. Comm'n, 242 M 242, 790 P2d 489, 47 St. Rep. 774 (1990).

18-4-123. Definitions.

Compiler's Comments

2001 Amendment: Chapter 181 in definition of procurement in (a) in first sentence after "means" inserted "acquisition with or without cost" and inserted (b) providing that procurement does not include acquiring supplies or services by gift; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in definition of services, at end of first sentence after "contractor", deleted "not involving the delivery of a specific end product other than reports which are merely incidental to the required performance" and in second sentence, after "does not include", deleted "consulting services as defined in 18-8-102, those services listed in 18-8-103" and near end substituted "the provision of human services administered by the department of public health and human services" for "the provision by providers of human services regulated by a state agency"; inserted definition of vendor; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Attorney General's Opinions

Procurement Act Inapplicable to Board of Crime Control Grants to Nongovernmental Agencies: Federal law allows states to subgrant certain federal funds to local governments and, in some cases, to nongovernmental agencies within the state. Certain grants made by the Board of Crime Control involve the passthrough of federal funding to local nongovernmental agencies that in turn provide crime control services within their communities to persons or entities that are not agencies of the state. The statutory grant of supervision over procurement contracts does not authorize the Department of Administration to supervise federally funded grants awarded by the Board of Crime Control to nongovernmental agencies. Therefore, the Montana Procurement Act, Title 18, ch. 4, does not apply to grants awarded by the Board of Crime Control to nongovernmental agencies to fund community projects. 52 A.G. Op. 5 (2008).

Health Insurance: Competitive bidding is not required for purchasing health insurance for school district employees. 40 A.G. Op. 37 (1984).

Service Contracts: Contracts for the preparation and service of meals need not be awarded by competitive bidding. (See 1997 amendment.) 29 A.G. Op. 49 (1962).

18-4-124. Local government adoption of procurement provisions — alternative project delivery contracts.

Compiler's Comments

2005 Amendment: Chapter 574 inserted (2) allowing a governing body to use an alternative project delivery contract; and made minor changes in style. Amendment effective October 1, 2005.

18-4-126. Public access to procurement information — records — retention.

Compiler's Comments

2015 Amendment: Chapter 348 in (1) substituted "public record" for "public writing" and substituted "2-6-1003" for "2-6-102"; in (2) substituted "the provisions of Title 2, chapter 6, parts 10 and 11" for "the state records management program, Title 2, chapter 6"; and in (3) substituted "Title 2, chapter 6, parts 10 and 11" for "the state records management program". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2005 Amendment: Chapter 289 in (1) inserted reference to 18-4-303. Amendment effective July 1, 2005.

1997 Amendment: Chapter 443 at end of (1) inserted reference to 18-4-304.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause.

18-4-132. Application.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 300, L. 2023, in (3)(k) at end deleted "when the total contract value is $12,501 or less"; and made minor changes in style. Amendment effective April 26, 2023.

Section 2, Ch. 489, L. 2023, in (3)(f) at beginning substituted "contracts with" for "employment of"; and in (3)(f)(v) and (3)(f)(vi) near beginning substituted "person contracted" for "consultant employed". Amendment effective May 16, 2023.

Applicability: Section 2, Ch. 300, L. 2023, provided: "[This act] applies to contracts and cooperative agreements executed on or after [the effective date of this act]." Effective April 26, 2023.

Preamble: The preamble attached to Ch. 300, L. 2023, provided: "WHEREAS, the Montana Community Service Act promotes public service that provides a benefit to the state; and

WHEREAS, the Montana Community Service Act asks state agencies, including the Department of Environmental Quality, the Department of Natural Resources and Conservation, the Department of Transportation, and the Department of Fish, Wildlife, and Parks, to develop and implement community service opportunities consistent with the mission and function of each agency; and

WHEREAS, the Montana Community Service Act authorizes state agencies engaged in community service to execute contracts or cooperative agreements; and

WHEREAS, the current restriction on contracts valued less than $12,501 under the Montana Community Service Act being exempted from the Montana Procurement Act creates obstacles to the development and implementation of contracts for community service projects benefiting the state; and

WHEREAS, removing the current restriction and completely exempting contracts under the Montana Community Service Act from the Montana Procurement Act reconciles the intention of these acts to facilitate the development and implementation of community service opportunities consistent with section 90-14-105, MCA, and clarifies that agencies, when operating under the Montana Community Service Act, will be exempted from state procurement requirements."

Preamble: The preamble attached to Ch. 489, L. 2023, provided: "WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds."

2019 Amendment: Chapter 431 inserted (3)(k) regarding contracting for a value of $12,501 or less; and made minor changes in style. Amendment effective October 1, 2019.

Applicability: Section 4, Ch. 431, L. 2019, provided: "[This act] applies to contracts and cooperative agreements executed on or after [the effective date of this act]." Effective October 1, 2019.

Preamble: The preamble attached to Ch. 431, L. 2019, provided: "WHEREAS, the Montana Community Service Act promotes public service that provides a benefit to the State of Montana; and

WHEREAS, the Montana Community Service Act asks state agencies, including the Departments of Environmental Quality, Natural Resources and Conservation, Transportation, and Fish, Wildlife, and Parks, to develop and implement community service opportunities consistent with the mission and function of each agency; and

WHEREAS, the Montana Community Service Act authorizes state agencies engaged in community service to execute contracts or cooperative agreements; and

WHEREAS, the omission of the Montana Community Service Act from the list of exemptions to the Montana Procurement Act creates obstacles to the development and implementation of contracts for community service projects to benefit the state; and

WHEREAS, the addition of the Montana Community Service Act to the list of exemptions to the Montana Procurement Act is consistent with current practice for state agencies entering into contracts and cooperative agreements; and

WHEREAS, this act reconciles the intention of the Montana Community Service Act with the Montana Procurement Act to facilitate the development and implementation of community service opportunities consistent with section 90-14-105, MCA, and it clarifies that agencies, when operating under the Montana Community Service Act, may be exempted from state procurement requirements."

2009 Amendment: Chapter 439 inserted (3)(j) providing that Title 18, chapter 4, does not apply to contracting under Title 90, chapter 4, part 11; and made minor changes in style. Amendment effective May 5, 2009.

2007 Amendment: Chapter 146 inserted (4)(a) regarding procurement of food products produced in Montana; inserted (5) defining food and produced; and made minor changes in style. Amendment effective April 5, 2007.

Applicability: Section 3, Ch. 146, L. 2007, provided: "[This act] applies to contracts for the purchase of food products by governmental bodies that are opened to bidding or direct purchase on or after [the effective date of this act]." Effective April 5, 2007.

2005 Amendments — Composite Section: Chapter 289 inserted (8) concerning nonapplicability to purchase of art. Amendment effective July 1, 2005.

Chapter 449 inserted (9) exempting contracts under Montana Public Defender Act. Amendment effective April 28, 2005.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2003 Amendment: Chapter 153 inserted (6)(i) providing that Title 18, chapter 4, does not apply to employment of a court reporter appointed as an independent contractor; and made minor changes in style. Amendment effective March 26, 2003.

2001 Amendments — Composite Section: Chapter 7 in (7)(a) substituted "electrical energy" for "electric energy". Amendment effective October 1, 2001.

Chapter 181 in (1) in first sentence near middle after "body" deleted "as defined in 18-4-123" and at end inserted "except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract" and inserted second sentence referring to the procurement of certain supplies or services at no cost to the state or that are income-producing or advantageous for the state; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendments — Composite Section: Chapter 407 inserted (5) concerning state fund contracts for insurance-related services; and made minor changes in style. Amendment effective April 21, 1999.

Chapter 580 inserted (7) regarding inapplicability of chapter to electric energy purchase contracts by university of Montana or Montana state university and requiring accrued savings to be retained by board of regents for university allocation and expenditure. Amendment effective May 10, 1999.

1997 Amendment: Chapter 443 deleted former (1) that read: "Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984"; inserted (5) exempting certain employment from application of chapter; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 359 inserted (5) excluding chapter applicability to contracts entered into by the state lottery that have an aggregate value of less than $250,000. Amendment effective April 11, 1995.

1989 Amendment: Inserted (4) exempting from this chapter certain transactions by student associations of the University System.

Attorney General's Opinions

Procurement Act Inapplicable to Board of Crime Control Grants to Nongovernmental Agencies: Federal law allows states to subgrant certain federal funds to local governments and, in some cases, to nongovernmental agencies within the state. Certain grants made by the Board of Crime Control involve the passthrough of federal funding to local nongovernmental agencies that in turn provide crime control services within their communities to persons or entities that are not agencies of the state. The statutory grant of supervision over procurement contracts does not authorize the Department of Administration to supervise federally funded grants awarded by the Board of Crime Control to nongovernmental agencies. Therefore, the Montana Procurement Act, Title 18, ch. 4, does not apply to grants awarded by the Board of Crime Control to nongovernmental agencies to fund community projects. 52 A.G. Op. 5 (2008).

18-4-133. Purchases exempt from general requirements.

Compiler's Comments

2001 Amendment: Chapter 181 inserted (3) creating procedure for procurement officer when bids are not received from a responsible bidder or offeror or responsive bidder or offeror; inserted (4) requiring the department to adopt rules for direct negotiation by procurement officer with vendor; inserted (5) pertaining to contracts with a landowner for certain remediation, reclamation, or conservation projects; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 deleted former (1) that read: "Fresh fruits and vegetables, other than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account must be kept of these purchases, and the account must be furnished to the department"; near beginning of (2), after "department", deleted "of administration"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 546 in (3), in two places, substituted "department of corrections" for "department of corrections and human services" and inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendment: In (3), after "the provisions of" changed "part 2 of this chapter" to "this chapter".

1981 Amendment: Substituted "residents of its institutions and community-based programs" for "residents of juvenile correctional facilities and the Boulder River school and hospital" in (3).

Administrative Rules

ARM 2.5.605 Exigency procurements.

Case Notes

Purchase Without Bidding: A lease agreement for an airplane with an option to purchase, entered into by the State Aeronautics Commission (now Department of Transportation), constituted a "purchase" within the statute requiring bids. Purchase of the airplane without bidding could have been authorized on the basis of public exigency, where the Governor had just lost his life in a plane crash and the purchase was made to safeguard the life of the new Governor. Holtz v. Babcock, 143 M 341, 390 P2d 801 (1963).

Attorney General's Opinions

Public Exigency — Limitations: A "public exigency" is a situation in which an unforeseen happening or event necessitates immediate action to protect the public interest. In time of a public exigency, the state may obtain articles and services without competitive bidding in the same manner as between individuals bargaining in a free, open market for similar articles and services. The public exigency exemption does not abrogate the prohibitions against personal interests in contracts contained in 2-2-201. 34 A.G. Op. 46 (1972).

18-4-141. Contract transfers and collusion prohibited — violations and penalty.

Compiler's Comments

2001 Amendment: Chapter 181 throughout (2) substituted references to "bidders" for references to "vendors"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in (1) deleted second sentence that read: "No approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1983 Amendment: In (1), inserted ", assigned, or subcontracted" after "transferred" at the beginning of the first sentence, inserted "without the express written approval of the state" after "given to any other party", substituted "unapproved transfer, assignment, or subcontract" for "such transfer" at the end of first sentence, and inserted last sentence referring to nonrelease of original obligor and his sureties.

Attorney General's Opinions

State Not Prohibited From Expressly Releasing Party or Surety After Transfer, Assignment, or Subcontract: This section prohibits the approval of a transfer or assignment of a contract or the granting of subcontract from acting as an implied release of a party or surety from the party's or surety's obligations. This section does not prohibit the state from expressly releasing a party or surety from the party's or surety's obligations. 45 A.G. Op. 11 (1993).

Part 2
Duties of Department

18-4-221. General procurement authority and duties of department — rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 519, L. 1983, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Department of Administration for the purpose of implementing the procurement procedures established by the bill. The bill is based upon the American Bar Association Model Procurement Code for State and Local Governments. The Model Code was drafted on the concept that it should be a short statute providing the fundamentals of sound procurement that should be implemented by rules consistent with the statutory framework.

It is intended that the Department look to the Recommended Regulations for the Model Procurement Code for State and Local Governments adopted by the American Bar Association for guidance in adopting rules implementing the provisions of this bill."

Administrative Rules

Title 2, chapter 5, subchapters 2 through 6, ARM Regulation of procurement activities — procedures.

18-4-222. Delegation of authority by department.

Administrative Rules

ARM 2.5.202 Department of Administration responsibilities.

ARM 2.5.301 Delegation of purchasing authority.

18-4-224. Contract clauses — rules.

Compiler's Comments

1997 Amendment: Chapter 443 at beginning of (1) substituted "The department may, in its discretion, permit or require" for "The department may adopt rules permitting or requiring"; in (2)(c) substituted "under clauses established under subsection (1)" for "such clauses"; deleted (2)(e) that read: "(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under 18-4-225"; at beginning of (3) substituted "The department may, in its discretion, permit or require" for "The department may adopt rules permitting or requiring"; inserted (5) allowing Department to accept lower price or better value; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-4-226. Surplus supply — rules.

Compiler's Comments

1999 Amendment: Chapter 441 in (2) after "bidding" inserted "donation to a school district as provided in 18-6-101"; and made minor changes in style. Amendment effective April 23, 1999.

1991 Amendment: In (1)(a), after "state", inserted "but does not include surplus handguns described in 81-1-105 and 87-1-212".

1991 Statement of Intent: The statement of intent attached to Ch. 234, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 and 4] [87-1-105 and 87-1-212] grant to the department of fish, wildlife, and parks and the department of livestock the authority to adopt rules regarding the disposal of surplus handguns. It is intended that the rules address, at a minimum:

(1) the process for determining what handguns are surplus;

(2) the manner of disposal, whether by destruction, sale, or other appropriate means;

(3) the proper crediting of any proceeds derived from the disposal of surplus handguns; and

(4) a procedure to allow a preference to a warden and to a department of livestock state inspector or detective for the purchase of a handgun previously used by that person, provided that the purchase price is established by bid or equal to the appraised value of the handgun."

Termination Date: Section 6, Ch. 234, L. 1991, provided: "[This act] terminates October 1, 1993."

Administrative Rules

ARM 2.11.201 Authority to dispose of supplies.

ARM 2.11.202 Disposition of surplus supplies.

18-4-227. Procurement and term contract rebate account — funding — use.

Compiler's Comments

2015 Amendment: Chapter 233 in (1) at end substituted "procurement and term contract rebate account" for "procurement rebate special revenue account"; in (2) near middle inserted "term" and near end before "account" deleted "procurement rebate special revenue"; inserted (3)(b) regarding term contracts; and made minor changes in style. Amendment effective July 1, 2015.

Effective Date: Section 3, Ch. 492, L. 2007, provided that this section is effective July 1, 2007.

18-4-231. Definition of specification.

Administrative Rules

ARM 2.5.501 Specifications.

18-4-232. Specifications — rules.

Administrative Rules

ARM 2.5.501 Specifications.

18-4-241. Authority to remove or suspend vendor.

Compiler's Comments

1997 Amendment: Chapter 443 throughout section substituted "vendor" for "person"; in (1), at end of first sentence, inserted "by the state" and deleted second sentence that read: "The removal may not be for a period of more than 3 years"; in (2), near beginning of first sentence, substituted "may temporarily suspend" for "may suspend" and at beginning of second sentence substituted "If an indictment" for "The suspension may not be for a period exceeding 3 months unless an indictment" and near end, after "remain in effect", inserted "at a minimum"; at end of (3)(b) substituted "or failure to provide the department with a correct address" for "and after adequate written notice to the affected person of the intent to remove or suspend"; at end of (3)(c), after "governmental entity", deleted "for any cause listed in the department's rules"; in (4), in first sentence after "suspend", inserted "a vendor" and at end inserted "for reasons other than those reasons provided in subsection (3)(b)"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1987 Amendment: Inserted (3)(d) referring to violations of Title 39, ch. 51, and Title 39, ch. 71; and made minor change in phraseology.

Administrative Rules

ARM 2.5.402 Suspension or debarment from contract eligibility.

18-4-242. Exclusive remedies for unlawful solicitation or award.

Compiler's Comments

1999 Amendment: Chapter 51 in (7) near middle of fourth sentence after "solicitations" substituted "or" for "of"; and in (9) after "solicitations" substituted "or" for "and". Amendment effective March 15, 1999.

1997 Amendment: Chapter 443 in (1), at beginning, substituted "This section establishes the exclusive remedies for a solicitation" for "If a solicitation" and substituted "contract determined to be in violation" for "contract is in violation"; inserted (2) allowing protest to Department in certain cases and establishing time limit for protest; inserted (3) requiring written protest decision from Department; in (4) substituted "In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided" for "the department may apply the remedies provided"; at end of (5) substituted "proposed award may be" for "proposed award must be"; deleted former (4) that read: "(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)"; inserted (7) relating to petition for judicial review and limiting right to recover for solicitation or award of contract in violation of law; inserted (8) providing state not required to delay procurement process pending protest, contested case proceeding, or judicial review; inserted (9) authorizing department to adopt rules governing protests; adjusted subsection references; and made minor changes in style. Amendment effective April 30, 1997.

Preamble: The preamble attached to Ch. 443, L. 1997, provided: "WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking the remedy; and

WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the Legislature, and persons acting under any statute are considered to be acting in contemplation of the Legislature's power to repeal the statute; and

WHEREAS, it is the intent of the Legislature by enacting [sections 2, 10, and 23] [18-4-122, 18-4-242, and retroactive applicability section] and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability of the remedy of money damages; and

WHEREAS, it is the intent of the Legislature by enacting [section 23] [retroactive applicability section] to make the reversal of the ISC case apply retroactively, unless a complaint was filed in district court prior to January 1, 1992, as provided in [section 23]."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

Retroactive Applicability: Section 23, Ch. 443, L. 1997, provided: "[Sections 2 and 10] [18-4-122 and 18-4-242] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10] [18-4-242], unless a complaint was filed in district court prior to January 1, 1992."

Case Notes

No Abuse of Discretion in Disallowing Futile Amendment to Pleadings: Reier Broadcasting Co. (Reier) filed a three-count complaint in July 2002, alleging that defendant university had wrongfully failed to award Reier's radio station a contract to broadcast the university's athletic events. The next month, Reier filed an amended complaint as a matter of right, deleting one of the original claims and adding a new claim. The next month, Reier moved to amend the amended complaint to add a new tort claim. Defendant opposed the motion and sought dismissal of the amended complaint for lack of subject matter jurisdiction and failure to state a claim for which relief could be granted. Five months later, Reier filed a second motion to amend the amended complaint, requesting leave to seek a declaratory judgment that this section was unconstitutional and seeking damages. The District Court dismissed the amended complaint and the first motion to amend because the tort claims had not been properly presented as required by the state tort claims act (Title 2, ch. 9, part 3). The court also dismissed the second motion to amend, and Reier appealed on grounds that it was error not to allow the amendment to address the constitutionality of this section. The Supreme Court noted that generally it is an abuse of discretion to refuse amendments to pleadings that are offered at a reasonable time and that would further justice, but also noted that futile amendments need not be permitted. Reier's proposed amendments to add a constitutional challenge were futile because Reier failed to take the steps necessary under 2-9-301 to preserve the tort claims, so dismissal of the second motion to amend was not an abuse of discretion. Reier Broadcasting Co., Inc. v. Mont. St. Univ.-Bozeman, 2005 MT 240, 328 M 471, 121 P3d 549 (2005), distinguishing Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001), and Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002).

Right of Plaintiff to Sue for Damages for Negligent or Bad Faith Application of Procurement Act: The District Court dismissed ISC's suit against the Department of Administration for negligent or bad faith application of the Montana Procurement Act on the basis that this section was the exclusive remedy for ISC and that the statute did not allow such an action. The Supreme Court held that the general remedies provided a plaintiff suing the state under 18-4-131 (now repealed) were not displaced by this section and that therefore ISC was entitled to seek damages for negligent or bad faith application of the Act by the Department. (See 1997 amendment.) ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

Part 3
Procurement Procedure

Part Administrative Rules

Title 2, chapter 5, ARM State procurement.

Part Case Notes

Misapplication of State Law Not Basis for Claim of Denial of Equal Protection: ISC argued that its allegations that the Department of Administration had applied the Montana Procurement Act in a discriminatory fashion in not awarding ISC a contract supported its claim that it had been denied equal protection. The Supreme Court held that ISC's claim failed because at most, it amounted to an allegation that state law was misapplied in an individual case and did not constitute invidious discrimination in violation of the equal protection clause. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

No Property Right Created When Government's Award of Contract Is Discretionary: ISC argued that the Department of Administration had violated its right to due process when the Department did not award ISC a contract that had been put out for bid. The Supreme Court held that a property right that would support a due process claim is not created when a state agency is not required to award a contract on a sufficiently objective basis. ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep. 894 (1995).

18-4-301. Definitions.

Compiler's Comments

2015 Amendment: Chapter 145 deleted definition that read: ""Office supply" means an item included under the office supply commodity class codes maintained by the department"; and made minor changes in style. Amendment effective March 30, 2015.

2007 Amendment: Chapter 226 inserted definition of American-made; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 289 substituted responsible for responsible bidder or offeror as defined term and after "means" deleted "a person who has"; and substituted responsive for responsive bidder as defined term, after "means" deleted "a person who has submitted a bid that", and at end inserted "or request for proposals". Amendment effective July 1, 2005.

Termination Provision Repealed: Section 9, Ch. 289, L. 2005, repealed sec. 29, Ch. 181, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2005.

2001 Amendment: (Temporary version) Chapter 181 inserted definition of alternative procurement method; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

(Version effective July 1, 2005) In definition of responsive bidder expanded definition to include "offeror", near middle after "bid" inserted "or proposal", and at end inserted "or request for proposals"; and made minor changes in style.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1991 Amendment: Inserted definition of displacement. Amendment effective May 15, 1991.

Termination Provision Amended: Section 3, Ch. 329, L. 1989, amended sec. 6, Ch. 303, L. 1987, so that this section was not terminated.

1987 Amendment: Inserted definitions of office supply and term contract.

18-4-302. Methods of source selection — authorization for alternative procurement methods.

Compiler's Comments

2015 Amendment: Chapter 145 in (3) in three places substituted "department" for references to the department's central stores program. Amendment effective March 30, 2015.

Termination Provision Repealed: Section 9, Ch. 289, L. 2005, repealed sec. 29, Ch. 181, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2005.

2001 Amendment: Chapter 181 inserted (4) allowing an agency to request authorization for an alternative procurement method, establishing guidelines for the request for authorization, establishing guidelines for evaluation and approval of the request, and providing for promulgation of rules establishing the use of alternative procurement methods; and made minor changes in style. Amendment effective October 1, 2001, and terminates June 30, 2005.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1997 Amendment: Chapter 443 in (1), at end of first sentence, substituted "awarded by a source selection method provided for in this title" for "awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3) of this section"; in (2), near beginning, substituted "department or another agency opens" for "department or a purchasing agency opens" and near end substituted "department or agency may reject" for "department or purchasing agency may reject"; and in (3), in first sentence near beginning after "central stores program", deleted "through bulk purchase or procured under a term contract", substituted "may be purchased by an agency" for "may be purchased by a purchasing agency", after "discount price offered" substituted "to the agency" for "to the purchasing agency", after "price offered by the central stores program" deleted "or under the term contract", and at end, after "quality offered by the central stores program", deleted "or under the term contract".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1993 Special Session Amendment: Chapter 11 near middle of (3), after "publicly advertised", inserted "price", after "catalog price" inserted "or discount price offered to the purchasing agency", and after "term contract" inserted "if the office supply"; and made minor changes in style.

1989 Amendment: In (2), after "agency", substituted "opens" for "mails an invitation for", after "or" deleted "a request for", after "proposals" deleted "for office supplies", substituted "if a supplier's" for "a Montana supplier's", after "price" substituted "is received at or before the time the bids or proposals are opened and is less than the" for "available to the public may be registered as a", after "bid" deleted clause concerning bid or proposal requirements, inserted language concerning the lowest responsible and responsive bidder or improvement of conditions for best proposal received, after "department" deleted language requiring Department to certify exact time of price receipt before bid or proposal is mailed and to make registered price available for bidder inspection, and inserted language authorizing Department to reject bids and purchase supplies without competitive sealed proposal and procurement requirements; in (3) substituted "department central stores" for "department through a bulk purchase", after "program" inserted "through bulk purchase", after "or" substituted "procured under a" for "contracted for by means of a", before "supplier" deleted "Montana", after "catalog price" deleted language concerning availability of catalog price at time of bid mailing, and after "the price" substituted language allowing purchase at price lower than central stores program or term contract price for former language authorizing purchase at price less than that of Department or contract; and made minor changes in style and grammar. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 329, L. 1989, provided: "[This act] applies to a term contract entered into after [the effective date of this act]." Effective July 1, 1989.

1987 Amendment: In (1), at end of first sentence, inserted "and subsections (2) and (3)"; inserted (2) allowing advertised or catalog price to be registered as a bid; and inserted (3) exempting purchase of certain office supplies from general purchasing requirements.

Applicability: Section 4, Ch. 303, L. 1987, read: "This act applies to term contracts entered into after the effective date of this act." Effective July 1, 1987.

18-4-303. Competitive sealed bidding.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 489, L. 2023. Amendment effective May 16, 2023.

Preamble: The preamble attached to Ch. 489, L. 2023, provided: "WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds."

2007 Amendment: Chapter 226 inserted (10) concerning tiebreaker for American-made products or supplies. Amendment effective October 1, 2007.

2005 Amendment: Chapter 289 in (3) in second sentence near beginning after "bidder" inserted "and any member of the public" and at end inserted "after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals"; in (5) at end substituted "18-4-126" for "2-6-102 and are subject to the requirements of subsection (4)"; deleted former (4) that read: "(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees"; in (8) at beginning of first sentence substituted "If an award is made, it must be made" for "The contract must be awarded"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 443 in (3), near beginning of first sentence after "opened publicly", deleted "in the presence of one or more witnesses"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1991 Amendment: At end of (3) inserted "and are subject to the requirements of subsection (4)"; and inserted (4) requiring bids to be available for public inspections when opened if bid invitation is issued by state agency to contract with private sector to provide services currently conducted by state employees and if bid acceptance would result in displacement of five or more state employees. Amendment effective May 15, 1991.

Case Notes

Lateness of Bid — Irregularity Not Requiring Waiver by State: Petri attempted to submit a hand-carried, written bid to state officials for a painting contract at Montana State University (now Montana State University-Bozeman). Petri arrived at the site of the bid opening several minutes after the announced closing of the time for submitting bids. At trial in the District Court, Petri submitted evidence showing that the clock in the room where bids were being accepted was several minutes fast according to a confidential U.S. West telephone number for obtaining the correct time. The Supreme Court held that there was no evidence that late bids were an irregularity requiring waiver by state officials. There was evidence that rejection of late bids is the industry-wide practice. The U.S. West time source was not established as more accurate than the clocks in the bid opening room, nor can MSU be held responsible for coordinating its clocks with a source not available to it. Under these circumstances, the District Court did not err in treating the lateness of the bid as a material irregularity. Petri v. Mont. St. Univ., 260 M 392, 860 P2d 154, 50 St. Rep. 1133 (1993).

Immaterial Irregularities in Bid May Be Waived: The defendant accepted the low bid for an airport construction contract. In its bid, the successful bidder listed the same subcontractor as fulfilling the requirement for a minority-owned business and a woman-owned business. Subsequently, it was learned that federal regulations would not allow one subcontractor to meet the requirements for both categories. The defendant allowed the contractor to amend its bid and list a second minority-owned subcontractor. The plaintiff was the second lowest bidder and argued that the low bid should have been rejected for not conforming to the bid requirements. The Supreme Court held that there had been no attempt by the defendant or successful bidder to circumvent minority hiring rules and that the state had the authority to waive immaterial irregularities in any bid offered. Sebena Paving, Inc. v. Gallatin Airport Authority, 245 M 389, 801 P2d 614, 47 St. Rep. 2194 (1990).

Attorney General's Opinions

Janitorial Services — Bidding Requirement: Janitorial services contracts are subject to competitive bidding requirements because they do not involve the exercise of special skills, taste, or discretion. 30 A.G. Op. 5 (1963).

18-4-304. Competitive sealed proposals.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 489, L. 2023. Amendment effective May 16, 2023.

Preamble: The preamble attached to Ch. 489, L. 2023, provided: "WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds."

2005 Amendment: Chapter 289 in (4) near middle after "proposals" inserted "and reviewed by the procurement officer for release"; deleted former (4)(c) that read: "(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308"; in (5) in first sentence substituted "criteria" for "factors", at beginning of second sentence substituted "If an award is made, it" for "The award", and in third sentence near beginning after "Other" deleted "factors or"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 416 substituted (4) authorizing inspection of documents by public and outlining inspection limitations for former (4) that read: "(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award. After the contract is executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4"; and deleted second sentence in (6) that read: "In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors." Amendment effective October 1, 1999.

1997 Amendment: Chapter 443 deleted former (1) that read: "When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding"; inserted (1) allowing Department to procure supplies and services through competitive sealed proposals; in (4) inserted third sentence allowing proposal documents to be inspected after contract executed; in (5), at end of first sentence, substituted "state the evaluation factors and their relative importance" for "state the relative importance of price and other evaluation factors" and inserted second through fourth sentences establishing to whom award must be made, limiting use of other factors or criteria, and requiring contract file to demonstrate basis of award; in (6) deleted former first two sentences that read: "As provided in the request for proposals and under rules adopted by the department, discussions with responsible offerors who submit apparently responsive proposals may be conducted for the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers", inserted first sentence allowing Department to discuss proposal with offeror for clarification or revision, and deleted last sentence that read: "The department may require the submission of cost or pricing data in connection with an award under this section"; and deleted (7) that read: "(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 130 in (1), in first sentence after "determines", deleted "in writing"; and made minor changes in style. Amendment effective March 13, 1995.

Case Notes

Bid Proposal Evaluation Including Negotiation of Unresolved Issues — Bid Properly Considered Nonresponsive: Reier Broadcasting Co. (RBC) sought to enter a broadcasting contract with Montana State University-Bozeman (MSU) and asserted that MSU violated administrative rules by finding that RBC's proposal was nonresponsive after the evaluation process was completed. The Supreme Court disagreed. The evaluation process concludes when the parties arrive at a contract, not before, so in this case, the evaluation process and the accompanying rules of engagement included negotiations of unresolved issues as well as discussion pursuant to the administrative rules. A state entity must retain the power to find a proposal nonresponsive when a party refuses to conform to a request for proposals (RFP) or substantially alters its proposal. In order to maximize the state's purchasing power, the Montana Procurement Act allows a state agency to ensure full compliance with an RFP up to the point of entering a contract. RBC's interpretation would defeat the intent of the Act and tie the hands of a state entity in a manner not contemplated by the Act. Here, MSU reviewed RBC's proposal based on evaluation criteria and did not restrict responsibility for determining nonresponsiveness or nonresponsibility of a proposal to the evaluation committee, so MSU's determination that RBC's proposal was nonresponsive was affirmed. In re Contested Hearing of Protest by Reier Broadcasting Co., 2005 MT 347, 330 M 152, 127 P3d 389 (2005).

Economic Advantage Inadequate Reason for Denial of Public Right to Observe Government Deliberations in Corrections Vendor Process: A newspaper company sought to restrain the Department of Corrections from excluding the public from meetings of the committee that reviewed proposals for operating private prison facilities. The District Court held that the public had no right to observe the negotiation phase of the committee's work, but that once negotiations were completed, the process by which the conclusions were arrived at must be open to public observation. Both parties appealed. The Supreme Court noted that as part of an Executive Branch agency, the Department and the committee were considered governmental bodies pursuant to 2-15-104 for purposes of procurement and that under the constitutional right to know, proposals submitted by private vendors were considered documents of a public body or agency that, under 2-6-102 (now repealed, but see 2-6-1003), the public has a right to inspect. Under the two-part test in Missoulian v. Bd. of Regents, 207 M 513, 675 P2d 962 (1984), the only exception to the constitutional provision arises when the demand of individual privacy clearly exceeds the merits of public disclosure. The state contended that the meetings at issue were closed for economic advantage, but economic advantage is neither a privacy interest nor a sufficient reason for denying the public the opportunity to observe deliberations of public bodies or to examine public documents, including proposals submitted to the public body by a vendor, unless the proposal concerns a privacy interest involving legitimate trade secrets or individual safety. A public agency's desire for privacy does not provide an exception to the public's constitutional right to observe its government at work. To the extent that provisions in ARM 2.5.602 or this section require exclusion of the public from the competitive bid process, those provisions are unconstitutional and unenforceable. Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M 155, 959 P2d 508, 55 St. Rep. 524 (1998), following Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), State ex rel. Great Falls Tribune Co., Inc. v. District Court, 238 M 310, 777 P2d 345 (1989), Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools, 255 M 125, 841 P2d 502 (1992), and Common Cause of Mont. v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices, 263 M 324, 868 P2d 604 (1994). See also Assoc. Press, Inc. v. Dept. of Revenue, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

18-4-305. Small purchases and limited solicitations.

Compiler's Comments

1997 Amendment: Chapter 443 near end of first and second sentences, after "with small purchase", inserted "or limited solicitation".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-4-306. Sole source procurement — records.

Compiler's Comments

2001 Amendment: Chapter 181 in (1)(a) before "supply" deleted "required"; inserted (1)(b) referring to the existence of only one source of the supply or service item; inserted (1)(c) requiring the supply or service item to be compatible with existing supplies or services; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

18-4-307. Cancellation of invitations for bids or requests for proposals.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 489, L. 2023. Amendment effective May 16, 2023.

Preamble: The preamble attached to Ch. 489, L. 2023, provided: "WHEREAS, modernizing the law governing procurement by the state of Montana is a stated purpose of the Montana Procurement Act; and

WHEREAS, the provisions regarding invitations for bid and requests for proposals have not been updated in more than 15 years; and

WHEREAS, business and technology have changed significantly in the last 15 years with innovations such as smart phones and video conferencing tools and the prevalence of remote work and electronic meetings; and

WHEREAS, unnecessarily complex government procurement and contracting processes discourage Montana small and medium-sized businesses from competing with large and sophisticated multinational and out-of-state corporations; and

WHEREAS, current procurement processes place business innovations and intellectual property at risk; and

WHEREAS, innovations and intellectual property are the most valuable assets of most small businesses in the information age and one of the primary competitive advantages small businesses have over large companies; and

WHEREAS, small businesses lack the resources of large companies to defend their innovations and intellectual property; and

WHEREAS, vendor and business surveys indicate current procurement processes and requirements provide an advantage to incumbent contractors and create other barriers and disincentives to seeking public contracts in Montana; and

WHEREAS, procurement methods that discourage competition are in direct conflict with the Montana Procurement Act's objectives to provide increased economy in state purchasing and to maximize, to the fullest extent practicable, the purchasing value of public funds of the state; and

WHEREAS, the Montana Procurement Act exists to ensure the fair and equitable treatment of all persons who deal with the procurement system of the state and to foster effective, broad-based competition within the free enterprise system; and

WHEREAS, more than 40 states and the federal government utilize modern procurement practices that allow free, open, and transparent government contracting without compromising the security of businesses' innovations and intellectual property; and

WHEREAS, a stated purpose of the Montana Procurement Act is to make as consistent as possible the procurement laws among various jurisdictions; and

WHEREAS, modern procurement practices allow citizens to observe and participate in government contracting decisions while protecting the confidentiality of businesses' innovations and intellectual property and allow free and open competition that maximizes the purchasing value of public funds."

18-4-308. Nonresponsibility of bidders and offerors.

Compiler's Comments

2005 Amendment: Chapter 289 deleted former (2) that read: "(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror"; and made minor changes in style. Amendment effective July 1, 2005.

18-4-309. Prequalification of suppliers.

Compiler's Comments

1997 Amendment: Chapter 443 in first sentence, after "may be prequalified", inserted "in accordance with department rules" and deleted second sentence that read: "Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers."

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-4-310. Types of contracts.

Compiler's Comments

1997 Amendment: Chapter 443 at beginning deleted "Subject to the limitations of this section" and after "may be used" deleted "except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-4-312. Bid and contract performance security.

Compiler's Comments

2005 Amendment: Chapter 289 in (2)(a)(ii) after "credit" deleted "not to exceed $100,000"; in (3) in third sentence at end inserted exception clause; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 203 inserted (2)(b) restricting requiring bond from particular company or producer; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 443 in (1)(b), after "suppliers", deleted "materialmen"; and in (3), at end of second sentence and beginning of third sentence after "payable to the state of Montana", substituted "Contract performance security must remain in effect" for "and must remain in effect".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

1995 Amendment: Chapter 130 in (1), after "procurement of services", deleted "in the amount of $10,000 or less" and after "require" deleted "the filing of"; deleted former (2) that read: "(2) For state contracts for the procurement of services exceeding $10,000, the department shall require bid security and contract performance security, except for purchases described in 18-4-305 and 18-4-306"; in (2)(d) inserted "certificate of deposit, money market certificate" and after "drawn or issued by" substituted current language relating to federally chartered or state-chartered bank or savings and loan association for "any banking corporation incorporated under the laws of Montana or by a banking association located in Montana"; deleted (3)(c) that read: "(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana"; in (3), in first sentence after "risk involved to the state", deleted "except that the same shall not be less than 10% of the bid price for bid security and 25% of the total contract price for contract performance security, and" and after "Montana" inserted "and must remain in effect for the entire contract period"; in (4), near end of first sentence, substituted "security" for "bond" and in second sentence, after "bid bond", inserted "or other security"; adjusted subsection references; and made minor changes in style. Amendment effective March 13, 1995.

1985 Amendment: In lead-in of (1), after "procurement of", substituted "services in the amount of $10,000 or less or of supplies" for "supplies and services"; inserted (1)(a) referring to bid security; at beginning of (1)(b) inserted "contract performance"; inserted (1)(c) referring to bid and performance security; inserted (2) referring to contracts exceeding $10,000; at beginning of (3), after "If", deleted "contract performance"; near middle of lead-in of (3), after "(1)", inserted "or (2)"; in (4) in first sentence, after "less than", inserted "10% of the bid price for bid security and" and after "contract price", inserted "for contract performance security", in second sentence, after "type of", inserted "contract performance", inserted third sentence requiring consideration of risks to the state in determining need for and amount of bid security, in fourth sentence substituted "these determinations" for "this determination", and at beginning of last sentence substituted "Bid and" for "Any"; inserted (5) referring to forfeiture of bid security; inserted (6) requiring refund of negotiable instruments; and in (7) after "provisions of" inserted "Title 18, chapter 1, part 2, and Title 18", and after "3", deleted "of this title".

18-4-313. Contracts — terms, extensions, and time limits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 418, L. 2023. Amendment effective May 3, 2023, and terminates July 1, 2033.

2015 Amendment: Chapter 322 inserted (2)(e) concerning certain concessions and visitor services contracts; inserted (5) concerning requirements for certain concessionaire contracts; and made minor changes in style. Amendment effective April 27, 2015.

2007 Amendment: Chapter 127 inserted (2)(d) concerning state employee group benefit plans; and made minor changes in style. Amendment effective July 1, 2007.

2005 Amendment: Chapter 289 in (1) at beginning inserted exception clause and deleted former second sentence that read: "However, the department may contract for hardware, software, or other information technology resources, the department of revenue may contract with liquor agencies, and the department of public health and human services may contract for the medicaid management information system (MMIS) for a period not to exceed 10 years"; inserted (2) concerning exceptions from contract term limit; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendments — Composite Section — Coordination: Chapter 181 in (1) near middle of second sentence after "purchase of" substituted "hardware, software, or services for telecommunications or data processing" for "telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective October 1, 2001. The amendment by Ch. 313 rendered the reference to services for telecommunications or data processing meaningless, and it has not been codified.

Chapter 313 in (1) in second sentence substituted "contract for hardware, software, or other information technology resources" for "contract for the lease or purchase of telecommunications equipment and systems, data processing equipment"; and made minor changes in style. Amendment effective July 1, 2001.

Pursuant to sec. 46, Ch. 313, L. 2001, a coordination section, the amendment to this section made by sec. 40, Ch. 313, L. 2001, was replaced by the amendment made by sec. 46.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1995 Amendments: Chapter 130 in (1), near beginning of first sentence, substituted "for a period of more than 7 years" for "for a longer period than 3 years" and in second sentence, after "renewed", deleted "notwithstanding the time limits stated in this section" and at end inserted "and if the total contract period, including any extension or renewal, does not exceed 7 years"; in (2) inserted "issuance" and after "determined" deleted "in writing"; and made minor changes in style. Amendment effective March 13, 1995.

Chapter 546 in (1), in second sentence, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 228 in (1), in second clause of first sentence, inserted "the department of revenue liquor agencies"; and made minor changes in style. Amendment effective March 30, 1993.

Applicability: Section 6, Ch. 228, L. 1993, provided: "[This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act]." Effective March 30, 1993.

1985 Amendment: In middle of (1) inserted "the department of social and rehabilitation services medicaid management information system (MMIS)".

Part 4

Cooperative Purchasing

Part Attorney General's Opinions

Municipality May Choose Competitive Bidding Method for Certain Municipal Government Purchases: When making municipal government purchases, a municipality may use the competitive advertised bidding process set out in 7-5-4302 or the municipality may choose to participate in cooperative purchasing with the Department of Administration without first seeking its own competitive bids, as allowed in this part. 51 A.G. Op. 15 (2006).

18-4-401. Definitions.

Compiler's Comments

1999 Amendment: Chapter 200 in definition of public procurement at end inserted "or a tribal procurement unit"; and inserted definition of tribal procurement unit. Amendment effective March 29, 1999.

18-4-402. Cooperative purchasing authorized.

Compiler's Comments

2011 Amendment: Chapter 185 in second sentence at end after "procurement units" added reference to competitive contracts established by certain entities; and made minor changes in style. Amendment effective April 15, 2011.

1997 Amendment: Chapter 443 at end of first sentence inserted "independent of the requirements of part 3" and in second sentence inserted "purchasing through federal supply schedules of the United States general services administration"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

CHAPTER 5
SPECIAL PURCHASING CONDITIONS

Part 1
Sheltered Workshops

18-5-101. Definitions.

Compiler's Comments

1997 Amendment: Chapter 472 in introductory clause and in two places in definition of certified shelter workshop substituted "this part" for "18-5-101 through 18-5-103"; in definition of certified sheltered workshop, in introductory clause, substituted "persons with disabilities" for "disabled vocationally handicapped individuals" and in (c) substituted "persons with disabilities" for "vocationally handicapped individuals"; substituted person with a disability for vocationally handicapped as defined term and substituted "impediment" for "handicap"; and made minor changes in style.

18-5-102. Duties and powers of department of administration.

Compiler's Comments

1997 Amendment: Chapter 472 in (3) substituted "this part" for "18-5-101 through 18-5-103"; and made minor changes in style.

1985 Amendment: In (1) substituted current language requiring Department to maintain a list of facilities, products, and services for "The department shall establish and publish a listing of the products and services purchased by the state. From this list, facilities may select products or services to be produced or provided by one or more facilities. A product or service shall be removed from the list approved for facilities whenever the department ascertains that the product or service exceeds 20% of the gross sales of any business in Montana producing that product or providing that service"; and deleted former (3) that read: "The department shall determine the fair market price to be charged for products and services on the procurement list which is competitive with readily available alternative sources. In determining and revising the prices of products and services, the department must give consideration to reasonable costs of labor, materials, and overhead and a percentage of gross sales to fund the activities of the nonprofit organization specified in (2)(a), (2)(b), and (2)(c) above."

Administrative Rules

ARM 2.5.607 Procurement from sheltered workshops or work activity centers.

18-5-103. Procurement requirements.

Compiler's Comments

1997 Amendment: Chapter 472 at end of second sentence substituted "this part" for "18-5-101 through 18-5-103".

1985 Amendment: Near middle of first sentence substituted "may procure listed products and services" for "shall, after promulgation of the product and service list, procure listed products and services".

Administrative Rules

ARM 2.5.607 Procurement from sheltered workshops or work activity centers.

Part 2
Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property.

Compiler's Comments

1989 Amendment: In first sentence inserted "federal" and substituted language allowing Governor to designate Department for reference to Department of Administration; and made minor changes in phraseology. Amendment effective July 1, 1989.

18-5-202. Authority and duties of the state agency for surplus property.

Compiler's Comments

Federal Statutes: The Federal Property and Administrative Services Act of 1949, referred to in subsection (1)(a) of this section, is compiled in the United States Code as Title 5, sec. 630 through 630h; Title 40, sec. 471 through 475, 481 through 492, 511 through 514, 521 through 524; Title 41, sec. 5, 251 through 255, 256a through 260; Title 44, sec. 391 through 401; Title 50, App., sec. 1622, 1641.

Section 203(k) of the Federal Property and Administrative Services Act of 1949, referred to in subsection (2) of this section, is compiled in the United States Code as Title 40, sec. 484(k).

Administrative Rules

ARM 2.11.203 Adoption of state plan of operation — federal surplus property.

18-5-203. Agency for surplus property — authorization for financing.

Compiler's Comments

2001 Amendment: Chapter 42 at end substituted "an enterprise fund" for "an internal service fund"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted "internal service fund" for "revolving fund".

18-5-204. Department director — delegating powers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

18-5-205. Officers or employees authorized to secure transfer of federal surplus property.

Compiler's Comments

1989 Amendment: In (1)(a) substituted reference to Department designated in 18-5-201 for reference to Department of Administration; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Federal Statute: Section 203(j) of the Federal Property and Administrative Services Act of 1949, referred to in this section, is compiled in the United States Code as Title 40, sec. 484(j).

Part 4
Vending Facilities

Part Compiler's Comments

Saving Clause: Section 12, Ch. 175, L. 1981, provided: "This act [18-5-401 through 18-5-416] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Severability: Section 13, Ch. 175, L. 1981, was a severability section.

Part Administrative Rules

Title 37, chapter 30, subchapter 25, ARM Blind vendors program.

18-5-402. Definitions.

Compiler's Comments

2005 Amendment: Chapter 249 in definition of federal property after "government" deleted "excluding military reservations"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

18-5-411. Administration of vending facilities — state properties.

Compiler's Comments

2009 Amendment: Chapter 56 deleted former (2) that read: "A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract for the vending facility for a period not to exceed 4 years."; made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

18-5-413. Implementation of Randolph-Sheppard Act, as amended.

Compiler's Comments

Federal Statute: The Randolph-Sheppard Act referred to in this section may be found at 20 U.S.C. §§ 107 through 107f.

18-5-414. Authority to adopt rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 67 (Ch. 175, L. 1981) provided: "The current statutory authority providing a preference to blind and handicapped persons in the leasing of vending facilities on state property is not adequate for the purposes of authorizing the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to administer the federal Randolph-Sheppard Act for either federal or state purposes. The state statutory scheme for providing a preference to blind vendors in the leasing of vending areas in state property is poorly defined and difficult to administer.

This act will provide specific statutory authority in Section 10 [18-5-413] by which the Department may administer the programs it has established for the purposes of the federal Randolph-Sheppard Act. Section 10, subsection 2 authorizes the Department to adopt rules for the purposes of implementing the administration of vending facilities on federal property by the department as authorized in the federal Randolph-Sheppard Act and for administering programs mandated by the federal Randolph-Sheppard Act.

This act provides for a state program administered by the Department which will make available to qualified blind persons vending facilities to be operated by them. This programmatic statutory scheme is a more appropriate mode for providing vocational opportunities to blind persons than was the prior preference system. This scheme will insure that federal and state vocational programs are available to those blind persons who are most qualified to become blind vendors. The preference system did not distinguish as to degree of handicap or economic need. This scheme will also insure continuity in the administering of these vending facilities and related programs. The preference system did not insure that vending facilities would be available to qualified blind persons nor did it encourage the investment of program resources in the training of qualified blind persons and the equipping of vending facilities for operation by them. This act clearly defines what state property is subject to the act. This act also provides that the Department may enter into agreements with private parties and local governments in order to make vending facilities on their properties available to qualified blind vendors. The prior preference system in not defining the property subject to the preference raised serious questions as to its intended scope, nor did the prior preference system allow for the expansion by agreement of the blind vendor program into vending facilities on private property.

The act is intended to provide vocational training and active employment for persons handicapped by blindness or serious visual impairment. Since active employment is an important objective of the legislation, the act limits the department's ability to directly operate or to include in its vocational program such passive operations as maintenance of self-service vending machines, particularly on state property. While the department will be able to derive the revenues from vending machines which are now received by the Department of Administration, it is anticipated that the Department will continue the present practice of the Department of Administration and let contracts for provision of vending machines by competitive bid. The act specifically provides for a gradual phasing in of blind-vendor operated vending facilities in any case where the immediate implementation of the program would cause an economic hardship to the current vendor, who could otherwise expect a renewal of contract. The language is written in discretionary terms in order to permit the Department to respond to situations as they actually exist and to preclude the language being used to provide a new contract to a private vendor whose contract, in the normal course of events, would have been terminated without this act. However, it is intended that the Department employ its discretion in a compassionate manner to avoid inflicting economic hardship on an otherwise satisfactory private vendor. The Department is authorized to charge a fee in lieu of rental to blind vendors on state property whose operations become financially successful. Again, the language is made discretionary so that the Department can deal with the situation as it actually exists in practice. However, the intent of this provision is that the Department charge to the financially successful blind vendor a fee in lieu of rental which will provide the state with some compensation for the use of the space without working a financial hardship on the blind vendor.

The certification of blind persons qualified to be blind vendors provided for in this act is necessary for administration by the Department of the federal Randolph-Sheppard Act on federal properties. This certification will constitute the "licensing" mandated in the federal Randolph-Sheppard Act. This certification will be utilized for the purposes of the state program as well. The administration of the program for federal and state purposes will be therefore more congruent.

This act provides that the Department may administer a health and retirement fund for the blind vendors. This fund as well as the blind vendors' program may be funded by a set-aside from the net income of blind vendors. This set-aside is to be a reasonable percentage which will not affect the financial status of the blind vendors to such a degree as to deny them the intended vocational and economic benefits of the program. The health and retirement fund and the blind vendors' program may be funded as well by the Department from the income the Department may receive from vending facilities which it may operate directly. The health and retirement fund is authorized for the purpose of implementing that aspect of the federal Randolph-Sheppard Act. The applicability of this fund to blind vendors on state property will insure that there will be congruence between the program as administered for federal and state purposes.

This act states the authority of the Department for the purposes of the act and provides the general criteria and procedure for the transfer of the administration of vending facilities on state property to the Department. The prior preference system did not define administrative authority nor did it state what the appropriate criteria and procedure would be.

The act provides the Department with the rulemaking authority necessary for the implementation in a definitive manner of the purposes of this act."

18-5-415. Operation of facilities.

Administrative Rules

ARM 37.30.2515 Transfer and termination.
ARM 37.30.2520 Equipment, stocks, and insurance.
ARM 37.30.2525 Vendor responsibilities.
ARM 37.30.2530 Training of blind vendors.
ARM 37.30.2540 Necessary compliance.
ARM 37.30.2555 Temporary operation of facility by the department.

Part 5

Blind Person Preference

Part Compiler's Comments

Applicability: Section 3, Ch. 36, Sp. L. June 1986, provided: "A contract for the operation of a vending facility entered into prior to July 1, 1986, is not subject to this part while the contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on July 1, 1986, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both."

1986 Statement of Intent: The statement of intent attached to Ch. 36, Sp. L. June 1986, provided: "A statement of intent is required for this bill because section 5 [18-5-504] grants rulemaking authority to the department of administration to establish procedures for the implementation by state agencies of the preference authorized by this bill. It is intended that the rules include but not be limited to provisions governing the method of determination of eligibility for the preference authorized in section 2 [18-5-502]."

Effective Date: The 1986 enactment was July 23, 1986.

18-5-502. Preference to blind persons.

Administrative Rules

ARM 2.5.405 Blind vendors' bidding preference.

Part 6
Nonvisual Access Technology Procurement

Part Compiler's Comments

Effective Date: Section 7, Ch. 429, L. 2001, provided that this part is effective July 1, 2001.

18-5-605. Implementation.

Compiler's Comments

2009 Amendment: Chapter 2 deleted former (5) that read: "(5) Until July 1, 2003, a state agency may be exempted from the requirements of 18-5-604 if the cost would cause the state agency's budget to exceed legislative appropriations"; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 6
SALES

Part 1
Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund.

Compiler's Comments

1999 Amendment: Chapter 441 in (1) inserted second sentence concerning donation of property to school district; and made minor changes in style. Amendment effective April 23, 1999.

1991 Amendment: At beginning of (1) inserted exception clause.

Termination Date: Section 6, Ch. 234, L. 1991, provided: "[This act] terminates October 1, 1993."

1983 Amendment: In (3), substituted "enterprise or internal service fund" for "revolving fund" in two places.

1981 Amendment: Added (3) referring to revolving funds and designated subfund accounts.

Case Notes

Employee — No Power to Sell: An employee of the State Park Commission (now Department of Fish, Wildlife, and Parks) sold a road roller to a private citizen. Neither the Park Commission nor its employee was authorized to sell the roller. The purchaser took no title or right to the roller from the state and passed none of the state's rights to a subsequent purchaser. The state was able to regain possession of the roller through an action of claim and delivery. State ex rel. Olsen v. Sundling, 128 M 596, 281 P2d 499 (1955).

Attorney General's Opinions

Exclusive Authority to Dispose of State Property Vested in Department of Administration: State agencies do not have authority to trade in state property without approval by the Department of Administration. 39 A.G. Op. 44 (1981).

18-6-102. Interagency transfers.

Attorney General's Opinions

Exclusive Authority to Dispose of State Property Vested in Department of Administration: State agencies do not have authority to trade in state property without approval by the Department of Administration. 39 A.G. Op. 44 (1981).

18-6-103. Highway equipment by bid.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Sec. 1, Ch. 277 substituted "state special revenue fund" for "earmarked revenue fund".

Sec. 3, Ch. 277 substituted "enterprise or internal service fund account" for "revolving fund account".

1981 Amendment: Added "or in the appropriate revolving fund account" at the end of the section.

CHAPTER 7
PRINTING AND LEGAL NOTICES

Part 1
State Printing

18-7-101. Power to contract for printing — exceptions.

Compiler's Comments

2021 Amendment: Chapter 576 in (1) near beginning substituted "16-12-104, and 16-12-503" for "and 50-46-303". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2019 Amendment: Chapter 292 in (1) near beginning inserted reference to 50-46-303; and made minor changes in style. Amendment effective May 3, 2019.

2001 Amendment: Chapter 314 inserted (4) relating to certain state compensation insurance fund materials. Amendment effective April 21, 2001.

1989 Amendment: Deleted former (3) that read: "(3) All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained, and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution."

18-7-104. Union label.

Compiler's Comments

1983 Amendment: In (2) and (3), deleted "18-7-103" and inserted "18-7-107, or chapter 4 of this title".

18-7-105. Penalty.

Compiler's Comments

1983 Amendment: Near beginning of section, after "any printed matter" deleted "except certificates named in 18-7-103"; and after "as set forth in" deleted "18-7-103" and inserted "chapter 4 of this title" and after "18-7-104" inserted "or 18-7-107".

18-7-107. State printing, binding, and stationery work.

Compiler's Comments

2001 Amendment: Chapter 181 in first sentence after "Montana" substituted "is subject to the preference in 18-1-102(1)(b)" for "must be printed in the state of Montana by the lowest responsible bidder if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%. If there is no responsible in-state bidder, the work may be performed by the lowest responsible bidder outside the state." Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1991 Amendment: In first sentence, before "responsible", inserted "the lowest" and after "bidder" substituted "if the bid, including the cost of delivery, does not exceed the lowest bid by a nonresident printer by more than 8%" for "if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102", inserted second sentence regarding contingency for lack of responsible in-state bidder, and inserted third sentence regarding federal exemptions.

1987 Amendment: Extended preference to all state printing by deleting exception for the Montana Code Annotated and certificates of appointment and election to office.

Part 3
Control of State Printing

18-7-302. Definitions.

Compiler's Comments

2011 Amendment: Chapter 148 deleted definition that read: "The term "committee" means the publishing policy committee created in 2-15-1017"; in definition of public document at end deleted "or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state"; and made minor changes in style. Amendment effective October 1, 2011.

18-7-306. Public disclosure of costs.

Compiler's Comments

2011 Amendment: Chapter 148 at beginning substituted "Each agency shall include a public disclosure of costs on all public documents. The public disclosure must contain" for "All public documents caused to be printed by any agency of state government shall contain"; in third sentence substituted "text" for "body copy"; in fourth sentence substituted "If the cost" for "If the committee determines that the cost"; in last sentence substituted "contacting the department of administration" for "writing department of administration, Helena, Montana"; and made minor changes in style. Amendment effective October 1, 2011.

Part 4
County Printing

18-7-401. Purpose of part.

Compiler's Comments

1995 Amendment: Chapter 507 in (1), before "legal", deleted "printing and"; inserted (2) concerning the purchase of county printed forms and materials; and made minor changes in style.

Administrative Rules

Title 2, chapter 67, ARM Board of County Printing.

18-7-402. Definition.

Compiler's Comments

1981 Amendment: Changed internal reference to the board.

18-7-403. Meetings of board of county printing.

Compiler's Comments

1995 Amendment: Chapter 507 after "meet" substituted "when ordered by the governor or requested by a majority of the board members" for "annually".

18-7-404. Establishment of maximum prices.

Compiler's Comments

2009 Amendment: Chapter 148 in (1) after "adopt" inserted "by rule"; and made minor changes in style. Amendment effective April 3, 2009.

1995 Amendment: Chapter 507 in (1), after "county", deleted "printing and" and deleted second sentence that read: "The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse"; in (2), at end of first sentence, substituted "legal advertising" for "printing" and in second sentence substituted "Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association" for "Notice of intention to hold a hearing shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena, and a copy shall be mailed to each board of county commissioners"; inserted (4) concerning county requirements for establishments printing county legal advertising; and inserted (5) concerning the Board not setting maximum prices for county printed forms.

Administrative Rules

Title 2, chapter 67, ARM Board of County Printing.
Title 2, chapter 67, subchapter 1, ARM Organizational rule.
Title 2, chapter 67, subchapter 2, ARM Rules of practice.

18-7-405. Adoption of printing standards.

Compiler's Comments

1995 Amendment: Chapter 507 substituted "The board shall adopt necessary standards for typeface, type size, type style, and type leading for county legal advertising" for "The board shall adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board."

18-7-411. County advertising — contract.

Compiler's Comments

2017 Amendment: Chapter 372 in (1) at end of first sentence deleted "and all printed forms required by the county"; substituted current text in (3) concerning terms of contracts for former (3) and (4) that read: "(3) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

(4) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days." Amendment effective July 1, 2017.

2007 Amendment: Chapter 439 in (1)(b) after "general" deleted "bona fide and paid" and after "circulation" deleted "with the second-class mailing privilege"; inserted (1)(d) requiring a sworn statement containing certain elements; inserted (2) providing that a newsletter or document produced or published by the local government is not considered a newspaper of general circulation; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 507 in first sentence of (1), after "all", deleted "the printing for the county, including" and after "county" deleted "at a rate not exceeding that set by the board"; in (2) substituted "Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job" for "(a) The county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only. The legal advertising contract shall be let to a legally qualified newspaper. The other contract shall provide for all printed forms, materials, and supplies required by the county.

(b) The contract for printed forms, materials, and supplies referred to in subsection (2)(a) or subsection (2)(c) shall be let:

(i) to a commercial printing establishment or establishments, as the case may be, which has been in business in the county for at least 1 year and whose competitive bid is not more than 5% higher than that of the lowest responsible commercial printing establishment bidder doing business outside the county; or

(ii) if no establishment qualifies under subsection (2)(b)(i), to the lowest responsible commercial printing establishment bidder.

(c) Contracts for printed forms, materials, and supplies may be awarded on an annual basis or may be awarded for a specific printing job"; in (3) substituted current language concerning the maintenance of a list of bidders for county printing for "A contract may not call for payment by the county of any prices in excess of the maximum fixed by the board of county printing"; deleted (4) that read: "(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing"; and made minor changes in style.

1989 Amendment: At beginning of (1) deleted "Except as provided in subsection (2)", after "contract" substituted "for" for "with one newspaper to do", and at beginning of second sentence inserted "advertising required by law shall be awarded to a"; at beginning of (2) deleted "In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class"; in (2)(b), after "(2)(a) or", deleted "one separated under"; at beginning of (2)(c) deleted "The board of county commissioners for counties of the first class may award separate" and after "supplies" deleted "required by the counties. The separate contracts"; and made minor changes in phraseology and punctuation.

1985 Amendment: In (2)(b) in lead-in, inserted the reference to printed forms, materials, and supplies and changed a reference to (2)(b) to (2)(c); and in (2)(b)(i) after "1 year", inserted remainder of (2)(b)(i) and (2)(b)(ii) relating to 5% in-county bidding preference.

1981 Amendments: Chapter 70 inserted "or one separated under subsection (2)(b)" at the beginning of the last sentence in (2)(a); inserted (2)(b) relating to printed forms, materials, and supplies; and made minor changes in phraseology.

Chapter 393 substituted the second sentence in (1) that reads: "The newspaper shall be one that is published in the county and of general bona fide and paid circulation with the second-class mailing privilege and has been published as such at least once a week in the county for the 12 months preceding the awarding of the contract." for "The newspaper shall be: (a) of general circulation; (b) published at least once a week; (c) published in the county; (d) published continuously in the county for the 12 months preceding the awarding of the contract."

Administrative Rules

ARM 2.67.101 Organization of Board.

ARM 2.67.303 Official maximum prices and printing standards.

Case Notes

Standing: The plaintiff had the requisite standing to bring an action under Montana's Uniform Declaratory Judgments Act requesting interpretation of 7-5-2411 (renumbered 18-7-411), et seq. W. Litho v. Bd. of County Comm'rs, 174 M 245, 570 P2d 891 (1977).

Attorney General's Opinions

Applicable to County Attorney: The office of County Attorney is covered by the county printing contract. 36 A.G. Op. 37 (1975).

18-7-412. County printing contract.

Compiler's Comments

2017 Amendment: Chapter 372 substituted current (2), (3), and (4) concerning printed contracts for printed forms and materials, list of willing bidders, and acceptance of unsatisfactory work for former (2) and (3) that read: "(2) This part may not be construed to compel the acceptance of unsatisfactory work.

(3) The term of a contract for county printing or county legal advertising may not exceed a period of 2 years." Amendment effective July 1, 2017.

1995 Amendment: Chapter 507 in (1), in second sentence, substituted "The county commissioners shall require a contractor to perform the county printing contract subject to the requirements of Title 18, chapter 1, part 2" for "The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract"; in (3) substituted "county printing or county legal advertising" for "printing" and deleted second sentence that read: "Any printing establishments doing business in the county which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor"; and made minor changes in style.

1985 Amendment: In (3) changed "All printing establishments" to "any printing establishments doing business in the county".

18-7-413. Competitive bids required.

Compiler's Comments

2017 Amendment: Chapter 372 in (1) after "county printing" inserted "under the terms of this part"; in (2) at end deleted "under the terms of this part"; and made minor changes in style. Amendment effective July 1, 2017.

1995 Amendment: Chapter 507 after "printing" inserted "or for county legal advertising if there is more than one legally qualified newspaper in the county".

CHAPTER 8
PROCUREMENT OF SERVICES

Part 2
Architectural, Engineering, and Land Surveying Services

Part Compiler's Comments

Saving Clause: Section 9, Ch. 51, L. 1987, was a saving clause.

Severability: Section 10, Ch. 51, L. 1987, was a severability section.

Effective Date: Section 11, Ch. 51, L. 1987, provided that the act was effective on passage and approval. Effective February 25, 1987.

18-8-202. Definitions.

Compiler's Comments

2007 Amendment: Chapter 449 in definition of special district near middle after "fire districts" inserted "fire service areas"; and made minor changes in style. Amendment effective June 1, 2007.

1999 Amendment: Chapter 51 in definition of agency after "state agency" deleted "as defined in subsection (7)", after "local agency" deleted "as defined in subsection (4)", and after "special district" deleted "as defined in subsection (6)"; in definition of licensed professional at end deleted "and who is exempt under 18-8-103"; and made minor changes in style. Amendment effective March 15, 1999.

18-8-204. Procedures for selection.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 145, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: Chapter 111 in (4) near middle substituted "the transportation commission has approved as" for "the department of transportation has determined are". Amendment effective October 1, 2021.

2017 Amendment: Chapter 308 inserted (3) providing for architectural, engineering, or land surveying services on as-needed basis for one or more projects; and made minor changes in style. Amendment effective May 4, 2017.

2007 Amendments — Composite Section: Chapter 56 in (3) near end after "contracting" deleted "pilot" and after "authorized in" deleted "60-2-135 through". Amendment effective July 1, 2007.

Chapter 188 in (1) near middle of first sentence after "annually" inserted "or biennially". Amendment effective October 1, 2007.

2003 Amendment: Chapter 192 inserted (3) exempting from section procurement of services for design-build contracting pilot program projects. Amendment effective April 1, 2003.

Attorney General's Opinions

Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

18-8-205. Negotiation of contract for services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 145, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: Chapter 111 in (3) near middle substituted "the transportation commission has approved as" for "the department of transportation has determined are". Amendment effective October 1, 2021.

2007 Amendment: Chapter 56 in (3) near end after "contracting" deleted "pilot" and after "authorized in" deleted "60-2-135 through". Amendment effective July 1, 2007.

2003 Amendment: Chapter 192 inserted (3) exempting from section design-build contracting pilot program projects; and made minor changes in style. Amendment effective April 1, 2003.

Attorney General's Opinions

Fee Not to Be Considered When Selecting Services: A state agency may not consider a proposed fee when selecting architectural, engineering, or land surveying services, but may negotiate a fair and reasonable fee after the most qualified firm has been selected. 44 A.G. Op. 45 (1992).

18-8-210. Energy performance contracts exempt.

Compiler's Comments

Effective Date: Section 14, Ch. 162, L. 2005, provided that this section is effective on passage and approval. Approved April 7, 2005.

18-8-211. Coordination with other statutes.

Compiler's Comments

1997 Amendment: Chapter 443 deleted (4) that read: "(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to this part"; and made minor changes in style.

Severability: Section 22, Ch. 443, L. 1997, was a severability clause. Effective April 30, 1997.

18-8-212. Exception.

Compiler's Comments

2017 Amendment: Chapter 308 in (1) substituted "$50,000" for "$20,000"; in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 4, 2017.

2003 Amendment: Chapter 162 in (1) increased estimated fees from $10,000 to $20,000; and made minor changes in style. Amendment effective March 28, 2003.

1993 Amendments: Chapter 22 in (1) inserted second sentence exempting procurement of services for the honors college program building; and made minor changes in style. Amendment effective February 8, 1993, and terminates July 1, 1995.

Chapter 518 in (1) increased "$5,000" to "$10,000"; and made minor changes in style. Amendment effective April 24, 1993.

CHAPTER 11
STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter Compiler's Comments

Interim Study Committee Bill: Chapter 309, L. 1981 (HB 25), was introduced at the request of the Interim Committee on Indian Affairs. See committee report, Legislative Council, 1980.

Preamble: The preamble to Ch. 309, L. 1981 (HB 25), provided: "WHEREAS, it is in the best interest of the State of Montana to establish a legal framework that will enable this state, its political subdivisions, and Indian tribes to achieve maximum harmony and facilitate cooperative efforts in the orderly administration of their respective governments; and

WHEREAS, it is in the best interest of the state of Montana to establish a legal framework for viable agreements between itself and tribal governments located in Montana that are based on mutual consent and mutual benefit; and

WHEREAS, it is in the best interest of the state of Montana to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with tribal governments on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of public agencies and local communities."

Chapter Attorney General's Opinions

County Reimbursement by Board of Crime Control for Indian Youth Placed in Regional Detention Facility by Tribal Court: Title 18, ch. 11, the State-Tribal Cooperative Agreements Act, includes broad authority for counties to enter into agreements with tribes for the delivery of services to their citizens. Although tribes have jurisdiction over tribal member youth, those youth remain citizens of Montana as well as citizens of the tribes, and if the tribes do not provide services, such as youth detention facilities, those tribal youth are nevertheless entitled to be offered state services in the same manner as any other Montana youth. The fact that a tribal court adjudicates the youth does not necessarily disqualify the youth from the receipt of state services. In the present case, Blaine County entered into an agreement with the Fort Belknap Tribe to allow detention in the Blaine County youth detention facility of youth determined by the tribal court to be in need of detention, and Blaine County included the tribal youth population in its survey of youth to be served. The youth detention services were appropriately covered in the county's grant application. Thus, when the county applies for reimbursement for each youth served, regardless of whether the youth is a tribal member or not, the Montana Board of Crime Control is required to reimburse the county for detention costs for the youth, including tribal youth served in a regional detention facility pursuant to an order of a tribal court. 49 A.G. Op. 10 (2001).

Part 1
General Provisions

Part Compiler's Comments

Preamble: The preamble attached to Ch. 625, L. 1993, provided: "WHEREAS, the Legislature finds it necessary to clarify provisions of the State-Tribal Cooperative Agreements Act in order to reduce the delays in implementing taxation agreements entered into between the State of Montana and Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal Cooperative Agreements Act will also reduce the need for duplicative language, which results in increased costs associated with publication of the Montana Code Annotated; and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905 (1991), stated, among alternatives, that the state and a tribe may adopt a "mutually satisfactory regime" for collection of a tax but did not mandate that a state collect the tax; and

WHEREAS, in an effort to promote a government-to-government relationship between the State of Montana and Montana Indian Tribes and in recognition that both the state and tribal governments must be trusted to act responsibly, it is appropriate that the party designated to collect taxes on an Indian reservation pursuant to any agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the State-Tribal Cooperative Agreements Act to specifically include tax assessment and collection or refund and to establish specific requirements for tax assessment and collection or refund by the state, a public agency, or a Montana Indian Tribe."

18-11-101. Short title — purpose.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] [enacting subsections (2) and (3) of 18-11-101] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-103. Authorization to enter agreement — general contents.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(b) authorizing agreement to collect refund of tax or fee and to share refund; in (2) inserted second sentence appointing Governor or designee as governing body; inserted (4) requiring public notice and meeting; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

Attorney General's Opinions

Open Meeting Law Inapplicable to Departmental-Tribal Cooperative Agreement Negotiations: Negotiations between a Department Director and tribal representatives relating to establishment of a cooperative agreement authorized under this section are not subject to Montana's open meeting law. Such discussions do not constitute a "meeting" under 2-3-203 because the Director, when acting alone on behalf of the Department, does not fall within the scope of the term "quorum of the constituent membership" as used in 2-3-203. (See 1993 amendment.) 42 A.G. Op. 51 (1988).

Agreements — Method for Performance of Child Protection Services: Although none have been reached in Montana, state and tribal agreements provide a method for the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) to perform child protection services that constitute a child custody proceeding under the Indian Child Welfare Act, with respect to an Indian child residing or domiciled on his tribe's reservation. 41 A.G. Op. 76 (1986).

18-11-104. Detailed contents of agreement.

Compiler's Comments

1993 Amendment: Chapter 625 inserted (1)(h) concerning other matters in agreement; inserted (3) specifying content of agreement involving tax or fee; deleted (9) that read: "(9) any other necessary and proper matters"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: "[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993."

18-11-105. Submission of agreement to attorney general.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

18-11-107. Filing of agreement.

Compiler's Comments

2001 Amendment: Chapter 54 in (1) at beginning substituted “60 days” for “10 days”; and in (1)(a) at beginning substituted “regional office” for “area office”. Amendment effective March 16, 2001.

Effective Date — Applicability: Section 4, Ch. 54, L. 2001, provided: “[This act] is effective on passage and approval [approved March 16, 2001] and applies to agreements entered into on or after [the effective date of this act].”

1985 Amendment: In introductory phrase of (1) substituted “signature of the parties” for “prior to commencement of its performance”, in (1)(a) substituted “area office of the bureau of Indian affairs” for “secretary”, at end of (1)(a) added “having trust responsibility for the tribe that is party to the agreement or its successor agency”, at end of (1)(b) inserted “except as provided in (2) of this section”; and inserted (2) exempting agreements to which a state agency is a party from filing requirement.

Interim Study Bill: House Bill 13 (Ch. 38, L. 1985), amending this section, was introduced by request of the Select Committee on Indian Affairs. See Select Committee on Indian Affairs 1983-84 Activities, A Report to the 49th Legislature, December 1984, Montana Legislative Council.

18-11-110. Specific limitations on agreements.

Compiler's Comments

1985 Amendment: In (1) substituted present language (see 1985 Session Law) for “enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either the state of Montana or tribal governments located in Montana”; and deleted former (4) that read: “provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States”.

Interim Study Bill: Senate Bill 24 (Ch. 81, L. 1985), amending this section, was introduced by request of the Select Committee on Indian Affairs. See Select Committee on Indian Affairs 1983-84 Activities, A Report to the 49th Legislature, December 1984, Montana Legislative Council.

18-11-112. Revenue account — administrative account — distribution of revenue.

Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 625, L. 1993, provided: “[This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993.”

18-11-121. Authorization to become contracting employer in public employees' retirement system.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

TITLE 19
PUBLIC RETIREMENT SYSTEMS

Title Administrative Rules

Title 2, chapter 43, ARM Public Employees' Retirement Board.
Title 2, chapter 44, ARM Teachers' Retirement Board.

Title Case Notes

Teachers' Pension Postretirement Adjustment Age Classification Violative of Equal Protection Guarantee: The 1989 Legislature enacted 19-4-711 (now repealed), which allowed a postretirement adjustment increase in the pensions of the beneficiaries of the Teachers' Retirement System. The law provided that to be eligible, retirees or their beneficiaries must be 55 years of age or older (see 1997 amendment) or, irrespective of age, must be receiving disability or survivorship benefits. Applying the rational basis test, the District Court declared the law unconstitutional, finding no reason rationally related to a legitimate state purpose to justify granting a postretirement adjustment to the class of beneficiaries under age 55 receiving disability or survivorship benefits, while denying it to another class of beneficiaries under age 55 receiving benefits from retirees. The Supreme Court noted that while nearly all legislation classifies or sets forth classifications of applicability, benefits, and recipients, the fact that some of these classifications are imperfect does not necessarily violate the equal protection clause. However, the court was unable to find any rational relationship to the purpose of the establishment of the classification in 19-20-711 (now repealed), holding that it was wholly arbitrary and an example of the Legislature picking and choosing who will receive benefits without making any distinction between the affected classes. The District Court ruling of unconstitutionality was affirmed. Arneson v. St., 262 M 269, 864 P2d 1245, 50 St. Rep. 1546 (1993).

Title Collateral References

Green Sheets Fiscal Year 2023, Montana's Public Employee Retirement Systems, Mont. Leg. Serv. Div. (2023), https://leg.mt.gov/content/Committees/Interim/2023-2024/State-Administration-and-Veterans-Affairs/Meetings/Mar-15-2024/2.03-FY23-Green-Sheets-FINAL.pdf.

2022 Legislator's Guide to Montana's Public Retirement Systems and HJ 8 (2021) Final Report, Mont. Leg. Serv. Div. (2022), https://leg.mt.gov/bills/2023/Minutes/House/Exhibits/230105STHa3.pdf.

Public Pension Breakout Session, Mont. Leg. Serv. Div. (2020).

A Legislator's Guide to Montana's Public Retirement Systems, Mont. Leg. Serv. Div. (2008).

Legislative Policy Objectives for Montana's Public Employee Retirement Systems: 1999-2000 Interim, Mont. Leg. Serv. Div. (2000).

CHAPTER 1
SOCIAL SECURITY

Part 1
General Provisions

19-1-101. Declaration of policy.

Compiler's Comments

Federal Statute: The Social Security Act referred to in this section may be found at 42 U.S.C. § 301, et seq.

19-1-102. Definitions.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 138 inserted definition of commissioner of social security; in definition of employment in (a)(ii) and (c) substituted "commissioner of social security" for "secretary of health and human services"; deleted definition that read: ""Secretary of health and human services" means the secretary of the United States department of health and human services. The term includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 250 inserted definitions of administrator and department; deleted definition that read: ""State agency" means the department of administration provided for in 2-15-1001"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 114 inserted definition of employee tax; in definition of Federal Insurance Contributions Act after "means" deleted "subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and" and at end substituted "Internal Revenue Code" for "federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended"; in definition of political subdivision near middle of first sentence substituted "legally constituted" for "juristic"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 58 in definition of state agency substituted "department of administration provided for in 2-15-1001" for "public employees' retirement board of the public employees' retirement system of the state of Montana". Amendment effective July 1, 1999.

1993 Amendment: Chapter 10 throughout section substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statutes: Section 218 of the Social Security Act referred to in this section may be found at 42 U.S.C. § 418.

Subchapters A and B of Chapter 21 of the Federal Internal Revenue Code, known as the Federal Insurance Contributions Act, may be found at 26 U.S.C. § 3101, et seq.

19-1-103. Exclusions.

Compiler's Comments

2015 Amendment: Chapter 250 following "apply to" deleted "and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-104. Retirement systems to be considered separate.

Compiler's Comments

2015 Amendment: Chapter 250 in (2) substituted "section 218(c) of the Social Security Act, 42 U.S.C. 418(c)" for "section 218(l)(1) of the Social Security Act (42 U.S.C. 418(l)(1))"; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendments — Code Commissioner Instruction — Name Change: Chapter 42 in (1) and (2) inserted parenthetical references to United States Code sections of the Social Security Act; in (2) substituted "218(l)(1)" for "218(p)(1)"; and made minor changes in style. Amendment effective March 12, 1997.

Pursuant to sec. 12, Ch. 223, L. 1997, in (2) the Code Commissioner has substituted "game wardens' and peace officers' retirement system" for "game wardens' retirement system". Amendment effective July 1, 1997.

1989 Amendment: In (2) changed "patrolmen's" to "patrol officers'".

1981 Amendment: Inserted "the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system" after "Social Security Act" in (2).

Part 2
Administration

19-1-201. Department may adopt rules.

Compiler's Comments

2015 Amendment: Chapter 250 substituted current text for former text that read: "The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter." Amendment effective October 1, 2015.

19-1-202. Costs of administration.

Compiler's Comments

2015 Amendment: Chapter 250 at end substituted "department" for "state agency"; and made minor changes in style. Amendment effective October 1, 2015.

1999 Amendment: Chapter 58 at end substituted “to the state agency” for former language that read: “to the pension trust fund of the public employees’ retirement system. The amount of administrative costs not defrayed by interest and income earned upon the contribution account, which had been credited to the pension trust fund of the public employees’ retirement system, as provided in 19-1-602, prior to July 1, 1987, must be paid to the state agency for deposit to the pension trust fund of the public employees’ retirement system by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions.” Amendment effective July 1, 1999.

1995 Amendment: Chapter 412 throughout section substituted “pension trust fund of the public employees’ retirement system” for “retirement division pension trust fund”; in second sentence inserted “prior to July 1, 1987”; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1983 Amendment: Substituted “retirement division pension trust fund” for “earmarked revenue fund, retirement division account” in three places.

Part 3
Referendum and Certification

19-1-301. Authorization of referendum by governor.

Compiler’s Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, the Code Commissioner has substituted “game wardens’ and peace officers’ retirement systems” for “game wardens’ retirement systems”. Amendment effective July 1, 1997.

1989 Amendment: Changed “patrolmen’s” to “patrol officers’”.

1981 Amendment: Substituted “members of the public employees’, highway patrolmen’s, judges’, and game wardens’ retirement systems” for “employees of the state other than highway patrolmen and with respect to highway patrolmen”.

19-1-302. Conduct of referendum.

Compiler’s Comments

2015 Amendment: Chapter 250 substituted “The governor shall designate the department director, who shall direct the administrator to conduct and supervise a referendum. The referendum must be conducted in accordance” for “In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct in accordance”; and made minor changes in style. Amendment effective October 1, 2015.

19-1-303. Notice of referendum.

Compiler’s Comments

2015 Amendment: Chapter 250 near middle substituted “department director, acting through the administrator” for “agency or individual designated to supervise the referendum”; and made minor changes in style. Amendment effective October 1, 2015.

19-1-304. Certification of referendum by governor.

Compiler’s Comments

2015 Amendments — Composite Section: Chapter 138 at end substituted “commissioner of social security” for “secretary of health and human services”. Amendment effective October 1, 2015.

Chapter 250 at beginning substituted “When the department receives satisfactory evidence that” for “Upon receiving satisfactory evidence that with respect to a referendum”; and made minor changes in style. Amendment effective October 1, 2015.

1993 Amendment: Chapter 10 at end substituted “secretary of health and human services” for “secretary of health, education, and welfare”; and made minor changes in style.

Part 4
Federal-State Agreement

19-1-401. Authority for federal-state agreement.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 138 substituted "commissioner of social security" for "secretary of health and human services". Amendment effective October 1, 2015.

Chapter 250 near beginning substituted "department director" for "state agency"; and made minor changes in style. Amendment effective October 1, 2015.

1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

19-1-402. Contents of federal-state agreement.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 138 near end of first sentence substituted "the commissioner of social security" for "secretary of health and human services"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 250 in introduction in first sentence substituted "department director" for "state agency"; and in (4) substituted "department" for "state agency". Amendment effective October 1, 2015.

2009 Amendment: Chapter 161 near beginning of introductory clause after "benefits" deleted "contributions" and after "modification" deleted "and termination"; deleted former (2) that read: "(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act"; and made minor changes in style. Amendment effective October 1, 2009.

1997 Amendment: Chapter 42 in (3) substituted "218(e) of the Social Security Act (42 U.S.C. 418(e))" for "218(f) of the Social Security Act"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 10 throughout section deleted citations to defined terms; in introductory clause, at beginning, substituted "The agreement authorized by 19-1-401" for "Such agreement" and near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Federal Statutes: Title II of the Social Security Act referred to in this section may be found at 42 U.S.C. § 401, et seq.

Attorney General's Opinions

Social Security — Public Employees' Retirement System: For the purpose of Social Security coverage under Ch. 270, L. 1955 (now Title 19, ch. 1), and the agreement between the state of Montana and the Secretary of Health, Education and Welfare (now Secretary of Health and Human Services), the positions of state Superintendent of Public Instruction, County Superintendent of Schools, the professional staff of the state Superintendent of Public Instruction, and teachers in custodial institutions are positions covered by the Public Employees' Retirement System. 26 A.G. Op. 103 (1956).

Part 5
Plans for Employees of Political Subdivisions

19-1-501. Submission of plan and agreement.

Compiler's Comments

2015 Amendment: Chapter 250 near middle substituted "department" for "state agency" and inserted reference to agreement; and made minor changes in style. Amendment effective October 1, 2015.

Federal Statute: Title II of the Social Security Act referred to in this section may be found at 42 U.S.C. § 401, et seq.

19-1-502. Approval of plan and agreement by department.

Compiler's Comments

2015 Amendment: Chapter 250 in (1) substituted current text concerning approval of the plan and agreement by the department for former text that read: "A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency"; in (2) near beginning substituted "department" for "state agency" and in two places after "plan" inserted "and agreement"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-503. Required provisions of plan and agreement.

Compiler's Comments

2015 Amendment: Chapter 250 in introduction inserted references to agreement and department; in (2) substituted "plan and agreement, except that the plan and agreement" for "plan, except that it"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 161 deleted former (3) through (6) that read: "(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ensure the correctness and verification of the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act"; and made minor changes in style. Amendment effective October 1, 2009.

1997 Amendment: Chapter 42 in (2) substituted "218(c)(3)(B) of the Social Security Act (42 U.S.C. 418(c)(3)(B))" for "218(c)(3)(C) of the Social Security Act"; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 10 in (2) deleted citation to defined term; in (5) substituted "secretary of health and human services" for "secretary of health, education, and welfare"; and made minor changes in style.

Part 7
Contributions

19-1-702. Contributions by state employees.

Compiler's Comments

2015 Amendment: Chapter 250 in (3) near end substituted "department" for "state agency". Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Federal Statute: The Federal Insurance Contributions Act referred to in this section may be found at 26 U.S.C. § 3101, et seq.

19-1-704. Contribution by political subdivision.

Compiler's Comments

2015 Amendment: Chapter 250 near beginning inserted reference to agreement, substituted "prescribed by the department" for "as the state agency may prescribe by regulation", and at end substituted "department director on behalf of the state" for "state agency"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-705. Deduction of employee contribution by political subdivision.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Federal Statute: The Federal Insurance Contributions Act referred to in this section may be found at 26 U.S.C. § 3101, et seq.

Part 8
Participation of Teachers

19-1-811. Referendum by school district.

Compiler's Comments

2015 Amendment: Chapter 250 in first sentence authorized the department to conduct and supervise a referendum; in third sentence near middle after "teachers approve" inserted "social security coverage" and after "department" deleted "of administration"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-813. Collection of contributions.

Compiler's Comments

2009 Amendment: Chapter 161 deleted former second sentence that read: "The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter"; and made minor changes in style. Amendment effective October 1, 2009.

19-1-815. Merger of reporting entities.

Compiler's Comments

2015 Amendment: Chapter 250 in introduction near middle substituted "department" for "state agency". Amendment effective October 1, 2015.

19-1-822. Referendum — institution of higher education.

Compiler's Comments

2015 Amendment: Chapter 250 near beginning substituted "direct the department" for "designate an agency or individual"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-823. Certification by governor.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 138 substituted "commissioner of social security" for "secretary of health and human services"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 250 at beginning substituted "On the department's notification that a majority of votes in the referendum were cast in favor of participation in social security, the governor, through the department" for "If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor"; and made minor changes in style. Amendment effective October 1, 2015.

1993 Amendment: Chapter 10 near middle substituted "secretary of health and human services" for "secretary of health, education, and welfare".

19-1-824. Federal-state agreement.

Compiler's Comments

2015 Amendment: Chapter 250 near beginning after "governor shall" substituted "direct the department director to enter into a modification to the existing agreement" for "designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement"; and made minor changes in style. Amendment effective October 1, 2015.

19-1-825. Collection of contributions.

Compiler's Comments

2009 Amendment: Chapter 161 near beginning after "section 218" substituted "of the Social Security Act, 42 U.S.C. 418" for "as follows"; deleted former (1)(b) that read: "(b) from the state, from any appropriations to the institution involved for salaries or other purposes"; deleted former (2) that read: "(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated"; and made minor changes in style. Amendment effective October 1, 2009.

19-1-826. Changes in federal law.

Compiler's Comments

2015 Amendment: Chapter 250 inserted reference to this part; and made minor changes in style. Amendment effective October 1, 2015.

CHAPTER 2
PUBLIC EMPLOYEES' RETIREMENT GENERAL PROVISIONS

Chapter Compiler's Comments

Severability: Section 29, Ch. 17, L. 1974, was a severability clause.

Chapter Administrative Rules

Title 2, chapter 43, ARM Public Employees' Retirement Board.

Part 3
General Provisions

19-2-301. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-302. Applicability.

Compiler's Comments

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendment: Chapter 471 inserted "Except as otherwise provided in this title" and inserted "and plans within the systems"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

The amendment to this section made by Ch. 562, L. 1999, was rendered void by sec. 99(1)(a), Ch. 562, L. 1999, a coordination section.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-303. Definitions.

Compiler's Comments

2015 Amendment — Coordination: Chapter 170 in definition of plan choice rate after "19-3-2117" deleted "and that is adjusted by the board pursuant to 19-3-2121". Amendment effective July 1, 2015.

The amendment to this section made by sec. 1, Ch. 190, L. 2015, was rendered void by sec. 6, Ch. 190, L. 2015, a coordination instruction.

Preamble: The preamble attached to Ch. 170, L. 2015, provided: "WHEREAS, employer contributions equal to 2.37% of compensation for covered members in the Public Employees' Retirement System Defined Contribution Retirement Plan (PERS-DCRP) and the Montana University System Retirement Program (MUS-RP) are statutorily allocated to the Public Employees' Retirement System Defined Benefit Retirement Plan (PERS-DBRP) as the plan choice rate; and

WHEREAS, additional employer contributions equal to 0.37% of a member's compensation are also allocated to the plan choice rate and this percentage will increase by 0.1% each year through 2024; and

WHEREAS, the plan choice rate was established to pay the portion of the PERS-DBRP unfunded actuarial liabilities associated with PERS members who elected to join the PERS-DCRP rather than the PERS-DBRP plan and also to pay for any increase to the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, section 19-3-2121, MCA, requires that the plan choice rate be adjusted if it is actuarially determined to be too high or too low to pay off the associated unfunded actuarial liabilities within an established timeframe and if there is an actual change in the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, the normal cost of benefits in the PERS-DBRP has never significantly changed because of PERS members selecting the PERS-DCRP; and

WHEREAS, the Public Employees' Retirement Board's actuary determined that as of June 30, 2014, the unfunded actuarial liability associated with the plan choice rate is $5,903,188, and is estimated to be fully paid off within the next 2 to 3 years."

2013 Amendments — Composite Section: Chapter 178 in definition of direct rollover substituted "retirement plan" for "plan" and after "distributee" inserted "or a payment from an eligible retirement plan to the retirement plan specified by the distributee". Amendment effective July 1, 2013.

Chapter 240 in definition of normal retirement age in middle substituted "age or both age and length of service" for "age, length of service, or both"; and made minor changes in style. Amendment effective April 22, 2013.

Chapter 272 in definition of vested member or vested in (a) after "plan" inserted "except as provided in subsection (56)(b)" and inserted (b) regarding highway patrol officer hired after July 1, 2013; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 386 inserted definition of excess earnings; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2011 Amendment: Chapter 99 inserted definition of banked holiday time; in definition of termination of service inserted (b) regarding no written or verbal agreement; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendments — Composite Section: Chapter 283 in definition of contingent annuitant after "means" deleted "a person", in (a) at beginning inserted "under option 2 or 3 provided for in 19-3-1501, one natural person", and inserted (b) regarding entities under option 4; in definition of designated beneficiary near beginning after "person" inserted "charitable organization, estate, or trust for the benefit of a natural person"; inserted definition of written instrument; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 284 inserted definitions of direct rollover, distributee, eligible retirement plan, and eligible rollover distribution; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 27(1) through (3), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(1) The definition of "distributee" in 19-2-303 applies retroactively to January 1, 2007, as provided in that section.

(2) The definition of "eligible retirement plan" in 19-2-303 applies retroactively to January 1, 2002, and January 1, 2008, as provided in that section.

(3) The definition of "eligible rollover distribution" in 19-2-303 applies retroactively to January 1, 2002, as provided in that section."

2005 Amendment: Chapter 329 in definition of inactive member substituted "terminates service and does not retire or take a refund of the member's accumulated contributions" for "is not an active or retired member"; in definition of retirement or retired in (a) substituted "terminated from service" for "been terminated from service for at least 30 days"; in definition of termination of employment at beginning inserted termination from employment, terminated employment, terminated from employment, terminate employment, and terminates employment as defined terms, deleted termination of service as defined term, and substituted (a) and (b) providing that there has been a complete severance by the positive act of the employee, employer, or both, and that the member no longer receives compensation for the job other than any outstanding lump-sum payment for various leaves for "the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination"; inserted definition of termination of service and similar terms; in definition of vested member in (a) substituted "at least 5 years of membership service" for "attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 114 in definition of Internal Revenue Code substituted "has the meaning provided in 15-30-101" for "means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999". Amendment effective October 1, 2003.

Chapter 429 in definition of benefit in (a) after "service" inserted "retirement benefit, early retirement benefit"; deleted definition of credited service that read: ""Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan"; in definition of disability inserted "or disabled" as defined term; inserted definitions of early retirement benefit, service credit, and service retirement benefit; in definition of retirement account near middle substituted "member" for "employee"; in definition of retirement benefit in (a) after "service" and "early" inserted "retirement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in definition of employee at end inserted "or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105"; in definition of employer in first sentence after "governmental" substituted "agency" for "entity" and inserted second sentence including certain interlocal government entities in the definition; in definition of membership service at beginning deleted "or "years of service""; inserted definition of normal retirement age; in definition of written application at beginning inserted "or "written election"", after "instrument" substituted "prescribed" for "specified", after "by the board" inserted "or required by law", and after "properly" substituted "signed" for "executed"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 149 in definition of actuarial equivalent substituted "the mortality table and interest rate assumptions adopted by the board" for "the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually". Amendment effective March 29, 2001.

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in definition of benefit in (b) inserted reference to a disability payment under 19-3-2141. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

(Temporary version) Chapter 490 inserted definition of retirement plan; and made minor changes in style. Amendment effective July 1, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Deleted definition of account balance that read: ""Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan"; inserted definition of retirement plan; inserted definition of vested account; in definition of vested member in (b) after "member or status of a" substituted "member who meets the minimum membership service requirements of 19-3-2116" for "member who, pursuant to 19-3-2116, is entitled to employer contributions and income on those contributions in the member's retirement account"; and made minor changes in style.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section — Coordination: Chapter 58 in definition of fiscal year after "means" inserted "a plan year, which is"; inserted definition of Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999. The amendments to definition of retirement system or system made by sec. 4, Ch. 58, L. 1999, were rendered void by sec. 46(1), Ch. 58, L. 1999, a coordination section.

Chapter 471 throughout section substituted "plan", "defined benefit plan", or "defined benefit retirement plan" for "system" or "retirement system"; inserted definitions of account balance, covered employment, covered position, defined benefit retirement plan or defined benefit plan, defined contribution retirement plan or defined contribution plan, plan choice rate, and retirement account; in definition of additional contributions inserted "of a defined benefit plan"; in definition of annuity in (a) at beginning inserted "in the case of a defined benefit plan" and inserted (b) referring to, in the case of a defined contribution plan, a payment of a fixed sum of money at regular intervals; in definition of benefit inserted (b) relating to a payment or distribution under a defined contribution retirement plan for the exclusive benefit of a plan member or a member's beneficiary or an annuity purchased under 19-3-2124; in definition of designated beneficiary inserted "or benefit from a retirement account"; in definition of member inserted (b) relating to a person with a retirement account in the defined contribution plan; in definition of pension substituted "retirement plan" for "system"; in definition of pension trust fund inserted "or plan"; in definition of retirement benefit in (a) in first sentence inserted "in the case of a defined benefit plan" and inserted "a defined benefit plan of" and in second sentence substituted "With respect to a defined benefit plan, the term does not mean an annuity" for "An annuity is not a retirement benefit" and inserted (b) relating, in the case of a defined contribution plan, to a benefit as defined in definition of benefit; in definition of vested member in (a) at beginning inserted “with respect to a defined benefit plan” and inserted (b) relating, with respect to a defined contribution plan, to a member or the status of a member who under 19-3-2116 is entitled to employer contributions and income on those contributions in the member's retirement account; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Section 4, Ch. 562, L. 1999, in definition of active member substituted “board” for “division”; deleted definition of division that read: ““Division” means the public employees' retirement division of the department of administration”; in definition of retirement or retired substituted “has been terminated from service for at least 30 days” for “has terminated from service”; in definition of retirement system or system after ““system”” inserted “or “plan”” and substituted “retirement plans enumerated in 19-2-302 and known as retirement systems” for “retirement systems enumerated in 19-2-302”; in definition of written application after “written instrument” substituted “specified by the board, properly executed” for “duly executed” and substituted “including documentation the board considers necessary” for “including such proofs of age as the board considers necessary”; and made minor changes in style. Amendment effective July 1, 1999.

The amendments to definition of retirement system or system made by sec. 4, Ch. 562, L. 1999, were rendered void by sec. 99(1)(b), Ch. 562, L. 1999, a coordination section.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are “effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier”. Section 65 provided in subsection (2) that “The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner.” The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan “is ready to become and will become operational as of July 1, 2002”.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in definition of active member, after “who is”, substituted “a paid” for “an” and after “contributions” substituted “and is properly reported to the division for the most current reporting period” for “to the system based on the member's compensation paid by the employer”; in definition of benefit, after “benefit”, inserted “payment”; in definition of contingent annuitant, after “continuing”, substituted “monthly benefit” for “annuity”; in definition of designated beneficiary, in two places after “member”, inserted “or payment recipient”; in definition of inactive member, after “member who”, substituted “is not an active or retired member” for “has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system”; in definition of pension, after “means”, inserted “benefit”; in definition of retirement, after “service”, substituted “and has received and accepted” for “with” and after “benefit” substituted “from” for “under”; in definition of retirement benefit, in first sentence after “payable”, substituted “as a result of” for “following” and inserted second sentence clarifying that an annuity is not a retirement benefit; in definition of retirement system, near beginning, inserted “or “system””; inserted definition of statutory beneficiary; in definition of survivorship benefit, after “life to the”, inserted “statutory or designated”; inserted definition of termination of employment or termination of service; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: “A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a “retiree” during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 throughout section inserted "retirement" before "system"; and inserted definition of essential elements of the position. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in introduction inserted reference to retirement systems; inserted definitions of active member, actuarial cost, actuarial liabilities, contingent annuitant, department, designated beneficiary, Division, inactive member, normal cost or future normal cost, pension trust fund, regular contributions, supplemental cost, unfunded actuarial liabilities or unfunded liabilities, and vested member or vested; substituted definition of accumulated contributions for former definition that read: ""Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon"; substituted definition of additional contributions for former definition that read: ""Additional contributions" means contributions by members under the provisions of 19-3-702"; substituted definition of annuity for former definition that read: ""Annuity" means payments for life derived from contributions made by a member as provided in this chapter"; deleted definition of beneficiary that read: ""Beneficiary" means the person so designated pursuant to part 13 of this chapter"; substituted definition of benefit for former definition that read: ""Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter"; deleted definition of compensation that read: ""Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year"; deleted definition of contracting employer that read: ""Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system"; substituted definition of credited service or service credit for former definition of creditable service that read: ""Creditable service" means the aggregate of membership service and prior service"; substituted definition of disability for former definition that read: ""Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion"; substituted definition of employee for former definition that read: ""Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402"; substituted definition of employer for former definition that read: ""Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system"; deleted definition of employer contributions that read: ""Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board"; deleted definition of final compensation that read: ""Final compensation", except as provided in 19-3-907, means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation"; deleted definition of head of department that read: ""Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment"; substituted definition of member for former definition that read: ""Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406"; substituted definition of membership service or years of service for former definition that read: ""Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section"; deleted definition of normal contributions that read: ""Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704"; substituted definition of pension for former definition that read: ""Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter"; deleted definition of prior service that read: ""Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana"; substituted definition of retirement or retired for former definition that read: ""Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter"; substituted definition of retirement benefit for former definition of retirement allowance that read: ""Retirement allowance" means the periodic benefit payable following service, early, or disability retirement"; deleted definition of retirement fund that read: ""Retirement fund" means the public employees' retirement system pension trust fund"; substituted definition of retirement system for former definition that read: ""Retirement system" means the public employees' retirement system created by this chapter"; substituted definition of service for former definition that read: ""Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502"; substituted definition of survivorship benefit for former definition of survivorship allowance that read: ""Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In definition of final compensation inserted reference to exception in 19-3-907. Amendment effective July 1, 1989.

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of retirement fund substituted "retirement system pension trust fund" for "retirement account in the agency fund".

1981 Amendment: Deleted "additional" before "contributions" both times it appears in definition of accumulated contributions; deleted definition of accumulated normal contributions and former definition of accumulated contributions; deleted language relating to credit for part time employment continuing for more than a year.

Commissioner Correction: Changed "subsection (11)" to "subsection (9)" in definition of membership service to correct inadvertent omission in HB 197 (Ch. 496, L. 1981), which renumbered the subsections.

Case Notes

Proper Reliance by PERB on Opinion of Own Medical Personnel: The plaintiff appealed the District Court's order affirming the denial by the Public Employees' Retirement Board (PERB) of his disability claim, arguing that the denial was not supported by substantial evidence because PERB improperly deferred to the opinion of its own medical personnel over the opinions of the plaintiff's treating physicians. The Supreme Court affirmed, concluding that reliance on the opinion of PERB medical personnel was not clearly erroneous because the opinions of the treating physicians were based primarily on the plaintiff's inconsistent self-reporting of his condition and because the opinion of PERB medical personnel was based on a review of the deposition testimony and reports of the treating physician and the plaintiff's medical and personnel files. Fauque v. Mont. Pub. Employees' Retirement Bd., 2014 MT 184, 375 Mont. 443, 329 P.3d 593.

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

District Court Decision Regarding Constitutionality of One Issue Precluding Consideration of Other Constitutional Questions — Certification to Supreme Court Proper: Baumgardner raised numerous issues concerning the constitutionality of 2001 amendments to the Public Employees' Retirement System. The District Court decided that the amendments were an unconstitutional delegation of legislative power but did not consider other issues related to the amendments. The Public Employees' Retirement Board moved to certify the judgment as final, and the motion was granted. On appeal, Baumgardner contended that certification was improper because the District Court did not resolve all of the pending issues. The Supreme Court disagreed. Once the amendments were declared unconstitutional on the delegation question, there was no need for the District Court to consider other challenges to the constitutionality of the amendments, so certification was appropriate, and the case was properly submitted to the Supreme Court. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005).

Public Defender Considered Employee Entitled to Purchase Service Credits: Lewis worked as a county public defender for about 2½ years and then began working for the state Department of Transportation. Lewis sought to purchase service credits pursuant to the applicable 1979 version of 19-3-505 for the time spent as a public defender. The District Court affirmed the finding of the Public Employees' Retirement Board that Lewis's service was creditable service (definition changed to credited service or service credit in 1993 and deleted in 2003), as defined in 19-3-104 (renumbered 19-2-303), that did not qualify for conversion to membership service, so Lewis was denied the right to purchase service credit. On appeal, the Supreme Court reversed. The definition of membership service in 19-3-104 (renumbered 19-2-303) was service with respect to which contributions are paid. No contributions were paid, so Lewis's service was not membership service and therefore was also not creditable service. Lewis was an employee rather than an independent contractor, the county was a participating member of the public employees' retirement system, and Lewis's service was not creditable service. Thus, Lewis was entitled to purchase service credits in the retirement system. (Note that the statutes were substantially revised beginning in 1993.) In re Lewis, 2004 MT 160, 322 M 13, 92 P3d 1218 (2004).

Proof That Multiple Sclerosis Caused Disability: A doctor for the claimant for state retirement disability benefits testified that the claimant had multiple sclerosis (MS) prior to 1988 and that it became disabling (in regard to his job) in that year and remained disabling after that year. He was not conclusively diagnosed with and told that he had MS until 1991. The Public Employees' Retirement Board, which denied benefits, presented no medical evidence and did not deny that a job disability due to MS existed since 1988, the year when the claimant resigned. Instead, the Board relied on the claimant's 1988 indications that he was resigning to preserve a higher payout of unused benefits (his position was about to be reclassified downward) and that he felt he could do the job. His doctor's uncontradicted testimony was entitled to special weight and should not have been disregarded absent specific legitimate evidence and reasons to the contrary. The claimant's 1988 statements showed only that he did not believe that he was disabled and did not show that he in fact was not. They could have been made during a period of remission when symptoms were minor and he thought himself in good health. The lower court properly ruled that the Board's treatment of the claimant's doctor's testimony was erroneous and that the denial of benefits was also erroneous. Weber v. Pub. Employees' Retirement Bd., 270 M 239, 890 P2d 1296, 52 St. Rep. 162 (1995).

Part 4
Administration

Part Administrative Rules

Title 2, chapter 43, subchapter 13, ARM General rules.

Title 2, chapter 13, subchapters 14 and 15, ARM Procedural rules.

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees.

Compiler's Comments

2021 Amendment: Chapter 535 in (1) before "first judicial district: inserted "judicial district in which the appealing party resides or, if the person resides outside the state, the" and at end deleted "unless otherwise stipulated by the parties"; and made minor changes in style. Amendment effective October 1, 2021.

2001 Amendment: Chapter 490 in (3) in second sentence near end in list of chapters inserted 2 and 50; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (2) increased quorum from three to four; and in (3) substituted reference to chapter 17 for references to chapters 12 and 15. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1995 Amendment: Chapter 412 in (1) inserted second sentence providing that jurisdiction and venue for judicial review of final administrative decisions of the Board are in the First Judicial District unless otherwise stipulated by the parties. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in (3), in second sentence after "members", deleted "which shall have authority", after "retirement" substituted "benefits" for "allowances", substituted "systems" for "system", and substituted reference to enumerated chapters for "this chapter"; deleted (4) that read: "(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-402. Compensation of board members.

Compiler's Comments

1985 Amendment: Substituted "Members shall be entitled to compensation as provided in 2-15-124" for: "The travel expenses of members of the board shall be as allowed in 2-18-501 through 2-18-503, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation as provided in 2-15-1009".

1983 Amendment: Substituted "as provided in 2-15-1009" for "at the rate of $25 a day".

19-2-403. Powers and duties of board.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 348 in (12) substituted "2-6-1017" for "2-6-109". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2013 Amendment: Chapter 178 in (4) inserted last sentence concerning proportional membership; inserted (5) concerning reports to incorrect retirement system; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (8) regarding memoranda of understanding; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (10) near middle of second sentence substituted "the appropriate retirement system fund" for "an account in the state special revenue fund and must be appropriated to the board". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (5) inserted second sentence allowing payment of benefits only if the board determines that an applicant is entitled to the benefits; and in (11) inserted second sentence regarding issuance and enforcement of subpoenas. Amendment effective March 21, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendments — Composite Section: Chapter 471 in (9) after "retirement system" inserted "or plan", inserted "in a defined benefit plan or in contributions under the defined contribution plan", and before "members" deleted "retired"; in (10) near end inserted "or plans"; and inserted (13) providing that the board has other duties and powers as provided in chapter 3, part 21, of this title. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (8) substituted "actuarial rates" for "actuarial tables"; inserted (11) authorizing hearings, administration of oaths and affirmation, depositions, certification of acts and records, and issuance of subpoenas; and inserted (12) authorizing delegation of board's powers or duties. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 412 inserted (10) allowing third-party mailings by the Board under 2-6-109, requiring rules governing mailings, and requiring mailing fees to be deposited in the state special revenue fund, to be appropriated to the Board for the benefit of retirement systems participants. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is further required for this bill [the bill amends three sections to grant rulemaking authority] because [section 2] [codified as subsection (10) of 19-2-403] gives the board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide the board with the option of generating fees from the sale of the use of mailing lists composed of participants in the retirement systems administered by the board. However, the legislature intends that such use be restricted by the board so that retirement system participants are neither deprived of their right of privacy concerning confidential information nor inundated with excessive mailings, particularly as concerns commercial interests, individual political candidates and ballot issues, or other specific political issues.

The legislature intends to allow the board discretion in promulgating rules concerning procedures to effectuate this intent. The legislature intends that the board have discretion to determine, for example, that mailings may not be allowed at all under this provision, that mailings may be tried for a limited period of time only, that mailings may be limited to tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code, that specific types of mailings may be allowed, that mailings can be limited to specific categories of participants, or that participants have a right to be excluded from mailings on request.

The legislature intends that the fees generated by mailings for third parties not reduce the amount of appropriation otherwise allocated for the administration of the retirement system but be used as the board considers appropriate, such as for additional communication by the board with retirement system participants regarding retirement system rights, obligations, and similar issues."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendments: Chapter 265 inserted (1) relating to chapters administered by the Board; in (2) substituted "systems" for "system" and at end substituted "enforcement of the chapters under which each retirement system is established" for "enforcement of this chapter, subject to its limitation"; in (3), before "credit", inserted "service"; in (4), at end of first sentence, substituted "each retirement system" for "this chapter" and in second sentence, after "authority", deleted "under this chapter" and at end substituted "systems" for "system"; in (5) substituted "modify retirement benefits under the retirement systems" for "modify allowances for service and disability under this chapter"; substituted (6) requiring uniform and nondiscriminatory treatment for "All persons in similar circumstances shall be treated alike"; at end of (7) substituted "the retirement systems" for "this chapter"; at end of (8) substituted "appropriate for the administration of the retirement systems" for "appropriate to comply with the provisions of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 481 inserted (9) requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living; and made minor changes in style.

Administrative Rules

Title 2, chapter 43, subchapter 13, ARM General rules.
Title 2, chapter 43, subchapters 14 and 15, ARM Procedural rules.
ARM 2.43.1406 Mailing for nonprofit retiree organizations.
ARM 2.43.1407 Acceptable materials — nonprofit mailing.
ARM 2.43.1408 Right to be excluded — nonprofit retiree organizations.
Title 2, chapter 43, subchapter 21, ARM Membership service and service credit.
Title 2, chapter 43, subchapter 22, ARM Reporting qualified plan compensation.
Title 2, chapter 43, subchapter 23, ARM Service purchases.
Title 2, chapter 43, subchapter 26, ARM Applying for retirement — service or disability.
Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.
Title 2, chapter 43, subchapter 29, ARM Refunds, distributions, and adjustments.
Title 2, chapter 43, subchapter 30, ARM Family law orders.
Title 2, chapter 43, subchapter 34, ARM PERS — elected officials.
Title 2, chapter 43, subchapter 35, ARM Defined contribution retirement plan.
Title 2, chapter 43, subchapter 40, ARM Highway Patrol Officers' Retirement System.
Title 2, chapter 43, subchapter 42, ARM Sheriffs' Retirement System.
Title 2, chapter 43, subchapter 46, ARM Municipal Police Officers' Retirement System.
Title 2, chapter 43, subchapter 48, ARM Firefighters' Unified Retirement System.
Title 2, chapter 43, subchapter 50, ARM Volunteer Firefighters' Compensation Act.
Title 2, chapter 43, subchapter 51, ARM Deferred compensation plan.

Case Notes

State Retirement Board Not Required to Calculate Compensation Amounts for Individual Plan Members: Plaintiffs sued the state and the Public Employees' Retirement Board alleging that plaintiffs' compensation was incorrectly calculated by the Board, resulting in inadequate monthly benefits. The District Court dismissed the claim on grounds that plaintiffs failed to file their complaint within the 2-year statute of limitations, and plaintiffs appealed. The Supreme Court noted that although the Board has broad statutory duties to administer the various state retirement plans, it is not the Board's duty to calculate compensation amounts for individual members. Rather, it is an employer's duty to calculate and report the compensation amounts. If those reports were in error, plaintiffs should have sought relief from their employers, but their remedy did not lie with the state or the Board. Thus, the District Court correctly dismissed the complaint, albeit for a different reason, and the Supreme Court affirmed. Hall v. St., 2006 MT 37, 331 M 171, 130 P3d 601 (2006).

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-2-404. Appointment and compensation of administrative staff.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "executive director" for "administrator". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at beginning substituted "The board shall hire" for "The department shall appoint" and inserted second sentence regarding compensation of the administrator and employees. Amendment effective July 1, 1997.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-405. Employment of actuary — annual investigation and valuation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2015 Amendment: Chapter 248 in (4)(b) substituted "19-21-214" for "19-21-203". Amendment effective January 1, 2016.

2013 Amendments — Composite Section: Chapter 155 in (2) and (5) inserted "and report on"; in (5) deleted last sentence that read: "Copies of the report must be provided to the legislature pursuant to 5-11-210"; and inserted (7) concerning report copies for the state administration and veterans' affairs interim committee and the legislature. Amendment effective October 1, 2013.

Chapter 240 inserted (8) requiring actuary to prepare certain disclosures. Amendment effective April 22, 2013.

Preamble: The preamble attached to Ch. 155, L. 2013, provided: "WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee voted to make the recommendations contained in this bill."

2007 Amendment: Chapter 285 in (2) after "make" substituted "an annual actuarial investigation" for "a biennial actuarial investigation"; and in (5) inserted second sentence requiring copies of retirement system actuarial report to be provided to the legislature. Amendment effective June 1, 2007.

2003 Amendment: Chapter 114 in (4)(b) deleted reference to subsection (5)(b) of 19-21-203. Amendment effective October 1, 2003.

1999 Amendment: Chapter 471 in (2) near end inserted "each defined benefit plan that is a part of"; in (3) near beginning substituted "each defined benefit retirement plan" for "the retirement system" and near end substituted "retirement plan" for "retirement system"; in (4)(a) in two places substituted "retirement plan" for "retirement system" and inserted "current and future defined benefit plan"; inserted (4)(b) providing that in determining the amortization period, the actuary shall consider the plan choice rate contributions to be made to the defined benefit plan; in (5) at end inserted "and plans"; inserted (6) allowing the board to require the actuary to conduct any valuation necessary to administer retirement systems and plans subject to this chapter; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1), in first sentence after "retain", deleted "on a full-time basis" and substituted "an enrolled member" for "a member" and in second sentence, at end, substituted "retirement systems" for "system"; in (2), at beginning, substituted "The board shall require the actuary to make a biennial actuarial investigation" for "Biennially he shall make an actuarial investigation", in two places substituted references to retirement systems for references to system, and deleted last two sentences that read: "From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board"; inserted (3) relating to calculation of normal cost contribution rate; inserted (4) relating to calculation of unfunded liability contribution rate; inserted (5) relating to periodic actuarial investigation; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.1306 Actuarial rates and assumptions.

19-2-406. Disability retirement — application — determination — benefit conversion — rules.

Compiler's Comments

2013 Amendment: Chapter 178 inserted (1) concerning application for disability retirement; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendments — Composite Section: (Temporary version) Chapter 99 in (1) inserted third sentence regarding issuance and enforcement of subpoenas; and in first sentence of (4) substituted "normal retirement age" for "the minimum age required for normal service retirement". Amendment effective March 21, 2001.

(Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) In (1) inserted third sentence regarding issuance and enforcement of subpoenas; and near beginning of first sentence of (4) after "to a member" inserted "of a defined benefit plan" and at end substituted "normal retirement age" for "the minimum age required for normal service retirement".

Chapter 423 in version effective on occurrence of contingency or July 1, 2002, in (4) after "member" inserted "of the defined benefit plan"; and deleted former (5) that read: "(5) This section does not apply to members of the defined contribution plan." Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1999 Amendments — Composite Section: Chapter 471 inserted (5) providing that this section does not apply to members of the defined contribution plan. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (1) near middle of second sentence after "official acts" inserted "and records". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 412 inserted (2) requiring Board rules that require employers to identify and explain elements and accommodations; and inserted (4) requiring conversion of a disability retirement benefit to a service retirement benefit if a member attains the minimum age required for normal service retirement and requiring notification of status change. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is further required for this bill [the bill amends three sections to grant rulemaking authority] because general rulemaking authority is granted to the board [by amendment of 19-2-406] to establish rules requiring employers to provide information germane to processing an application for disability retirement of a public employee retirement system member.

The Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq., requires employers to define the essential elements of each position and to make reasonable accommodations for employees with disabilities.

In recognition of the purpose of the ADA, it is intended that the board, when determining if an applicant is totally and permanently disabled and thereby eligible for benefits from one of the retirement systems administered by it, consider whether the member is able to perform the essential elements of the position after the employer makes accommodations required by the ADA."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in (1) deleted last sentence that read: "The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice"; inserted (2) relating to retention of medical personnel; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

Case Notes

Proper Reliance by PERB on Opinion of Own Medical Personnel: The plaintiff appealed the District Court's order affirming the denial by the Public Employees' Retirement Board (PERB) of his disability claim, arguing that the denial was not supported by substantial evidence because PERB improperly deferred to the opinion of its own medical personnel over the opinions of the plaintiff's treating physicians. The Supreme Court affirmed, concluding that reliance on the opinion of PERB medical personnel was not clearly erroneous because the opinions of the treating physicians were based primarily on the plaintiff's inconsistent self-reporting of his condition and because the opinion of PERB medical personnel was based on a review of the deposition testimony and reports of the treating physician and the plaintiff's medical and personnel files. Fauque v. Mont. Pub. Employees' Retirement Bd., 2014 MT 184, 375 Mont. 443, 329 P.3d 593.

19-2-407. Reports.

Compiler's Comments

2015 Amendment — Coordination: Chapter 170 in (2) after "fees" deleted "determinations on the plan choice rate made pursuant to 19-3-2121"; and made minor changes in style. Amendment effective July 1, 2015.

The amendment to this section made by sec. 2, Ch. 190, L. 2015, was rendered void by sec. 6, Ch. 190, L. 2015, a coordination instruction.

Preamble: The preamble attached to Ch. 170, L. 2015, provided: "WHEREAS, employer contributions equal to 2.37% of compensation for covered members in the Public Employees' Retirement System Defined Contribution Retirement Plan (PERS-DCRP) and the Montana University System Retirement Program (MUS-RP) are statutorily allocated to the Public Employees' Retirement System Defined Benefit Retirement Plan (PERS-DBRP) as the plan choice rate; and

WHEREAS, additional employer contributions equal to 0.37% of a member's compensation are also allocated to the plan choice rate and this percentage will increase by 0.1% each year through 2024; and

WHEREAS, the plan choice rate was established to pay the portion of the PERS-DBRP unfunded actuarial liabilities associated with PERS members who elected to join the PERS-DCRP rather than the PERS-DBRP plan and also to pay for any increase to the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, section 19-3-2121, MCA, requires that the plan choice rate be adjusted if it is actuarially determined to be too high or too low to pay off the associated unfunded actuarial liabilities within an established timeframe and if there is an actual change in the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, the normal cost of benefits in the PERS-DBRP has never significantly changed because of PERS members selecting the PERS-DCRP; and

WHEREAS, the Public Employees' Retirement Board's actuary determined that as of June 30, 2014, the unfunded actuarial liability associated with the plan choice rate is $5,903,188, and is estimated to be fully paid off within the next 2 to 3 years."

2007 Amendment: Chapter 285 in (1) in middle of first sentence inserted "and with the legislature pursuant to 5-11-210" and in second sentence inserted "but is not limited to"; in (1)(b) substituted "a summary of the most recent information available from the actuary concerning the actuarial valuation" for "the most recent unpublished report of the actuary of the actuarial valuation"; inserted (1)(c) requiring report to include an analysis of how market performance is affecting actuarial fund of retirement systems and plans; in (2) after "report" inserted "required under subsection (1)"; and made minor changes in style. Amendment effective June 1, 2007.

1999 Amendments — Composite Section: Chapter 471 at end of third sentence inserted "or plan"; inserted fourth sentence requiring the report to include information concerning the defined contribution plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in first sentence substituted "board" for "division". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "division" for "department of administration" and in second sentence substituted "pension trust funds" for "retirement fund"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-408. Administrative expenses.

Compiler's Comments

2011 Amendment: Chapter 64 in (2)(b) after "administration of the" substituted "Volunteer Firefighters' Compensation Act" for "volunteer firefighters' pension plan". Amendment effective July 1, 2011.

2007 Amendment: Chapter 285 inserted (3)(d) providing that administrative expenses do not include expenses for actuarial valuation performed during the first year of a biennium; and made minor changes in style. Amendment effective June 1, 2007.

2003 Amendment: Chapter 114 in (3)(c) after "19-3-112(1)(b)" deleted "or (1)(c)". Amendment effective October 1, 2003.

1999 Amendments — Composite Section: Chapter 286 in (2) at end of first sentence deleted "except as provided in subsection (3)"; deleted former (3) and (4) that read: "(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, and 13 and this chapter.

(4) The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (2)(a) in first sentence at end substituted "retirement system's defined benefit plan, except as otherwise provided in this section" for "retirement system, except as provided in subsection (3)" and in second sentence at beginning deleted "Before the fiscal yearend closing", after "system" inserted "or plan", after "board" deleted "for the immediately preceding fiscal year", after "system's" inserted "or plan's", and at end deleted "system" and inserted "system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund"; in (2)(b) inserted "defined benefit plan"; inserted (3) providing that in calculating the percentage specified in subsection (2)(b), certain administrative expenses are not included; in (4) deleted reference to chapter 2 (amendment rendered void by Ch. 286 amendment); inserted (4) requiring defined contribution plan administrative expenses to be paid from plan assets; and made minor changes in style. Amendment effective April 27, 1999.

Chapter 562 in (4) after "board may assess and" deleted "the division may". Amendment effective July 1, 1999. The amendment by Ch. 286 rendered the amendment by Ch. 562 void.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 in (2) inserted third sentence limiting the Board's total administrative expenses; in (3), at beginning of second sentence after "The", deleted "appropriation of these", after "fees" deleted "together with other money appropriated for that purpose", and after "chapters" inserted "2"; deleted former (4) that read: "Any request for an increase in spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "pension trust funds" for "retirement fund"; in (2), at beginning of first sentence, deleted "Effective July 1, 1986" and near end substituted "investment earnings on the pension trust fund of the public employees' retirement system" for "income earnings on the retirement fund" and at beginning of second sentence inserted introductory clause, near middle, after "board", inserted "for the immediately preceding fiscal year", before "retirement system's" substituted "each" for "the", and at end substituted "pension trust fund of the public employees' retirement system" for "retirement fund"; in (3), in first sentence, deleted introductory clause that read: "In addition to the contributions elsewhere provided in this chapter", after "employer" inserted "under the public employees' retirement system", substituted "service" for "employ", and after "$1" inserted "in addition to other required contributions" and in second sentence, at end, inserted reference to other chapters; inserted (5) relating to collection of a fee from Department of Fish, Wildlife, and Parks; and made minor changes in style. Amendment effective July 1, 1993.

1986 Amendment: Inserted (1) regarding proper administration of the retirement fund; and inserted (2) providing for payment of administrative expenses from income earnings.

1985 Amendment: Deleted former (1) that read: "The expense of administering this chapter, exclusive of the payments of retirement allowances and other benefits, may be paid from the fund"; at beginning of second sentence, changed "These fees" to "The appropriation of these fees"; and inserted last sentence referring to budget amendments.

1981 Amendments: Chapter 254 substituted the language in (1) (see 1985 amendment note for text) for language providing for a fee, not to exceed 0.3%, collected by the department from an employer for defraying expenses of the chapter.

Chapters 254 and 496 substituted "January" for "July" in the middle of (2).

19-2-409. Plans to be funded on actuarially sound basis — definition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

1999 Amendment: Chapter 471 in second sentence substituted "retirement plan" and "plan" for two references to "system"; at beginning of third sentence inserted "For a defined benefit plan"; and inserted sentence at end providing that for the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-2-410. Presentation to board of investments.

Compiler's Comments

Effective Date: Section 11, Ch. 285, L. 2007, provided that this section is effective June 1, 2007.

Part 5
Management and Investment of Pension Trust Funds

19-2-501. Pension trust funds established.

Compiler's Comments

1999 Amendment: Chapter 471 inserted "plan within a". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-502. Payments from pension trust funds.

Compiler's Comments

2005 Amendment: Chapter 329 in (2) at end of third sentence inserted "of membership". Amendment effective July 1, 2005.

1997 Amendment: Chapter 532 in (1), at beginning, inserted "The board shall administer the", after "funds" substituted "as provided in Article VIII, section 15, of the Montana constitution" for "are statutorily appropriated, as provided in 17-7-502, to the division for payment of benefits and refunds to eligible recipients and for paying the necessary administrative and investment expenses of the retirement systems", and after "chapters" inserted "2"; inserted (2) regarding contract provisions; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2607 Payment of estimated benefits.

Attorney General's Opinions

Transfer of Money Between State Treasury Accounts — Statutory Appropriation Not Required: Article VIII, sec. 14, Mont. Const., requires a statutory appropriation only when money is paid out of the state treasury, but neither the constitution nor state law requires a statutory appropriation when money is transferred between accounts within the state treasury. 44 A.G. Op. 43 (1992). (See 17-8-101.)

19-2-503. Management of pension trust funds.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 471 in (3) at beginning inserted exception clause. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (2) substituted "received by the board" for "received by it". Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to pension trust funds for references to retirement fund; in (1) substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-504. Investment of pension trust funds.

Compiler's Comments

2015 Amendment: Chapter 140 substituted (3) concerning commingling of trust funds for former (3) that read: "(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system"; inserted (4) through (7) regarding custodial accounts, adoption of common group trust, and separate accounts; and made minor changes in style. Amendment effective March 30, 2015.

1999 Amendment: Chapter 471 in (1) at beginning inserted exception clause. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1) and in two places in (2) substituted references to pension trust funds for references to fund; and inserted (3) relating to commingling of funds and separate accounts. Amendment effective July 1, 1993.

1991 Amendment: In (1), at end, substituted "unified investment program described in Title 17, chapter 6, part 2" for "long-term investment fund"; in (2), at beginning of first sentence, substituted "All income" for "Interest", before "assets" deleted "cash deposited in a bank by the state treasurer and income on other", and deleted second sentence that read: "Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies"; and made minor changes in style. Amendment effective March 29, 1991.

19-2-505. Restrictions on use of funds.

Compiler's Comments

2013 Amendment: Chapter 178 inserted (5) concerning forfeiture and reversion of accumulated contributions; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendment: Chapter 99 inserted (3) requiring that retirement system assets remain in trust until a warrant is negotiated or an electronic funds transfer is deposited; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 in (1) substituted "board" for "department"; inserted (1)(e) prohibiting board or board of investments from engaging in transaction prohibited by section 503(b) of the Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in (1) in introductory clause inserted "the board"; in (2) near beginning inserted "including the assets of retirement accounts"; and inserted (4) providing that the section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 at end of (1)(c) substituted "board" for "division"; and inserted (3) providing for forfeiture of unclaimed benefits. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) inserted reference to Board of Investments; at end of (1)(c) substituted "division" for "department"; at end of (1)(d) substituted "pension trust funds" for "retirement system"; in (2), near beginning, substituted "systems" for "system"; and made minor changes in style. Amendment effective July 1, 1993.

1986 Amendment: At end of (2) substituted "reasonable administrative expenses of the retirement systems administered by the board" for "reasonable expenses of administering the retirement system".

19-2-506. Payment of contributions by employers — accompanying reports — penalty — liability.

Compiler's Comments

2011 Amendment: Chapter 99 inserted (5) regarding board nonliability; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in (3)(a) deleted former third sentence that read: "The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan"; in (3)(b) at beginning substituted "The rules must specify the employee categories to be reported, the data required" for "The board shall establish"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in (1) inserted third sentence concerning delinquent payments; and in (3) inserted fifth sentence concerning establishment of penalty fees. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) substituted language regarding submission of contributions for former language that read: "At a time prescribed by the rules of the board, each employer shall remit to the board all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period"; in (3) substituted language regarding submission of employer reports and specifying data in reports for former sentence that read: "Employers shall submit reports to the board, as the board requires by rule, of compensation paid to both member and nonmember employees"; in (4) deleted former first sentence that read: "The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death", at beginning substituted "Each employer" for "The chief administrative officer", after "members" deleted "that the board may require in the administration of the retirement systems, including the services of the employer's office and departments", and near end after "benefits" inserted "or service"; inserted (5) regarding distribution of materials to employees; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) substituted "board" for "division"; and in (3) substituted "reports to the board, as the board requires by rule, of compensation paid to both member and nonmember employees" for "reports of their covered payroll and contributions remitted as the board requires by rule". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted "each employer" for "each agency of the state", substituted "division" for "public employees' retirement system", after "under" inserted "retirement systems subject to", before "compensation" inserted "covered", and at end, after "period", deleted "including any contributions payable with respect to members absent in the armed forces of the United States"; in (2), in first sentence after "whichever is greater", deleted "from the appropriation account of the reporting agency by submission of a claim to the state treasurer", in second sentence, before "penalty", deleted "interest", and inserted last clause concerning collection; inserted (2)(a) relating to court action; inserted (2)(b) relating to deductions; inserted (4) relating to monthly reports and additional information; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), at beginning, substituted "At a time prescribed by the rules of the board, each agency of the state shall" for "No later than the 15th day of each month or 5 working days after payroll warrants have been issued for the last normal pay period of the previous month, whichever is later, the state auditor and each agency of the state which is not paid through the state central payroll system shall", substituted "pay period" for "month", and deleted former second sentence that read: "These remittances shall be accompanied by such reports as the board requires"; and inserted (3) requiring submission of reports by employers. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 138, L. 1991, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-3-802, renumbered 19-2-506, 19-3-804, now repealed, 19-5-408, now repealed, 19-6-409, now repealed, 19-7-409, now repealed, 19-8-505, now repealed, 19-9-707, now repealed, and 19-13-609, now repealed] grant to the public employees' retirement board the authority to adopt rules setting timeframes for agency payments into the retirement systems that the board administers and rules requiring reports.

(1) The legislature understands that capabilities for expediting deposits to the retirement systems are afforded by the increasing computer resources of both employers and the retirement systems.

(2) Therefore, it is the intent of the legislature that:

(a) contributions payable to the retirement systems administered by the board be paid within timeframes that are reasonable and cost-effective to contributors and the retirement systems;

(b) while expedited deposits can result in increased investment earnings for the retirement systems and the individual members of those systems, current contribution deadlines may not be shortened unless the resulting increase in investment income would help forestall increases in employer contribution rates required to actuarially fund the systems; and

(c) employers be responsible for providing accurate reports containing sufficient information to allow the board to both account for overall retirement system contributions and precisely record and credit membership service, monthly compensation, and membership contributions to individual member's accounts."

1979 Statement of Intent: The statement of intent adopted with Ch. 348, L. 1979, provided: "A statement of intent is included with this Bill because the Committee felt that there is a need to clarify the conditions under which an interest penalty may be waived. This pertains to Section 1, subsection (2) and Section 2, subsection (2), of Senate Bill No. 156.

1. When an agency or contracting employer requests a time extension upon a showing of good faith effort or because of circumstances beyond their control, the board will grant a reasonable extension of time without penalty."

Administrative Rules

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2114 Required employer reports.

ARM 2.43.2115 Correction of defined benefit retirement system reporting errors.

Case Notes

State Retirement Board Not Required to Calculate Compensation Amounts for Individual Plan Members: Plaintiffs sued the state and the Public Employees' Retirement Board alleging that plaintiffs' compensation was incorrectly calculated by the Board, resulting in inadequate monthly benefits. The District Court dismissed the claim on grounds that plaintiffs failed to file their complaint within the 2-year statute of limitations, and plaintiffs appealed. The Supreme Court noted that although the Board has broad statutory duties to administer the various state retirement plans, it is not the Board's duty to calculate compensation amounts for individual members. Rather, it is an employer's duty to calculate and report the compensation amounts. If those reports were in error, plaintiffs should have sought relief from their employers, but their remedy did not lie with the state or the Board (see 2011 amendment). Thus, the District Court correctly dismissed the complaint, albeit for a different reason, and the Supreme Court affirmed. Hall v. St., 2006 MT 37, 331 M 171, 130 P3d 601 (2006).

19-2-507. Transfer between funds.

Compiler's Comments

1999 Amendment: Chapter 562 at end substituted "board" for "division" and deleted former last sentence that read: "The division shall certify to the department the amounts to be transferred and the funds from and to which the transfer is to be made, and the division shall make the transfer as directed in the certificate." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "fund"; in two places substituted "division" for "disbursing officer"; in first sentence, after "provisions of", substituted "this title" for "this chapter"; near end substituted "division" for "department"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "state auditor" and "auditor" to "department of administration" and "department".

Administrative Rules

ARM 2.43.2317 Purchase of refunded service or service from another MPERA-administered retirement system.

19-2-511. Limitation of liability.

Compiler's Comments

2013 Amendment: Chapter 282 in (2), (3), (4), and (5) substituted "the university system retirement program" for "optional retirement program"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 38 in (2) near middle after "program" inserted "established pursuant to 19-21-101"; in (3) near middle of first sentence after "omissions of any" inserted "employer or reporting agency or of any"; inserted (5) limiting the liability of plan fiduciaries for certain investment losses; and made minor changes in style. Amendment effective February 19, 2003.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Part 6
Termination of Membership and Refunds

Part Compiler's Comments

Sections Not Codified: Section 68-2504(part 1), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 52, Ch. 323, L. 1973, as amended by sec. 12, Ch. 128, L. 1975.

Section 68-2513, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 61, Ch. 323, L. 1973, as amended by sec. 13, Ch. 128, L. 1975.

Section 68-2513.1, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 241, L. 1977.

Section 68-2514, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 62, Ch. 323, L. 1973.

Part Administrative Rules

Title 2, chapter 43, subchapter 21, ARM Membership service and service credit.

19-2-601. Termination of membership.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding termination of membership for former section that read: "If any part of a member's accumulated normal contributions is refunded pursuant to 19-3-703, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member." Amendment effective July 1, 1993.

19-2-602. Refund of member's contributions on termination of service.

Compiler's Comments

2017 Amendment: Chapter 195 in (3) near end inserted "within 90 days of terminating service". Amendment effective July 1, 2017.

2009 Amendment: Chapter 284 in (4) near end of first sentence after "distribution" inserted "of any eligible rollover distribution", at beginning of third sentence inserted "As of January 1, 2008, an eligible retirement plan includes", and in fifth sentence after "eligible" deleted "for direct"; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 27(4), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(4) Section 19-2-602(4) applies retroactively to January 1, 2008, for the determination of an eligible retirement plan as provided in that subsection."

2007 Amendment: Chapter 128 in (3) near middle decreased amount from $5,000 to $1,000; and in (4) at end of second sentence inserted "or to a Roth IRA, provided for under 26 U.S.C. 408A". Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (1) near beginning substituted "who has terminated service" for "whose service has been discontinued"; in (2) and in (3) near beginning substituted "has terminated" for "terminates from" and near end after "administratively feasible" deleted "after termination"; and in (4) in first sentence after reference to 19-2-909 substituted "or by a member who is terminating service and is eligible" for "or a terminating member eligible". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) in first sentence substituted "Upon the filing of a written application by an alternate payee eligible to receive a single distribution of $200 or more under 19-2-907 or 19-2-909 or a terminating member eligible to receive a refund of $200" for "Upon the written application of a terminating member with $200" and after "401(a)(31)" deleted "of the eligible portion of a refund of the member's accumulated contributions", at beginning of third sentence substituted "The applicant is responsible for designating an" for "The terminating member shall designate the", and at beginning of fourth sentence substituted "The portion of the account" for "Amounts of the member's accumulated contributions that are" and after "paid" substituted "directly to the recipient" for "to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section — Coordination: Chapter 58 at end of (1) substituted language regarding written application by member for "at the member's request" and inserted second sentence prohibiting member from receiving refund of accumulated contributions prior to termination of service; inserted (2) requiring that nonvested member who terminates service with accumulated contributions of less than $200 be paid contributions in lump sum as soon as feasible without written application; inserted (3) requiring that nonvested member who terminates service with accumulated contributions of $200 to $5,000 be paid contributions in lump sum as soon as feasible unless written application made for rollover; near beginning of (4) substituted "written application" for "written request" and after "member" inserted "with $200 or more of accumulated contributions"; deleted former (3) through (5) that read: "(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the members' written request"; and made minor changes in style. Amendment effective July 1, 1999.

Section 99(2), Ch. 562, L. 1999, in (1) at end of first sentence substituted "contributions on written application by the member and board approval" for "contributions at the member's request" and inserted last sentence prohibiting refund of contributions prior to termination of service; inserted (2) relating to termination with less than $200 accumulated contributions; inserted (3) relating to termination with $200 to $5,000 accumulated contributions; in (4) at beginning substituted "Upon the written application of a terminating member with $200 or more of accumulated contributions" for "Upon the written request of a terminating member" and in two places substituted "board" for "division"; deleted former (3) through (5) that read: "(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request"; and made minor changes in style. Amendment effective July 1, 1999.

The amendments to this section made by sec. 14, Ch. 562, L. 1999, were rendered void by sec. 99(2), Ch. 562, L. 1999, a coordination section.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (2) substituted present subsection regarding direct rollover distribution for former subsection that read: "Upon qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made"; at end of (3) substituted "the pension trust fund" for "the retirement fund as provided in 19-3-704"; in second sentence of (4) substituted "division" for "department of administration"; inserted (5) relating to repayment of additional contributions; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "such part of his accumulated contributions, including regular interest thereon, as he requests" to "his accumulated contributions at his request" at the end of (1); and deleted from (1) provision relating to automatic payment of accumulated contributions to employees with less than 5 years of service who leave service and do not reenter for 5 years.

Administrative Rules

ARM 2.43.2901 Refunds to members.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-2-603. Reinstatement after withdrawal of contributions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 400, L. 2023. Amendment effective July 1, 2024.

2017 Amendment: Chapter 195 in first sentence after "who again becomes" substituted "an active member" for "a member"; in second sentence near beginning inserted "while either an active or inactive vested member"; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 99 deleted former (2) that read: "(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in 19-2-801"; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1) at end of first sentence substituted "previous membership service or service credit" for "credit for any previous membership service", in second sentence after "membership service" inserted "or service credit", and in third sentence substituted "membership service and service credit" for "service credits"; and in (2) at end substituted "19-2-801" for "this section". Amendment effective July 1, 2003.

1999 Amendment: Chapter 471 in (1) near beginning inserted "chapter 3, part 21, of this title and" and inserted "of a defined benefit plan". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (1), in two places, substituted "accumulated contributions" for "accumulated normal contributions", near end of second sentence substituted "accumulated contributions" for "account", and substituted last sentence relating to reinstatement of service credits for former sentence that read: "If he makes this redeposit, his membership shall be the same as if unbroken by such last termination"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2309 Service purchases by inactive vested members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2324 Guaranteed annual benefit adjustment coverage.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

Attorney General's Opinions

Qualification of Prior PERS Service and Non-PERS Service: Reinstatement of membership in PERS with past service credit under this section does not preclude a member from earning credit under 19-3-512 for non-PERS service that occurred during the period between initial membership and reinstatement of membership in PERS. 42 A.G. Op. 74 (1988).

Part 7
Service Credit and Additional Contributions

Part Administrative Rules

Title 2, chapter 43, subchapter 21, ARM Membership service and service credit.

19-2-701. Service credit.

Compiler's Comments

1999 Amendment: Chapter 562 in (1) inserted first two sentences requiring cumulation of service credit and limiting amount of credit; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in first sentence, after "13", deleted "of this title" and inserted third sentence clarifying that a retired member is not eligible to earn service credits. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2105 Basic period of service.
ARM 2.43.3401 Retirement options for elected officials other than legislators.

19-2-702. Membership service.

Compiler's Comments

2003 Amendment: Chapter 429 in introductory clause in second sentence before "service" inserted "membership"; and in (2) substituted "service retirement, early retirement" for "early or normal service retirement". Amendment effective July 1, 2003.

1997 Amendment: Chapter 370 at beginning, after "A member", inserted "who is not retired". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.3401 Retirement options for elected officials other than legislators.
ARM 2.43.3402 Retirement system membership options for legislators.

19-2-703. No duplication of benefits for same service.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) near end substituted "same service" for "same period of service". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) at beginning substituted "A member may not receive service credit or membership service" for "A period of service of the member may not be credited" and after "system" substituted "plan, or program under Title 19 for the same period of service" for "enumerated in 19-2-302 for purposes of calculation of retirement benefits"; and inserted (2) precluding service credit or membership service in more than one system. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at end substituted "retirement benefits" for "retirement allowances". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted present section relating to duplication of benefits for former section that read: "There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2106 No duplication of service credit.

19-2-704. Purchasing service credits allowed — payroll deduction.

Compiler's Comments

2017 Amendment: Chapter 195 in (2) at end inserted "or to redeposit amounts withdrawn under 19-2-602"; and in (3) at beginning substituted "An eligible member" for "A member". Amendment effective July 1, 2017.

2009 Amendment: Chapter 283 in (3) near end after "payment" inserted "by personal check or rollover of funds from another eligible plan"; in (4) near beginning of first sentence after "must be" inserted "made by personal check" and in second sentence after "payments" deleted "made directly to the board"; deleted former (5)(c) that read: "must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration"; in (6)(f) in second sentence after "deduction" inserted "agreement without terminating employment" and at end after "member" substituted "becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715" for "with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j)"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) in middle substituted "make additional contributions" for "contribute amounts in addition to the mandatory employee contributions required by the member's retirement system"; in (5)(e) and (6)(a) near beginning before "contributions" inserted "additional"; in (6)(d) in middle of first sentence substituted "employee's additional" for "employee" and in third sentence near beginning after "apply to any" inserted "additional"; and in (7) in first sentence near beginning substituted "employment" for "service" and near end after "the amount paid" deleted "as of the date of termination" and in second sentence near beginning after "termination" inserted "from employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (3) near middle after "service" inserted "credit"; in (6)(f) at end of second sentence inserted exception clause; in (7) near middle of second sentence after "for" inserted "up to" and after "service" inserted "credit remaining to be purchased"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (2) after "purchase" deleted "qualify"; in (3) after "may" inserted "elect to"; in (4) in first sentence substituted "member elects to make" for "member makes"; in (5) after "employer" deleted "a binding"; in (5)(a) substituted "must be signed" for "must be executed"; in (6) in introductory clause after "been" substituted "filed with" for "received by"; in (6)(e) at beginning of first sentence substituted "Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files" for "A contract for installment payments initiated before July 1, 1999, may be made only if the member executes" and in second sentence after "member" substituted "does not file" for "does not execute"; in (6)(f) in first sentence after "member" substituted "may file" for "may make", after "one" deleted "binding", after "deduction" inserted "agreement and", and after "previous" deleted "binding", and in second sentence after "under" deleted "a binding"; in (7) in first sentence after "authorization" substituted "filed" for "made"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted former (2) that read: "(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and taxed-deferred amounts being transferred"; inserted (3) authorizing lump-sum payments, installment payments, or combination for member wishing to redeposit amounts withdrawn or who is eligible to purchase service; inserted (4) requiring installments payment to be paid directly to board unless member makes irrevocable payroll deduction and establishing minimum installment period; inserted (5) requiring member to file binding, irrevocable, written application and authorization for payroll deduction with board and employer to elect installment payments and outlining application requirements; inserted (6) requiring employer to initiate payroll deduction upon notification of properly filed application and authorization and outlining payroll deduction procedures; inserted (7) regarding procedure upon termination or death of member prior to completing all required payroll deduction payments; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 47(3), Ch. 58, L. 1999, provided: "(3) The provisions in [section 7] [19-2-704] providing for the making of contributions required to purchase service by employer pickup are effective on the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency has occurred. The letter was received from the internal revenue service on December 21, 1999.

1997 Amendment: Chapter 370 inserted (3) allowing only active or vested inactive members to purchase, qualify, or transfer service credits, membership service, or contributions. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 inserted (2) allowing a member eligible to qualify service under certain sections to, prior to retirement, transfer all or part of the member's contributions in a trust fund to another plan. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 substituted present section relating to purchase of service credits for former section that read: "Subject to the rules promulgated by the board, any member may elect to contribute at rates in excess of those provided for in 19-3-701 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions." Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 23, ARM Service purchases.

19-2-706. Additional service credit for active member involuntarily terminated from employment.

Compiler's Comments

2013 Amendment: Chapter 178 in (6)(a) substituted "minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid" for "minus any retirement benefits already paid". Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 in (1)(a) near middle inserted "defined benefit plan or the"; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 329 in (1) at beginning inserted "The provisions of subsection (3) apply to" and near end after "system" deleted "is entitled to the involuntary termination provision provided in subsection (3)"; in (1)(a) near beginning substituted "an active" for "a" and inserted "firefighters' unified"; in (1)(b) at beginning substituted "the employee has involuntarily terminated from employment" for "the employee's active service is involuntarily terminated" and at end substituted "in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits" for "in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature"; in (1)(d) substituted "the rights and benefits" for "termination benefits"; in (3) at end of first sentence inserted reference to 19-13-405; in (3)(c) in second sentence at end deleted "by the terminated employee"; in (6)(a) in first sentence after "in a calendar year in" deleted "a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) in two places, in first sentence of (3), in (3)(a), in (3)(c), in first sentence of (4), and in (6)(a) in three places after "service" inserted "credit"; in (1)(c) before "service" deleted "normal"; in (3) in second sentence after "portion" deleted "applied toward the service purchase"; in (4) near middle of first sentence substituted "contribution required from" for "amount contributed by"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 66 in (6) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former second sentence in (4) that read: "A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section"; and in second sentence in (6) substituted "must be credited" for "must be refunded". Amendment effective July 1, 1999.

Chapter 118 in (1)(b) at end deleted "on or after July 1, 1997, but before July 1, 1999". Amendment effective July 1, 1999.

Chapter 471 in (1)(b) at end deleted "on or after July 1, 1997, but before July 1, 1999" and inserted "or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature". Amendment effective April 27, 1999.

1997 Amendment: Chapter 361 in (1)(b), at end, substituted "July 1, 1997, but before July 1, 1999" for "January 1, 1995, but before July 1, 1997"; inserted (2) establishing the cost of service as the total actuarial cost of purchasing the service; in (3), near beginning of first sentence after "pay", inserted "a portion of" and inserted second sentence and (2)(a) through (2)(c) regarding the formula for calculating the employer-paid portion; in (4) inserted first sentence requiring the member to pay the difference between the full actuarial cost and the amount contributed by the employer and inserted third sentence allowing the member to purchase less than the full amount of service; deleted former (3) that read: "(3) A retired member who was involuntarily terminated because of a reduction in force on or after January 1, 1995, but before April 21, 1995, and whose effective date of retirement was before April 21, 1995, is eligible for the involuntary termination benefits described in this section if a properly completed application for those benefits is received by the division on or before June 1, 1995"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

1997 Code Commissioner Instruction — Name Change: Pursuant to sec. 12, Ch. 223, L. 1997, the Code Commissioner has substituted "game wardens' and peace officers'" for "game wardens'". Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Section 11, Ch. 524, L. 1995, provided that this section is effective April 21, 1995, and sec. 10 provided that it applies retroactively to an employee involuntarily terminated from the state or University System because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the Legislature on or after January 1, 1995.

Administrative Rules

ARM 2.43.2319 Purchase of "one-for-five" service by employers for reduction in force employees.
ARM 2.43.2609 Return to employment within same jurisdiction.
ARM 2.43.3402 Retirement system membership options for legislators.

19-2-707. Qualified military service.

Compiler's Comments

2015 Amendment: Chapter 235 near end substituted "state military duty" for "state active duty". Amendment effective April 13, 2015.

2005 Amendment: Chapter 381 inserted second sentence providing that certain contributions, benefits, and service credits are governed by the Montana Military Service Employment Rights Act. Amendment effective April 25, 2005.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

Administrative Rules

ARM 2.43.2315 Credit for service in uniformed services.

19-2-708. Rollover of contributions.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) in two places after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in first sentence after "who" substituted "elects" for "wishes", after "eligible to" substituted "purchase" for "qualify", and after "prior to retirement" substituted "file a" for "make"; and made minor changes in style. Amendment effective March 21, 2001.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

19-2-709. Transfer of service and contributions from other Montana public employee retirement systems.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) after "service" inserted "credit", inserted reference to 19-2-715, and deleted references to 19-3-509, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date: Section 47(1), Ch. 58, L. 1999, provided that this section is effective July 1, 1999.

19-2-710. Nonapplication of part to defined contribution plan.

Compiler's Comments

2009 Amendment: Chapter 283 near beginning after "provided in" inserted "19-2-715 and". Amendment effective July 1, 2009.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3515 Purchase of service not permitted by participant in defined contribution retirement plan.

19-2-715. Purchase of Montana public service.

Compiler's Comments

2011 Amendment: Chapter 99 in (1)(a)(i) at end substituted "and" for "or". Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in (1)(a) at beginning before "member" inserted "active"; inserted (1)(d) requiring a member to pay the actuarial cost of the service credit if the member was formerly in the defined contribution plan; in (2)(a) in first sentence after "portion of" substituted "previous employment" for "service credit for full-time service performed" and inserted fourth sentence providing that a political subdivision includes a school district; in (2)(b) before "public service" deleted "full-time"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 inserted (1)(a)(ii) concerning membership in another retirement system; and made minor changes in style. Amendment effective October 1, 2007.

Effective Date: Section 123, Ch. 429, L. 2003, provided that this section is effective July 1, 2003.

Administrative Rules

ARM 2.43.2106 No duplication of service credit.

ARM 2.43.2303 Purchase of other types of service.

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2309 Service purchases by inactive vested members.

ARM 2.43.2310 Purchase of full-time service or "1-for-5" service by part-time members.

ARM 2.43.2311 Limitations on purchases of service.

ARM 2.43.2317 Purchase of refunded service or service from another MPERA-administered retirement system.

ARM 2.43.3402 Retirement system membership options for legislators.

19-2-716. Compromise or settlement of claims by public employees regarding retirement service credits.

Compiler's Comments

Effective Date: Section 5, Ch. 306, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

Retroactive Applicability — Applicability: Section 6, Ch. 306, L. 2017, provided: "(1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act] [May 4, 2017], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act] [May 4, 2017]."

Part 8
Beneficiaries

19-2-801. Designation of beneficiary.

Compiler's Comments

2021 Amendment: Chapter 131 in (2) after "order issued pursuant to 40-4-121" inserted "an order issued pursuant to 40-4-126, or an order issued pursuant to Title 40, chapter 15"; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment: Chapter 248 in (1) and (2) after "membership" deleted "card or other"; in (3) substituted current text concerning return to covered employment for "If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the board shall reference the membership card executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries nominated on that membership card continue until changed as provided in subsection (2) of this section"; and in (4)(a) and (4)(b) after "membership" substituted "form" for "card". Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (2) substituted "this title or by a valid temporary restraining order issued pursuant to 40-4-121" for "statute". Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (3) regarding person returning to covered employment; in (4)(a) near beginning inserted reference to (4)(c), substituted "the beneficiary designation on the most recent membership card" for "the most recent beneficiary designation", and at end inserted "until the member retires"; inserted (4)(c) regarding member retirement; inserted (7) regarding contingent annuitant of retired member; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in (1)(a) at beginning of third sentence inserted exception clause; inserted (1)(b) allowing a member to elect to either override or retain the member's existing beneficiary designation; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in (1) near middle of first sentence after "organizations" inserted "estate of the payment recipient" and inserted third sentence concerning most recent beneficiary designation; inserted (2) concerning beneficiary predeceasing member or payment recipient; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (2) providing that a beneficiary who renounces an interest in payment rights is considered to have predeceased the member or payment recipient; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in first sentence after "natural persons" inserted "charitable organizations, or trusts for the benefit of natural living persons" and in first and second sentences substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in first sentence, after "any", substituted "statutory beneficiaries, designated beneficiaries" for "statutorily designated persons, the beneficiaries of a member", after "natural persons" deleted "charitable organizations, or trusts for the benefit of natural living persons", near middle, after "member", inserted "or payment recipient", and at end inserted "or other form provided by the division" and in second sentence, after "member", inserted "or payment recipient", after "different" inserted "designated", after "filing" inserted "with the board", and after "membership card" substituted "or other form provided by the division" for "with the board". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 substituted present section relating to designation of beneficiary for former section that read: "The beneficiaries of a member shall be such natural persons, charitable organizations, or trusts for the benefit of natural living persons as the member shall designate in the appropriate written application. A member may revoke such designation and name different beneficiaries by filing written notice with the board." Amendment effective July 1, 1993.

1985 Amendment: In first sentence inserted "natural" before "persons" and inserted charitable organizations and trusts as permissible beneficiaries.

1981 Amendment: Changed "beneficiary" to "beneficiaries" and "person" to "persons"; changed "revised written instrument" to "written notice" near the end of section.

Administrative Rules

ARM 2.43.2104 Membership cards.

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2610 Designation of beneficiary by retirees, alternate payees, and contingent annuitants.

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Case Notes

Change in Retirement Plan Beneficiary Covered by Temporary Restraining Order Pending Marriage Dissolution Proceedings — Attempted Change in Beneficiary Invalid: The petitioner was denied benefits under her deceased husband's Sheriffs' Retirement System (SRS) plan because he had dropped her as a beneficiary and added his minor children while marriage dissolution proceedings were pending. At the time the husband made the change, both parties were subject to a temporary restraining order (TRO) that, in part, prohibited either party from changing the beneficiaries of insurance or other coverage held for the benefit of a party. The husband made the change without the consent of the petitioner or the court, in violation of the TRO. The Supreme Court held that a TRO issued under 40-4-121 that restricts changes of beneficiaries of insurance or other coverage applies to a change of beneficiary under the SRS and that the husband's attempted change was therefore invalid as a violation of statute. Briese v. Mont. Pub. Employees' Retirement Bd., 2012 MT 192, 366 Mont. 148, 285 P.3d 550. However, see In re Estate of Corrigan, 2014 MT 337, 377 Mont. 364, 341 P.3d 623, in which a change in beneficiary was allowed because the TRO had not been served within the 3-year timeframe and the change was made after the time for service had expired.

19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated beneficiary.

Compiler's Comments

2011 Amendment: Chapter 99 in (1) near beginning inserted "a member or payment recipient fails to name a designated beneficiary or if". Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1) in second sentence near beginning after "estate" inserted "as either a designated beneficiary or as a beneficiary by default as provided in this subsection" and in two places after "due" inserted "to the estate"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 in (1) at end of first sentence substituted "any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death" for "any lump-sum payment or retirement benefit accrued but not received prior to the statutory or designated beneficiary's death"; and in (3) in second sentence substituted "board" for "retirement division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), at beginning of first sentence after "If a", substituted "statutory or designated beneficiary does not survive the member or payment recipient" for "living beneficiary, existing charitable organization, or natural living person who is the beneficiary of a trust is not designated", after "estate of the member" inserted "or payment recipient", and after "is" substituted "entitled to any lump-sum payment or retirement benefit accrued but not received prior to the statutory or designated beneficiary's death" for "the designated beneficiary" and in second sentence, after "due", deleted "including retirement benefits accrued but not received prior to death"; and in (4), after "member's", inserted "or payment recipient's". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), near end of first sentence before "beneficiary", inserted "designated" and in second sentence, after "including retirement", substituted "benefits" for "allowances"; in first sentence of (3), after "groups", inserted "listed in subsection (2)" and in second sentence substituted "division" for "board"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near beginning of first sentence, after "beneficiary", inserted "existing charitable organization, or natural living person who is the beneficiary of a trust".

Administrative Rules

ARM 2.43.2903 Payment to an estate.

19-2-803. Payment to custodian of minor beneficiary.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 369 in (1) at beginning inserted exception clause; inserted (2) concerning payment of benefits for dependent child to a trust for the child; in (3) near beginning of second sentence inserted "receiving benefit payments pursuant to this section"; and made minor changes in style. Amendment effective April 21, 2005.

1993 Amendment: Chapter 265 in (1) substituted "a system" for "the system"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Deleted "not to exceed $500" after "benefit from the system", deleted "who has no guardian of his estate" after "minor", changed "may" to "must", and deleted "the person entitled to the custody of a minor to hold for the minor, upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed $1,000 in value." in the first sentence of (1); and added list of persons to whom benefit to be paid in (1).

Case Notes

State Retirement Board Protected From Minor's Direct Claims for Additional Payment After Proper Payment Already Made: The Montana Public Employee Retirement Administration (MPERA) denied the petitioner's claim as a beneficiary under her late husband's plan because he had dropped her as a beneficiary and added his minor children while a temporary restraining order was in effect pending marriage dissolution proceedings. Although the petitioner appealed MPERA's decision to the District Court, she also activated monthly payments to herself for the benefit of her children. On appeal to the Supreme Court, the Montana Public Employees' Retirement Board argued that this section rendered the petitioner's appeal moot, as the Board's obligations under the law were fully discharged by commencing payments for the minor children and thus the petitioner had no potential relief available. The Supreme Court disagreed and held that this section protects the Board from a minor's direct claims for additional payment after proper payment has already been made to a designated recipient on behalf of the minor. This section was inapplicable when the petitioner, who had elected monthly payments in lieu of a lump sum, could seek relief through future monthly payments. Briese v. Mont. Pub. Employees' Retirement Bd., 2012 MT 192, 366 Mont. 148, 285 P.3d 550.

19-2-804. Limitations on payment of benefits to person causing member's death or disability.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section relating to limitations on payment of benefits for former section that read: "(1) If a member's beneficiary is convicted of knowingly, purposely, or intentionally causing the member's death, the beneficiary is not entitled to receive benefits as the member's beneficiary, and, except as provided in subsection (2), the benefits must be payable as provided in 19-3-1302.

(2) In lieu of the payment of benefits as provided in subsection (1), the board may grant a survivorship allowance in the amount provided for in 19-3-1205 to the member's surviving next of kin other than the beneficiary who caused the member's death. Determination of the surviving next of kin must be made according to the order provided in 19-3-1302(2)." Amendment effective July 1, 1993.

Part 9

Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete.

Compiler's Comments

1993 Amendment: Chapter 265 near end substituted "this title" for "this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-902. Payment of benefits.

Compiler's Comments

2017 Amendment: Chapter 195 in (2)(a) before "elects" inserted "who is a natural person" and after "shall pay the" substituted "member's accumulated contributions" for "present value of the benefit"; inserted (3) concerning payment of single lump sum to certain beneficiaries; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 284 in (2)(a) at beginning after "If" deleted "the total actuarial present value of a benefit payable to", after "beneficiary" substituted "elects" for "is equal to or less than $5,000", and at end after "sum" deleted "unless the member or beneficiary chooses to receive a monthly benefit"; in (2)(c) after "receive a" substituted "single lump sum" for "monthly benefit"; and in (3) near beginning before "pro rata" deleted "smaller". Amendment effective July 1, 2009.

1999 Amendments — Composite Section: Chapter 58 at end of (1) substituted "except as provided in this part" for "except that the board may elect to convert payments of at least $20 per year to a single sum of actuarial equivalent value"; inserted (2) requiring board to pay present value of benefit in single lump sum if total actuarial present value is equal to or less than $5,000 unless member or beneficiary chooses monthly benefit, requiring lump sum to be paid at time of initial monthly benefit, and requiring monthly election 30 days prior to first payment; in (3) inserted introductory clause regarding death of recipient and substituted language requiring amount otherwise payable to recipient to be paid to designated or statutory beneficiary, contingent annuitant, or recipient's estate for former language that read: "A smaller pro rata amount may be paid for part of a month when the retirement benefit ends before the last day of the month"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in first sentence after "chapter" inserted "other than a benefit under the defined contribution plan"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 substituted present section relating to frequency of benefit payments for former section that read: "A retirement allowance or survivorship allowance granted under the provisions of this chapter shall be payable in monthly installments, except that the board, at its discretion, may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month." Amendment effective July 1, 1993.

19-2-903. Correction of errors and suspension of payments.

Compiler's Comments

2017 Amendment: Chapter 195 inserted (4) concerning suspension of payment based on board's suspicion that payment is not being delivered to its intended recipient; in (5)(b) near end inserted "requesting an electronic funds transfer or automated clearinghouse reversal transaction from the recipient's banking institution"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (3) at end deleted "and, if necessary, equitably adjust the payments"; inserted (4) concerning overpayment of benefits or payments; inserted (5) concerning retirement system errors; and made minor changes in style. Amendment effective January 1, 2016.

2005 Amendment: Chapter 329 inserted (2) relating to methods for correcting an incorrect purchase of service credit under 19-2-704; in (3) at beginning substituted "If fraud or error results" for "If any fraudulent change or any inadvertent mistake in records results", near end before "adjust the payments" inserted "if necessary, equitably", and at end deleted "to the member, survivor, or beneficiary in an equitable manner"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) substituted "If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

(a) adjustment of subsequent payments from a member or an employer;

(b) installment payments or a lump-sum payment from an employer; or

(c) a lump-sum payment or a rollover from a member" for "If more or less than the correct amount of contribution required by a retirement system subject to this chapter is or has been paid, proper adjustment must be made in connection with the subsequent payments or the adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board." Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1), near beginning, substituted "required by a retirement system subject to this chapter" for "required by this chapter of a member, the state, or a contracting employer" and deleted last sentence that read: "Adjustments to correct any other errors in payments to or by the board may be made in the same manner"; inserted (2) relating to adjustments for fraudulent changes and inadvertent mistakes; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2102 Optional membership.

ARM 2.43.2115 Correction of defined benefit retirement system reporting errors.

ARM 2.43.2116 Correction of defined contribution retirement plan reporting errors.

19-2-904. Withholding of group insurance premium from retirement benefit.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) in first sentence and in (2) near middle substituted "sponsoring employer" for "insurance carrier". Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 inserted (2) concerning direct payments by the retirement system to the insurance carrier; and made minor changes in style. Amendment effective January 1, 2016.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Committee Created: Chapter 677, L. 1985, created a Select Committee on Health Insurance for Retired Public Employees.

19-2-905. Payments under workers' compensation.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "except as otherwise provided" for "except as provided in 19-7-604" and after "benefits" deleted "now or hereafter". Amendment effective July 1, 1993.

19-2-906. Limitations on disability or survivorship benefits.

Compiler's Comments

1999 Amendment: Chapter 471 near beginning inserted reference to a defined benefit plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 substituted present section regarding limitations on disability or survivorship benefits for former section that read: "The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity." Amendment effective July 1, 1993.

19-2-907. Alternate payees — family law orders — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 172 in (7) at beginning of third sentence inserted exception clause and at end of third sentence inserted "or by designation of a beneficiary"; and made minor changes in style. Amendment effective July 1, 2021.

2017 Amendment: Chapter 195 in (5)(c) in last sentence at end inserted "unless the family law order specifies that the alternate payee is not entitled to benefit adjustments". Amendment effective July 1, 2017.

2013 Amendment: Chapter 178 in (5)(b) substituted "19-2-406(5)" for "19-2-406(4)". Amendment effective July 1, 2013.

2009 Amendment: Chapter 284 in (2)(a) at end inserted "and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p)"; in (4) at beginning of introductory clause inserted exception clause; in (6)(a) at beginning of fourth sentence substituted "The alternate payee's portion" for "A new account may be established for an alternate payee, but money in the account", before "feasible" inserted "administratively", and at end substituted "board's approval of the family law order" for "participant's termination of service or death"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 throughout section substituted "paid" for "apportioned"; and in (5)(b) inserted second sentence concerning maximum amount of zero. Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (6)(a) in fourth sentence near beginning substituted "may be established" for "may not be established" and at end inserted "but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a) at beginning deleted "Service"; in (6)(b) near beginning after "payments" substituted "or" for "from"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (5)(a) after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in definition of participant near beginning after "means" inserted "an identified person who is" and near middle after "of a retirement system" inserted "or plan"; in (3) in first sentence near beginning after "order must identify" inserted "a participant and" and after "current address" inserted "date of birth"; in (4)(b) at end after "retirement system" inserted "or plan"; in (5) in introductory clause at beginning substituted "With respect to" for "In"; in (5)(a) in first sentence near middle after "directing payment of" inserted "either" and after "amount payable or" deleted "payment of" and inserted second sentence regarding payments to alternate payee; in (5)(c) in three places after "apportioned" inserted "as a percentage"; deleted former (5)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance"; inserted (6) regarding apportionment of a defined contribution plan by a family law order to an alternate payee; inserted (7) regarding duration of monthly payment; in (10) after "provide for the" substituted "administration of family law orders" for "application of a family law order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (4)(a) at end inserted "or plan"; in (5) in introductory clause inserted "In a defined benefit plan"; in (5)(e) after "system" inserted "or plan"; inserted (8) requiring rules; and made minor changes in style. Amendment effective April 27, 1999.

1997 Amendment: Chapter 370 in (5)(b) inserted second sentence regarding conversion of a disability retirement to a service retirement; and inserted (7) requiring a statement that a family law order that establishes a final obligation is subject to Board review and approval. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 111 in (2)(a), after "17", deleted "or 20"; and made minor changes in style. Amendment effective March 10, 1995.

1993 Statement of Intent: The statement of intent attached to Ch. 259, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [19-2-907] grants rulemaking authority to the public employees' retirement board or the teachers' retirement board. [Section 1] [19-2-907] provides for the assignment and payment of retirement system benefits to alternate payees but differs from federal qualified domestic relations orders. Alternate payees will not be eligible to receive payments that could not otherwise be paid by the retirement system."

Coordination Instruction: Section 11, Ch. 259, L. 1993, provided: "If Senate Bill No. 385 is passed and approved, [section 1] [19-2-907] is to be codified only as an integral part of the general retirement provisions and the bracketed language in [section 1] [19-2-907] replaces the references to the enumerated chapters of Title 19." Senate Bill No. 385 was passed and approved as Ch. 265, L. 1993; therefore, the reference to enumerated chapters of Title 19 in 19-2-907(2)(a) was codified as instructed.

Administrative Rules

ARM 2.43.3001 Family law orders — general requirements.

ARM 2.43.3004 Family law orders for the PERS defined contribution retirement plan.

ARM 2.43.3005 Family law orders — approval and implementation for the defined contribution retirement plan.

ARM 2.43.3008 Family law orders — contents and duration for defined benefit plans.

ARM 2.43.3009 Family law orders — approval and implementation for defined benefit plans.

ARM 2.43.3517 Family law orders, executions, and income-withholding orders and elections.

ARM 2.44.522 Teachers' retirement — family law order — contents and duration.

ARM 2.44.523 Teachers' retirement — family law orders — approval and implementation.

ARM 2.44.524 Teachers' retirement — adjustment of disability allowance for outside earnings.

Case Notes

Offset of Unpaid Retirement Benefits Proper Under Prior Family Law Order: The District Court ordered the husband to pay $734 a month from his retirement benefits, as ordered in a dissolution decree, and allowed the wife to offset her obligations to the husband when he became eligible to share in her retirement benefits to cover accrued payments of more than $10,000 owed by the husband. On appeal, the husband contended that he was exempt from this legal process under 19-2-1004 because 11 years had passed since the decree was issued, so the decree should no longer be considered a family law order under this section. The Supreme Court disagreed and affirmed. The husband cited no authority for the proposition that a family law order is no longer a family law order after 11 years. The District Court did not err in allowing the wife to collect accrued payments by setoff or otherwise. In re Marriage of Weber, 2004 MT 206, 322 M 324, 95 P3d 694 (2004).

Writ of Mandamus Ordering State Agency to Pay Highway Patrol Benefits to Ex-Wife Improper: The petitioner obtained a writ of mandamus from the lower court directing the Department of Administration to pay one-half of her ex-husband's highway patrol retirement benefits to her as required by the couple's divorce decree. The Supreme Court reversed, holding that the agency had no legal duty to pay the benefits to the petitioner because she was not a beneficiary under the applicable law. (See 1993 and 2001 amendments.) State ex rel. Neuhausen v. Nachtsheim, 253 M 296, 833 P2d 201, 49 St. Rep. 559 (1992).

19-2-908. Time of commencement of benefit — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 172 in (4) at end of first sentence substituted "has received a monthly retirement benefit payment in each of the year's 12 months" for "begins to receive the member's retirement benefit payment". Amendment effective July 1, 2021.

2015 Amendment: Chapter 248 in (5) inserted first sentence concerning survivorship benefits. Amendment effective January 1, 2016.

2011 Amendment: Chapter 99 inserted (3)(b) regarding disabled member continuing with purchase of service; in (4) in first sentence at beginning inserted reference to member beginning to receive retirement benefits later than when initially eligible and after "19-13-1011" substituted current text for "may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments" and inserted second sentence prohibiting retroactive payment of benefit adjustment; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in (2)(a) near middle after "last day of" substituted "employment" for "membership service", after "requested by the" deleted "inactive", and at end after "month" deleted "following filing of the written application". Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 in (3)(a) at beginning inserted "Subject to the provisions of subsection (3)(b)"; inserted (3)(b) concerning timing of guaranteed annual benefit adjustments; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (1)(a) in first sentence near beginning substituted "active or inactive member who is vested" for "member"; in (1)(b) substituted "termination from employment" for "terminating service"; in (2)(a) and (2)(b) near beginning before "retirement" inserted "service"; and in (3) at end substituted "employment" for "service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(a) in first sentence and in (1)(b) before "service" deleted "covered"; and in (2)(a) and in first sentence in (2)(b) before "retirement" deleted "service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1)(a) at end of first sentence inserted "with the board"; in (2)(a) near end after "following" substituted "filing" for "receipt"; in (2)(b) inserted second sentence requiring written application and in third sentence after "calculating" substituted "highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system" for "final average salary under the retirement system"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 inserted second sentence in (1) authorizing board to begin benefit payments to comply with section 401(a)(9) of the Internal Revenue Code. Amendment effective July 1, 1999.

Chapter 471 in (2)(b) and (4) near beginning inserted "from a defined benefit plan"; and inserted (6) requiring rules. Amendment effective April 27, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

19-2-909. Execution or withholding for support obligation — rulemaking.

Compiler's Comments

2007 Amendment: Chapter 128 in (4)(b) in first sentence near beginning after "may be" deleted "apportioned and" and inserted second sentence concerning maximum amount of zero; and in (5)(a) near beginning of second sentence and in (6) near middle of first sentence substituted "paid" for "apportioned". Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (5)(a) in fourth sentence near beginning substituted "may be" for "may not be" and at end inserted requirement that account money be disbursed to the alternate payee as soon as feasible after participant's termination of service or death. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4)(a) at beginning deleted "Service"; in (5)(b) near beginning after "payments" substituted "or" for "from"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (4)(a) near beginning after "payments or" substituted "refunds" for "withdrawals of member contributions". Amendment effective March 21, 2001.

Chapter 490 in (2)(c) near beginning after "means" inserted "an identified person who is"; deleted former (4)(d) that read: "(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount each month if the number of payments is specified"; inserted (5) regarding income-withholding order; inserted (6) regarding duration of monthly or periodic payments; in (7) after "provide for the" substituted "administration of execution or income-withholding orders" for "application of an execution or income-withholding order within the defined contribution plan"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) inserted "or plans"; in (2)(c), (3)(a), and (3)(b) inserted "or plan"; in (4) in introductory clause inserted "applied to a defined benefit retirement plan"; inserted (5) requiring rules; and made minor changes in style. Amendment effective April 27, 1999.

Effective Date: Section 103(1), Ch. 552, L. 1997, provided that this section is effective July 1, 1997.

Administrative Rules

ARM 2.43.3517 Family law orders, executions, and income-withholding orders and elections.

Part 10
Special Provisions

19-2-1001. Maximum contribution and benefit limitations.

Compiler's Comments

2015 Amendment: Chapter 140 in (13)(d)(ii)(A)(II), (13)(d)(ii)(B)(II), and (13)(d)(ii)(B)(III) at end substituted references to I.R.S. publications for references to applicable mortality tables under 26 CFR 1.417(e)-1(d)(2); and made minor changes in style. Amendment effective March 30, 2015.

Retroactive Applicability: Section 8, Ch. 140, L. 2015, provided that this section applies retroactively, within the meaning of 1-2-109, to January 1, 1993.

2013 Amendment: Chapter 240 inserted (12)(e) concerning differential wage payments; in (13)(a) at end inserted "to the extent required by a reasonable interpretation of 26 CFR 1.415-3(c)"; in (13)(d)(ii)(B)(III) in two places before "rate" deleted "30-year treasury"; and made minor changes in style. Amendment effective April 22, 2013.

Retroactive Applicability: Section 15, Ch. 240, L. 2013, provided: "[This act] applies retroactively, within the meaning of 1-2-109, as follows:

(1) Section 19-2-1001(12)(e) applies retroactively to a member receiving differential wage payments while on active duty in the uniformed services on or after January 1, 2009.

(2) Section 19-2-1001(13)(a) applies retroactively to permissible benefit limitation calculations prior to January 1, 2009."

2009 Amendment: Chapter 284 inserted (1)(b) regarding criteria for determining whether annual limitations are met; in (2) substituted "415(d)" for "415(b)"; inserted (4) regarding a member's contributions to purchase permissive service credit; inserted (5) defining permissive service credit; inserted (6) establishing when a system or plan fails to meet the requirements of subsection (4); inserted (7) defining nonqualified service credit; inserted (8) regarding when service must be nonqualified service; inserted (9) providing for cases of a trustee-to-trustee transfer; inserted (10) describing an eligible plan member; in (12)(a) after "Code" substituted "26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4)" for "includes"; inserted (12)(a)(i) excluding certain employee contributions; in (12)(a)(ii) at end inserted "is included in the definition"; inserted (12)(b) through (12)(d) defining salary for various limitation years; inserted (13) setting out provisions for purposes of applying limits on a defined benefit plan member's annual benefit; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 27(5) through (11), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(5) Section 19-2-1001(4)(a) applies retroactively to January 1, 1998, for a permissive service credit contribution as provided in that subsection.

(6) Section 19-2-1001(5)(d) applies retroactively to January 1, 1998, for permissive service credit contributions as provided in that subsection.

(7) Section 19-2-1001(7) applies retroactively to January 1, 1998, for the definition of "nonqualified service credit" as provided in that subsection.

(8) Section 19-2-1001(9) applies retroactively to December 31, 2001, for trustee-to-trustee transfers as provided in that subsection.

(9) Section 19-2-1001(10) applies retroactively to years before January 1, 1998, for a determination as to who is an eligible plan member.

(10) Section 19-2-1001(12) applies retroactively to the definition of "salary" as provided in that subsection.

(11) Section 19-2-1001(13) applies retroactively to January 1, 2001, January 1, 2008, and January 1, 2009, for the limits on a defined benefit plan member's annual benefit as provided in that subsection."

2001 Amendments — Composite Section: Chapter 7 in (1) after "contributions and benefits" deleted "in". Amendment effective October 1, 2001.

Chapter 490 in (1) near middle after "paid from" substituted "a retirement system or plan" for "the retirement systems"; in (3) in introductory clause near middle after "a retirement system" inserted "or plan"; in (3)(a) near beginning after "If the" deleted "retirement system's"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 58 at beginning of (1) substituted "Employee contributions paid to and retirement benefits paid from" for "A monthly benefit paid under", after "limits on" substituted "contributions and benefits in, respectively allowed by" for "benefits as specified in", and at end after "Code" deleted "of 1986 and adjusted annually by the commissioner of internal revenue"; inserted (2) prohibiting member from receiving annual benefit that exceeds dollar amount specified by Internal Revenue Code; inserted (3) authorizing board to modify member request to make contribution exceeding allowable federal limit to retirement system by one of two methods; inserted (4) establishing limitation year for purposes of section 415 of Internal Revenue Code; inserted (5) defining salary for purposes of determining compliance with Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 471, L. 1999, was rendered void by sec. 46(2), Ch. 58, L. 1999, a coordination section.

1993 Amendment: Chapter 265 near beginning substituted "retirement systems" for "retirement system provided for in this chapter" and at end, after "revenue", deleted "for calendar years 1988 and thereafter"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-2-1002. Termination of plan.

Compiler's Comments

2009 Amendment: Chapter 284 inserted (2) providing that a plan member is 100% vested in the member's accumulated contributions at all times; and inserted (3) prohibiting the use of certain accumulated contributions; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 490 in three places after "retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in three places substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Chapter 265 near middle substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence in three places before "plan" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in first sentence inserted "of a defined benefit plan" and substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Chapter 265 in two places substituted "accumulated contributions" for "savings account"; in first sentence, before "member", inserted "nonvested" and substituted "pension trust fund of the system in which the member is participating if the member has not participated in the plan as an employee" for "pension accumulation fund if the account has been dormant"; in second sentence, at end, substituted "return to service or subsequent application for refund" for "reentry to membership"; and made minor changes in style. Amendment effective July 1, 1993.

19-2-1004. Exemption from taxes and legal process.

Compiler's Comments

2021 Amendment: Chapter 503 in (1)(b) in introductory clause after "subject to" deleted "state"; deleted former (1)(b)(i) that read: "(i) a benefit or annuity received in excess of the amount determined pursuant to 15-30-2110(2)(c); or"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2017 Amendment: Chapter 195 in (1) in exception clause inserted reference to subsection (2); inserted (2) providing that right to benefit or payment is subject to lien or levy for past-due taxes and certain processes related to collection of federal criminal fines and restitution orders; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 382 in (2)(a) after "in excess of" deleted "$3,600 or adjusted by" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2001 Amendment: Chapter 490 in introductory clause near middle after "or payment from" substituted "a retirement system or plan" for "the retirement systems" and near end after "money in the" inserted "system or plan's"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1997 Amendment: Chapter 552 in introductory clause inserted "and 19-2-909". Amendment effective July 1, 1997.

1993 Amendments: Chapter 259 at beginning inserted exception clause.

Chapter 265 in introductory clause substituted "any benefit or payment from the retirement systems" for "a retirement allowance or any other benefit under this chapter" and substituted "pension trust funds is" for "fund created under this chapter are"; in (2)(a) substituted "benefit or annuity" for "retirement allowance"; in (2)(b), after "refund", deleted "paid under 19-3-703", before "contributions" inserted "regular", and at end, after "19-3-315", inserted additional references; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2)(a) concerning an adjusted retirement allowance or retirement allowance in excess of $3,600; and made minor changes in style. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1985 Amendment: At end of introductory language substituted "is not" for "shall not be"; in (1) after "attachment", deleted "state or municipal taxes"; inserted (2) providing for tax on refund of certain contributions; and in (3) made minor changes in phraseology.

Case Notes

Offset of Unpaid Retirement Benefits Proper Under Prior Family Law Order: The District Court ordered the husband to pay $734 a month from his retirement benefits, as ordered in a dissolution decree, and allowed the wife to offset her obligations to the husband when he became eligible to share in her retirement benefits to cover accrued payments of more than $10,000 owed by the husband. On appeal, the husband contended that he was exempt from this legal process under this section because 11 years had passed since the decree was issued, so the decree should no longer be considered a family law order under 19-2-907. The Supreme Court disagreed and affirmed. The husband cited no authority for the proposition that a family law order is no longer a family law order after 11 years. The District Court did not err in allowing the wife to collect accrued payments by setoff or otherwise. In re Marriage of Weber, 2004 MT 206, 322 M 324, 95 P3d 694 (2004).

No Private Contract Created by Statute — State Prohibited From Surrendering Power to Tax: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that they had a contractual right to a continued exemption from taxation. Citing Wage Appeal v. Bd. of Personnel Appeals, 208 M 33, 676 P2d 194 (1984), the Supreme Court held that the former tax exemption was only a policy statement that could be changed by the Legislature and that the Legislature did not clearly manifest an intention in the law in question to create a private contractual right. Additionally, the Supreme Court held that the state was prohibited by Art. VIII, sec. 2, Mont. Const., from promising any group of taxpayers that it would never tax them. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

Federal Retirees Not Entitled to Retroactive Tax Refunds: Applying the U.S. Supreme Court's decision in Davis v. Mich. Dept. of the Treasury, 489 US 803, 103 L Ed 2d 891, 109 S Ct 1500 (1989), the District Court adopted a stipulation that the state income tax assessed on benefits received by federal retirees under 4 U.S.C. 111 that were in excess of $3,600 was unconstitutional and invalid for tax years after 1988. The District Court denied plaintiffs' summary judgment motion that Davis be applied retroactively, thus entitling retirees to refunds for previous tax years. On appeal, the Montana Supreme Court affirmed, ruling that it would be inequitable to refund taxes to retirees because the refunds would be made at the expense of all state taxpayers. Sheehy v. St., 250 M 437, 820 P2d 1257, 48 St. Rep. 1008 (1991).

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-2-1005. Compensation limit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2013 Amendment: Chapter 386 inserted (2) concerning earnings excluded from member's highest average compensation; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 284 at end inserted "as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B)"; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 490 near beginning after "A retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 substituted "plan" for "system". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-2-1006. Use of forfeitures.

Compiler's Comments

2001 Amendment: Chapter 490 in first sentence near beginning and in second sentence near end after "retirement" inserted "system or"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section — Coordination: Chapter 58 near beginning substituted "retirement plan" for "retirement system" and after "benefits" inserted "resulting from the member's termination of employment, the death of the member, or any other reason"; and inserted second sentence authorizing use of forfeitures to reduce the costs of administration of retirement plan subject to chapter. Amendment effective July 1, 1999.

The amendments to this section made by sec. 15, Ch. 58, L. 1999, were rendered void by sec. 46(3), Ch. 58, L. 1999, a coordination instruction.

Chapter 471 substituted "plan" for "system".

Purported Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The amendment contained in sec. 27, Ch. 471, L. 1999, was the same as the amendment contained in sec. 46(3), Ch. 58, L. 1999. The effect of the two amendments is that the substitution of "retirement plan" for "retirement system" is not subject to the contingency in sec. 79(4), Ch. 471, L. 1999. Instead, that substitution is effective July 1, 1999, pursuant to sec. 47(1), Ch. 58, L. 1999.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-2-1007. Required distributions.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(a)(i) after "70 ½ years of age" substituted "if the member was born before July 1, 1949, or 72 years of age if the member was born after June 30, 1949; or" for "or April 1 of"; in (1)(b) near middle substituted "benefits must begin under subsection (1)(a)" for "the member attains age 70½ or April 1st of the year following the calendar year in which the member terminates employment, whichever is later"; in (5) at the end of the third sentence inserted "if the member was born before July 1, 1949, or 72 years of age if the member was born after June 30, 1949"; and made minor changes in style. Amendment effective July 1, 2021.

2001 Amendment: Chapter 490 in introductory clause after "The benefits payable by" substituted "a retirement system or plan" for "the retirement plans"; in (1) in second sentence near middle after "by the retirement system" inserted "or plan"; and in (2) in first sentence near beginning after "in a retirement" inserted "system or". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendments — Composite Section: Chapter 58 near beginning of (1) after "by" inserted "the later of", substituted "calendar year" for "plan year", after "age" substituted "or April 1 of the calendar year following the calendar year in which the member terminates employment" for "or retires, whichever is later", and inserted second sentence requiring the board to begin distribution according to statute if member fails to apply for benefits; inserted second sentence in (2) requiring distribution of death benefits in accordance with section 401(a)(9) of the Internal Revenue Code and regulations; inserted (3) prohibiting recalculation of life expectancy of member or beneficiary after benefit payments begin; in (4) after "distributed" inserted "beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed"; inserted fourth and fifth sentences in (5) regarding prompt distributions to beneficiary and requiring payment in form of lifetime monthly payment or lump sum if beneficiary has not elected payment form; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 471 in introductory clause substituted "plans" for "systems"; in (2) substituted "a retirement plan" for "the retirement system" and before "over a period" inserted "or"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.3545 Distribution to participant.
ARM 2.43.3546 Distribution upon death of participant.

19-2-1009. Penalty for fraud.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding penalty for fraud for former section that read: "(1) No person shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(2) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding $1,000 or suffer imprisonment not exceeding 1 year, or both, in the discretion of the court." Amendment effective July 1, 1993.

19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) near end after "rules" inserted "policies, and plan documents". Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 inserted first sentence in (1) requiring board to administer plan to satisfy requirements of qualified government plan provided by the Internal Revenue Code, in second sentence after "Code" inserted "or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code", and at end substituted "plan to retain its qualified status" for "system to retain tax-deferred status"; inserted (2) regarding composition of the plan document for each retirement system for purposes of the Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

Administrative Rules

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

ARM 2.43.2312 Purchase of service through direct trustee-to-trustee transfer of funds.

ARM 2.43.3515 Purchase of service not permitted by participant in defined contribution retirement plan.

19-2-1011. Limitations on eligible rollover distributions.

Compiler's Comments

2013 Amendment: Chapter 240 in (2)(b) at beginning substituted "The plans described in subsections (2)(a)(ii), (2)(a)(iv), and (2)(a)(v) must" for "that agrees to"; and made minor changes in style. Amendment effective April 22, 2013.

Effective Date: Section 26, Ch. 284, L. 2009, provided that this section is effective July 1, 2009.

19-2-1013. Compliance with federal restrictions on interest rate crediting.

Compiler's Comments

Effective Date: Section 26, Ch. 284, L. 2009, provided that this section is effective July 1, 2009.

19-2-1014. Compliance with federal laws regarding service in uniformed services.

Compiler's Comments

2015 Amendment: Chapter 140 in (1) and (2) substituted "qualified service in the uniformed services as defined in 38 U.S.C. 4303" for "qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245"; in (1) inserted last sentence requiring a deceased member's period of qualified services to be counted for vesting purposes; in (2) after "extent" substituted "permitted" for "required"; and made minor changes in style. Amendment effective March 30, 2015.

2013 Amendment: Chapter 240 in (2) substituted "section 414(u)(9) of the Internal Revenue Code, 26 U.S.C. 414(u)(9)" for "section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37)". Amendment effective April 22, 2013.

Effective Date: Section 26, Ch. 284, L. 2009, provided that this section is effective July 1, 2009.

Retroactive Applicability: Section 27(14), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(14) [Section 24] [enacting 19-2-1014] applies retroactively to retirement system member deaths on and after January 1, 2007, and to retirement system member disabilities on and after January 1, 2009."

19-2-1015. Probate and nonprobate transfer statutes superseded.

Compiler's Comments

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Retroactive Applicability: Section 102, Ch. 562, L. 1999, provided: "[Section 19] [19-2-1015 and 19-20-510] applies retroactively, within the meaning of 1-2-109, to July 1, 1997."

CHAPTER 3
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.
ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.

Chapter Law Review Articles

Public Employees' First Amendment Rights, Rotering, 38 Mont. L. Rev. 365 (1977).

Chapter Collateral References

Public Pension Breakout Session, Mont. Leg. Serv. Div. (2020).

Part 1
General Provisions

19-3-103. Retirement system created — system to consist of two plans.

Compiler's Comments

1999 Amendment: Chapter 471 in (1) substituted "defined benefit retirement plan" for "retirement system" and at end deleted "and to be known as the public employees' retirement system"; inserted (2) providing that a defined contribution plan is established as provided in part 21 of this chapter; in (3) inserted "public employees' retirement", inserted "consists of the defined benefit plan and the defined contribution plan. Each plan within the system", and inserted "applicable"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

The amendment to this section made by Ch. 562, L. 1999, was rendered void by sec. 99(1)(c), Ch. 562, L. 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted second sentence regarding chapters applicable to system. Amendment effective July 1, 1993.

19-3-108. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 195 in definition of highest average compensation in (b) after "Lump-sum payments for" deleted "severance pay, including payment for"; and made minor changes in style. Amendment effective July 1, 2017.

2013 Amendment: Chapter 386 inserted (1)(b)(vi) concerning bonuses; inserted (6)(c) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendments — Composite Section: Chapter 99 in definition of compensation in (a) and (b)(v) and in definition of highest average compensation in (b) inserted "banked holiday time". Amendment effective July 1, 2011.

Chapter 369 inserted definition of banked holiday time [not codified]; in definition of compensation in (a) and (b)(v) inserted "banked holiday time"; in definition of highest average compensation in (a) after "means" deleted "a member's", in (a)(i) inserted "for a member hired prior to July 1, 2011, the", and at end deleted "except as otherwise provided in subsection (6)(b) or (6)(c)", deleted former (b) and (c) that read: "(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.

(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36", inserted (a)(ii) and (a)(iii) relating to compensation for certain members, and in (b) inserted "banked holiday time"; and made minor changes in style. Amendment effective July 1, 2011.

2011 Amendment Not Codified: Section 1, Ch. 369, L. 2011, inserted definition of banked holiday time that is identical to the definition of banked holiday time inserted in 19-2-303 by sec. 4, Ch. 99, L. 2011. Since the definitions in 19-2-303 apply to Title 19, chapter 3, the definition inserted by Ch. 369, L. 2011, is redundant and was not codified. It is still valid law, and reference may be made to sec. 1, Ch. 369, L. 2011.

2005 Amendment: Chapter 329 in definition of compensation in (b)(i) substituted "the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit" for "the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a)"; in definition of highest average compensation in (a) at end inserted exception clause and in (b) at beginning substituted "For" for "or, with respect to" and near middle inserted "highest average compensation means"; inserted (6)(c) stating what highest average compensation means for a vested member without 36 consecutive months of membership service; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 429 in definition of highest average compensation at end of first sentence inserted language concerning member who is 65 years of age. Amendment effective July 1, 2003.

Chapter 602 in definition of employer at end deleted "except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999"; and made minor changes in style. Amendment effective July 1, 2005.

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term and at end of second sentence of definition after "calculation of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of compensation in (a) near middle inserted "in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence", inserted (b)(ii) excluding in-kind goods, inserted (b)(iii) excluding in-kind services, inserted (b)(iv) excluding contributions to group insurance, and inserted (b)(v) excluding certain lump-sum payments; in definition of final average salary in second sentence near beginning after "severance pay" inserted "including compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

1999 Amendments — Composite Section: Chapter 58 in first sentence of definition of compensation after "employer" inserted "before any pretax deductions allowed by state or federal law are made"; at end of definition of employer inserted exception clause regarding nonprofit mental health corporation; and at beginning of definition of final average salary after "salary" deleted "except as provided in 19-3-520". Amendment effective July 1, 1999.

Chapter 471 inserted definitions of defined benefit plan and system or retirement system; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1993 Amendment: Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-3-109. Public employees' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

19-3-111. Exemption for certain university temporary employees — "temporary employee" defined.

Compiler's Comments

Effective Date: Section 4, Ch. 121, L. 1995, provided that this section is effective March 10, 1995.

19-3-112. Education fund established — allocation of employer contributions — educational program requirements.

Compiler's Comments

2013 Amendment: Chapter 282 in (2)(b) substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2005 Amendment: Chapter 329 in (1)(a) near middle substituted "to be used to educate and inform" for "and provide for educational programs for"; in (1)(b) in first sentence near beginning substituted "educational services and communication services" for "educational and communication programs" and near middle substituted "the compensation paid to all of the employer's employees who are members of the system" for "covered payroll"; in (2)(a) in first sentence near beginning substituted "services" for "programs" and at end inserted "benefits, and features", in second sentence substituted "services must be provided in a variety of formats" for "programs must involve multimedia formats", and in third sentence near middle substituted "historical" for "real" and near end inserted "or benefits"; in (2)(b) in first sentence near beginning substituted "educational services are" for "an educational program is" and near middle substituted "services are" for "program is" and in second sentence substituted "the educational program provided for in subsection (3)" for "educational services pursuant to this section"; in (3) in first sentence near beginning substituted "offer" for "provide for an initial and" and in second sentence at beginning substituted "The program" for "The transfer educational program"; in (3)(a) at beginning inserted "determining" and after "money available" deleted "to a member"; in (3)(d) at beginning substituted "the rate" for "the aggregate rate", in middle substituted "that must" for "and the period of time over which the aggregate rate of return must", and at end inserted "assuming the same time period in each plan"; in (3)(f) substituted information on determining retirement income needs and comparing those needs to each plan's possible or expected benefit for "the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible"; inserted (3)(g) relating to use of supplemental retirement savings programs to enhance retirement income; in (4) in introductory clause substituted text relating to ongoing educational and communications services for former text that read: "(4) An ongoing educational and communication program must provide members of either plan with information necessary to make informed decisions about choices within their plan of membership and in preparation for retirement. The program must include but not be limited to information concerning"; in (4)(c) at beginning inserted "planning for retirement, including" and at end substituted "supplemental retirement savings programs" for "a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code"; deleted former (4)(f) that read: "(f) planning for retirement"; in (6) near beginning before "plan" inserted "contracted" and at end substituted "information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan" for "information necessary to make informed decisions about the defined contribution plan or the optional retirement program and investment alternatives within the defined contribution plan or the optional retirement program"; and made minor changes in style. Amendment effective July 1, 2005.

Termination Date Changed: Section 39, Ch. 490, L. 2001, amended sec. 81, Ch. 471, L. 1999, to terminate subsection (1)(b) of this section effective July 1, 2002, rather than July 1, 2001.

Effective Date — Contingent Effective Date: Section 79(3), Ch. 471, L. 1999, provided that subsections (1)(a), (1)(b), and (2) through (6) of this section are effective July 1, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1)(c) (now (1)(b)) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Termination: Section 81(1), Ch. 471, L. 1999, provided that subsection (1)(b) of this section terminates July 1, 2001.

19-3-117. Board report required.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 44, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

Effective Date: Section 14, Ch. 390, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 2

Extension of Coverage by Local Government Employers

19-3-201. Contracts with political subdivisions.

Compiler's Comments

2017 Amendment: Chapter 195 inserted (3)(d)(i) concerning cost of actuarial valuation; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 283 in (1) near middle of first sentence after "employer" substituted "through" for "and make all or specified groups of its employees members of the retirement system by" and inserted second and third sentences regarding contract terms and validity of prior contracts. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (2) inserted reference to chapter 2; in (2)(a) in first sentence after "resolution" deleted "giving notice" and in fifth sentence near beginning after "must be" deleted "by ordinance adopted", near middle increased the time period from 20 to 40 days, and at end deleted "or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract"; in (2)(b) at beginning substituted "The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract" for "The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees who are included under the contract and who are hired after the effective date of the contract"; in (2)(c) deleted former second sentence that read: "Groups of excluded employees may be subsequently included by amendment" and inserted three sentences requiring board approval of the contract, allowing disapproval of a contract that adversely affects the system, and concerning amendments to the system; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendments — Composite Section: Chapter 471 in (2)(b) at end inserted sentence providing that membership in the defined benefit plan or defined contribution plan is determined on an individual basis; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 562 in (2)(a) and (3)(c) after "legislative body" substituted "within 20 days" for "not less than 20 days"; and made minor changes in style. Amendment effective July 1, 1999.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), at end of first sentence, deleted "subject to the provisions of this chapter" and in second sentence inserted reference to chapter 2; in (2)(b), in second sentence after "duties", deleted "age" and in fourth sentence, at end after "contract", inserted "and who are hired after the effective date of the contract"; in (3)(c) substituted "terminating coverage under the system" for "terminating PERS coverage"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Deleted "and termination" after "approval" in (2); added subsection (3) relating to termination of the contract.

Attorney General's Opinions

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979).

19-3-202. Request by individual employee for employer to participate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-3-203. Conversion of local or state retirement plan.

Compiler's Comments

1999 Amendment: Chapter 471 in (2) in first sentence inserted "Subject to the applicable provisions of this chapter" and inserted "either the defined benefit plan or the defined contribution plan of"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 265 in (3), in second sentence after "credited", substituted "as accumulated contributions" for "to the respective individual accounts" and in fourth sentence, near end before "interest", inserted "regular"; and made minor changes in style. Amendment effective July 1, 1993.

19-3-204. Tax levy to meet employer's obligations.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Part 3
Contributions and Refunds

Part Administrative Rules

ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2302 Documentation of service.

19-3-315. Member's contribution to be deducted.

Compiler's Comments

2013 Amendment: Chapter 390 in (1)(a) substituted current text for former text that read: "Each member's contribution is:

(i) for a member hired prior to July 1, 2011, 6.9% of the member's compensation; and

(ii) for a member hired on or after July 1, 2011, 7.9% of the member's compensation"; in (1)(b) substituted "The board shall annually review" for "For members hired on or after July 1, 2011, the board shall periodically review"; inserted (2) concerning reduction of member's contribution; in (4) substituted "subsection (1) or (2)" for "subsection (1)"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2011 Amendment: Chapter 369 in (1)(a)(i) at beginning inserted "for a member hired prior to July 1, 2011"; inserted (1)(a)(ii) concerning a member hired on or after July 1, 2011; inserted (1)(b) regarding board review; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (3) after "Code" deleted "of 1954, as amended and applicable on July 1, 1985"; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 471 in (4)(b) inserted "In the case of a member of the defined benefit plan"; inserted (4)(c) providing for contribution allocation for a member of the defined contribution plan; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1997 Amendment: Chapter 287 in (1), in first sentence, changed "July 1, 1993" to "July 1, 1997" and substituted "6.8%" for "6.70%" and inserted second sentence providing that member's contribution increases to 6.9% beginning July 1, 1999. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted (1) regarding regular contribution rate for former subsection that read: "(1) On and before June 30, 1989, the normal contribution of each member is 6% of his compensation. The normal contribution of each member increases to:

(a) 6.15% of his compensation on July 1, 1989;
(b) 6.30% of his compensation on July 1, 1990;
(c) 6.417% of his compensation on July 1, 1991;
(d) 6.55% of his compensation on July 1, 1992; and
(e) 6.70% of his compensation on July 1, 1993"; in (5), at end of first sentence after "compensation", deleted "as defined in 19-3-104"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At beginning of (1) inserted "On and before June 30, 1989" and at end inserted "The normal contribution of each member increases to"; and inserted (1)(a) through (1)(e) specifying the percentage increases. Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

1985 Amendment: In (1) in middle of first sentence substituted "is" for "shall be equal to" and deleted former second sentence that read: "The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Administrative Rules

ARM 2.43.2114 Required employer reports.
ARM 2.43.2302 Documentation of service.
ARM 2.43.2314 Eligible federal volunteer service.

19-3-316. Employer contribution rates.

Compiler's Comments

2013 Amendment: Chapter 390 in (3)(a) substituted "the percentage specified in subsection (3)(b)" for "0.27%"; inserted (3)(b) concerning percentage of compensation; in (4)(a) substituted "annually" for "periodically"; in (4)(b) substituted current text for former text that read: "The employer contribution required under subsection (3) terminates on July 1 following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2009 Amendment: Chapter 283 in (3) near middle after "equal to" substituted "0.27%" for "the following percentage"; deleted former (3)(a) and (3)(b) that read: "(a) beginning July 1, 2007, 0.135%; and

(b) beginning July 1, 2009, 0.27%"; in (4)(b) after "July 1" deleted "immediately" and after "following the" inserted "board's receipt of the". Amendment effective July 1, 2009.

2007 Amendment: Chapter 371 in (1) in second sentence inserted "plus any additional contribution under subsection (3)" and after "those" inserted "employees"; inserted (3) requiring additional employer contribution beginning July 1, 2007, and July 1, 2009; inserted (4) requiring board to periodically review contributions and providing for termination of certain employer contributions; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2005 Amendment: Chapter 329 in (1) in second sentence substituted "the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees, except those properly excluded from membership" for "the amount of the employer contribution as a percentage of the employer's covered payroll is 6.9%"; and in (2) near end before "under 19-3-319" deleted "applied to their monthly covered payrolls". Amendment effective July 1, 2005.

Incorrect Effective Dates — Effective Date Amended: Section 79, Ch. 471, L. 1999, incorrectly provided two effective dates for sec. 34 of Ch. 471, one July 1, 1999, and the other effective upon a contingency, or July 1, 2002, whichever was earlier. Section 38, Ch. 490, L. 2001, amended sec. 79 to make the effective date July 1, 1999.

1999 Amendments — Composite Section: Chapter 51 in (1) near end after "payroll is" deleted "6.8% beginning July 1, 1997, and increases to"; and in (2) deleted former second sentence that read: "The payment is statutorily appropriated as provided in 17-7-502." Amendment effective March 15, 1999.

Chapter 471 in (1) in first sentence after "contribute to" deleted "the cost of benefits under" and inserted third and fourth sentences requiring allocation of a portion of employer contributions for educational programs and requiring employer contributions for members under the defined contribution plan to be allocated as provided in 19-3-2117. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

1997 Amendment: Chapter 287 substituted language in second sentence in (1) inserting exception clause and language providing that an employer's contribution is 6.8% of payroll beginning July 1, 1997, and 6.9% beginning July 1, 1999, for language that read: "On and after July 1, 1993, the amount of the employer contribution is 6.70% of each employer's covered payroll"; inserted (2) requiring local government and school district to subtract state contribution rate from total employer rate; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present section regarding employer contribution rates for former section that read: "(1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates is 6.417% from July 1, 1983, to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons." Amendment effective July 1, 1993.

1989 Amendment: At end of (1), after "July 1, 1983", substituted "to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993" for "and thereafter"; and made minor change in phraseology. Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

1983 Amendment: At end of (1), substituted "these rates shall be 6.417% from July 1, 1983, and thereafter" for "these rates shall be 6.32% from July 1, 1981, and thereafter".

1981 Amendments — Coordination Section: Section 3, Ch. 254, L. 1981, provided: "If both this act and HB 45, introduced in the 47th legislature, are passed and approved, the percentage amount contained in 19-3-801 [renumbered 19-3-316] shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." The pre-1981 employer rate was 5.90%. The increase in HB 45 (Ch. 549) was .12% and in SB 232 (Ch. 254) .30%. In accordance with the coordination section, the Code Commissioner inserted "6.32" in the last sentence of (1).

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.43.2114 Required employer reports.

ARM 2.43.2302 Documentation of service.

ARM 2.43.3533 Reallocation of certain PERS employer contributions to DCRP member accounts.

Case Notes

Disproportionate Employer Contributions to Retirement Plans — Defined Contribution, Defined Benefit Plans — No Substantive Due Process or Equal Protection Violation: The plaintiffs, all of whom were public employees participating in the state's defined contribution or university retirement plans (contribution plans), sued the Montana Public Employee Retirement Administration. The plaintiffs alleged that they were being treated differently from employees in the state's defined benefit plan because the percentage of their employer's contribution into their own individual plans was less than the percentage of employer contribution that went into the defined benefit plan trust. The District Court disagreed, noting that the plaintiffs all had chosen voluntarily between joining one of the contribution plans and joining the benefit plan and that they received the employer contribution they bargained for when they chose to join a contribution plan. On appeal, the Supreme Court affirmed, ruling that the plaintiffs had received the flexibility to control their accounts in exchange for a lower contribution into their individual accounts and that their substantive due process rights had therefore not been violated. Wrzesien v. St., 2016 MT 242, 385 Mont. 61, 380 P.3d 805.

19-3-318. Credit of contributions made after member becomes inactive.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 329 at beginning substituted "Contributions made on the basis of compensation earned by members after they are considered to be inactive members" for "Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system". Amendment effective July 1, 2005.

1999 Amendment: Chapter 58 at end substituted "credited to the employer" for "repaid to the employer". Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 substituted reference to subsection (4) of 19-3-403 for reference to subsection (8); and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

19-3-319. State contributions for local government and school district employers.

Compiler's Comments

2011 Amendment: Chapter 99 in (2)(a) near middle substituted "0.27%" for "the following percentage" and after "school districts" deleted "on and after July 1, 2007"; deleted former (2)(a)(i) and (2)(a)(ii) that read: "(i) beginning July 1, 2007, 0.135%; and

(ii) beginning July 1, 2009, 0.27%". Amendment effective July 1, 2011.

2007 Amendment: Chapter 371 in (1) near end after "those" inserted "employees"; inserted (2) requiring certain employer contributions from state general fund beginning July 1, 2007, and July 1, 2009; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2005 Amendment: Chapter 329 in first sentence substituted "paid to all employees of" for "of members employed by" and at end inserted "except those properly excluded from membership". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 near beginning of second sentence substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Coordination: Section 39(1), Ch. 532, L. 1997, provided: "(1) If House Bill No. 170 is passed and approved and if it contains a new [section 4] providing for state contributions to the public employees' retirement system on behalf of local governments, then:

(a) the new [section 4 of House Bill No. 170] shall read:

"Section 4. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after July 1, 1997. The division shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502."" House Bill No. 170 was approved as Ch. 287, L. 1997, effective July 1, 1997, and included the enactment of section 4 as 19-3-319; therefore, the text of 19-3-319 was amended as provided in sec. 39(1), Ch. 532, L. 1997.

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-3-320. Supplemental state contribution — appropriation.

Compiler's Comments

Effective Date: Section 20(1), Ch. 351, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2017."

Severability: Section 19, Ch. 351, L. 2017, was a severability clause.

Part 4

Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.

19-3-401. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2011 Amendment: Chapter 99 in (5) inserted reference to Montana school for the deaf and blind; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 in (5) near middle after "school district" inserted "or a public institution of higher education"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (2)(a) and (3)(a) at beginning substituted "An inactive member" for "A member"; in (2)(a) after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) providing what a lump-sum payment consists of; in (3)(a) after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; in (3)(b) inserted "of the defined benefit plan"; in (4) at beginning inserted exception clause and at end substituted "is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either" for "who"; substituted (4)(a) and (4)(b) relating to a member who either returns to service within 30 days of termination of employment or terminates one position and remains in another position for "returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) after "service" inserted "credit"; and in (5) at end substituted "membership service in determining eligibility for retirement benefits" for "service in determining eligibility for membership under this chapter". Amendment effective July 1, 2003.

1999 Amendments — Composite Section — Coordination: Chapter 471 in (1) in first sentence inserted "of the defined benefit plan", near end of second sentence after "status of members" deleted "of the retirement system", and at end inserted sentence allowing an employee to join the defined contribution plan only as provided in Title 19, chapter 3, part 21; in (2) and (3) near beginning inserted "of the defined benefit plan"; in (3) at end of first sentence substituted "plan" for "system"; and in (4) near beginning of first sentence inserted "of either the defined benefit plan or the defined contribution plan, subject to the provisions of this chapter". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Section 99(1)(d), Ch. 562, L. 1999, in three places after "members" or "member" inserted "of the defined benefit plan"; in (1) in second sentence after "members" deleted "of the retirement system" and inserted third sentence relating to defined contribution plan participation; and substituted (4) providing that person who returns to service within 30 days of termination of service or who terminates one service and remains in another service is active member for former (4) that read: "(4) Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry." Amendment effective July 1, 1999.

The amendments to this section made by sec. 24, Ch. 562, L. 1999, were rendered void by sec. 99(1)(d), Ch. 562, L. 1999, a coordination section.

Purported Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The amendments contained in sec. 35, Ch. 471, L. 1999, were the same as the amendments contained in sec. 99(1)(d), Ch. 562, L. 1999, except the amendment to the first sentence of (4), which was rendered void by the deletion of (4) in Ch. 562. The effect of the amendments is that this section is not subject to the contingency in sec. 79(4), Ch. 471, L. 1999. Instead, the amendments are effective July 1, 1999, pursuant to sec. 101, Ch. 562, L. 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), in first sentence after "all", deleted "eligible" and at end substituted "service" for "covered employment" and at beginning of second sentence, after "Each", substituted "employer" for "eligible employee" and after "affecting" substituted "their employees' status as members" for "the employee's status as a member". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), at beginning, inserted exception clause, in two places changed references to employees to references to eligible employees, and before "employment" inserted "covered"; in (2), near beginning, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", before "contributions" inserted "accumulated", after "contributions" inserted "is an inactive vested member and", after "service" inserted "and to receive a service retirement benefit", and before "this chapter" deleted "part 5 of"; deleted (2)(b) that read: "(b) Upon reaching retirement age, a member becomes eligible to receive a retirement allowance under the provisions of 19-3-901 or 19-3-902"; in (3), in first sentence, substituted "membership service" for "creditable service", after "terminates" substituted "service" for "covered employment", after "contributions" substituted "in the pension trust fund" for "on deposit", after "is" inserted "an inactive nonvested member and is", and after "benefits" substituted "from the retirement system" for "other than" and in last sentence, before "a refund", inserted "An inactive nonvested member is eligible only for"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2) regarding right to purchase service and eligibility for retirement allowance for member with at least 5 years' service who terminates covered employment; and inserted (3) limiting member with less than 5 years' service to refund of contributions. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.2104 Membership cards.

ARM 2.43.2309 Service purchases by inactive vested members.

19-3-402. Federally subsidized employees eligible.

Compiler's Comments

1983 Amendment: Deleted, effective July 1, 1984, former (2), that read: "Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 19-3-505 and 19-3-506."

Attorney General's Opinions

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979).

19-3-403. Exclusions from membership.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 195 inserted (8) concerning county school superintendents; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 99 in (1) inserted "or residents" and inserted "or correctional institutions". Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in introductory clause after "system" inserted "and, except as provided in subsection (7), may not later purchase previous service under 19-3-505"; inserted (5) prohibiting certain substitute teachers and part-time teacher's aides from being members of the retirement system; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (4) in third sentence at end substituted "with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions" for "solely for the purposes of making regular contributions, as permanently separated from service"; and in (4)(a) at beginning substituted "The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit" for "When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4) in first and second sentences substituted "employment" for "service" and near end of second sentence after "applied for and" inserted "the service credit"; in (6) near end after "purchasing the service" inserted "credit" and after "receive" substituted "service credit" for "credited service"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (6) near middle substituted "becomes an active member" for "becomes a member", after "option of" substituted "purchasing" for "qualifying", and after "becoming" substituted "an active member" for "a member". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (4)(b) substituted "retirement benefits" for "retirement allowances". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendments — Composite Section: Chapter 308 in (6), after "high school", deleted "vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 412 at end of (3) deleted "unless there is a written contract that specifies the creation of an employer-employee relationship for purposes of retirement coverage under the retirement system"; and in (6), near beginning, substituted "school of technology" for "vocational-technical center". Amendment effective April 13, 1995.

The codifier did not codify the subsection (6) name change made by Ch. 412 because Ch. 308 merged the school of technology system into the University System and deleted the old reference to "vocational-technical center".

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded"; in (1), after "institutions", deleted "who are allowed compensation for such service as they are able to perform"; at end of (3) substituted "the retirement system" for "The Public Employees' Retirement System Act"; deleted former (5) through (7) that read: "(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members"; in (4), in third sentence, substituted "regular contributions" for "normal contributions"; at end of (4)(a), after "retirement system", deleted "and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system"; in (4)(b) substituted "subsection (4)" for "subsection (8)" and after "employee" deleted "as defined in this chapter"; in (5), after "court commissioners", inserted "elected officials"; deleted (10) through (12) that read: "(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members"; near end of (6) substituted "credited service" for "credit"; deleted (14) that read: "(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Deleted former (15) that read: "(15) all former members receiving a retirement allowance, other than as a beneficiary, serving in employment if that employment does not exceed 60 working days in any calendar year. These former members must be reinstated into membership on the 61st working day in any calendar year unless they elect to return to membership prior to that day". Amendment effective March 29, 1991.

1985 Amendment: Deleted former (14) that read: "effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505"; and in (15) substituted reference to calendar year for fiscal year in two places.

1983 Amendment: At beginning of (13), substituted "full-time students employed at and attending the same" school for "students of any" school.

1981 Amendments: Chapter 60 inserted "for 6 months or less" in (12); substituted "or the legislative council to perform work related to the legislative session" for "during the legislative session" in (12).

Chapter 142 substituted "120" for "60" working days at the beginning of (5); added the balance of (5) following "any fiscal year" near the beginning of the subsection (see 1981 Session Law for text); deleted "within 1 year" before "after becoming a member" near the end of (13); added (16) allowing retired members to work 60 days without rejoining the retirement system.

Administrative Rules

ARM 2.43.2102 Optional membership.
ARM 2.43.2315 Credit for service in uniformed services.
ARM 2.43.2318 "1-for-5" additional service.
ARM 2.43.2608 Return to covered employment by retiree — report.

Case Notes

Retirement Pay — Accumulated Sick Leave: By this section the Legislature reaffirmed its policy that parties may collectively bargain for such things as retirement pay. Therefore, the clear language of a collective bargaining agreement regarding retirement pay derived from accumulated sick leave was upheld. School District v. Driscoll, 173 M 492, 568 P2d 149 (1977).

Attorney General's Opinions

Pension Trust for PERS Members Prohibits Use of State Funds: Subsection (8) of this section prohibits use of annual state payments received by a city pursuant to 19-10-305 (renumbered 19-19-305) for a pension trust plan for police officers who are also members of the Public Employees' Retirement System. 42 A.G. Op. 92 (1988).

CETA Programs Under PERS: A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program. 38 A.G. Op. 19 (1979). (See the 1985 amendment note to this section. The amendment deleted the exemption for CETA employees.)

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

Social Security — Public Employees' Retirement System: For the purpose of Social Security coverage under Ch. 270, L. 1955 (now Title 19, ch. 1), and the agreement between the state of Montana and the Secretary of Health, Education and Welfare, the positions of state Superintendent of Public Instruction, County Superintendent of Schools, the professional staff of the state Superintendent of Public Instruction, and teachers in custodial institutions are positions covered by the Public Employees' Retirement System. 26 A.G. Op. 103 (1956).

19-3-411. Eligible employees.

Compiler's Comments

2015 Amendment: Chapter 248 in introduction inserted reference to 19-3-413; and made minor changes in style. Amendment effective January 1, 2016.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-412. Optional membership — employees not in elected office.

Compiler's Comments

2015 Amendment: Chapter 248 in (1) at beginning substituted "Except as provided in subsection (2), the following employees in covered positions that are not elected offices shall elect" for "Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect"; deleted former (1)(a) that read: "(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election"; in (2) substituted current text concerning active, inactive, and retired members for "A member who is elected to a local government position in which the member works less than 960 hours in a fiscal year may, within 90 days of taking office, decline optional membership with respect to the member's elected position"; in (3)(b) after "Each employee" deleted "or elected official"; in (3)(c) after "filed with the board" deleted "for an employee described in subsection (1)(d)"; deleted former (3)(c)(ii) that read: "(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 90 days of the commencement of the employee's or elected official's employment"; in

(3)(d) after "employee's" deleted "or elected official's"; in (4) after "employee" deleted "or elected official" and near end substituted "failure must be considered an election to decline membership" for "employee or elected official waives membership"; in (5) inserted exception clause and after "employee" deleted "or elected official"; in (6) in first sentence after "An employee" deleted "or elected official"; deleted former (7) and (8) that read: "(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in a different optional membership position.

(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.

(c) If, after termination from employment for 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(d) If the termination from employment is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership"; inserted (7) concerning new or different membership elections; in (8) at end substituted "under this section" for "and did not have a 30-day break in service"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (2) substituted "fiscal year" for "calendar year". Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 in (2) near middle substituted "taking office" for "being elected"; and in (8)(c) and (8)(d) near beginning substituted reference to termination from employment for reference to break in service. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (2) and (3)(c)(ii) substituted "90 days" for "180 days"; in (3)(c)(i) substituted "90 days" for "300 days"; in (8)(a) near beginning after "employee" deleted "or elected official" and at end after "employed" substituted "with the same employer but in a different optional membership position" for "in that position"; inserted (8)(b) regarding membership for an elected official; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 41 in (1)(d) after "working" substituted "10 months" for "6 months"; deleted former (2)(a) and (2)(b) that read: "(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b)"; inserted (3)(c)(i) requiring filing of an application within 300 days of commencement of employment of an employee working 10 months or less; in (3)(c)(ii) at beginning inserted "for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f)"; and made minor changes in style. Amendment effective March 22, 2007.

Chapter 128 in (1)(a) at end inserted "including individuals appointed to fill the unexpired term of elected officials"; deleted former (2)(a) that read: "(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board"; in (2) near beginning after "who" deleted "after April 17, 2003"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 334 in (1) in exception clause inserted "5-2-304 and"; and made minor changes in style. Amendment effective April 27, 2007.

Transition: Section 3, Ch. 334, L. 2007, provided: "(1) A person who is subject to the provisions of 5-2-304 who made an irrevocable election under 5-2-304 after January 1, 2003, and before [the effective date of this act] [April 27, 2007] may rescind the election.

(2) A person who is eligible under subsection (1) to rescind an election previously made by the person pursuant to 5-2-304 shall notify the public employees' retirement board in writing prior to July 1, 2007, that the person has rescinded the person's prior election.

(3) A person who rescinds, under subsection (2), the person's previous election is:

(a) subject to the applicable options available under 5-2-304 and 19-3-412 as provided for in [this act]; and

(b) is eligible to receive retroactively to January 1, 2007, the retirement benefits for which the person would have been eligible absent the original election."

Retroactive Applicability: Section 5, Ch. 334, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 2003."

2005 Amendment: Chapter 329 in (1) substituted "employees and elected officials in covered positions shall elect either to" for "employees in covered employment may" and at end substituted "in the manner prescribed in subsection (3)" for "within 180 days of commencement of their employment"; deleted former (2)(c)(i) that read: "(i) A member who is a local elected official and an active member on April 17, 2003, and who is working in the member's elected position less than 960 hours in a calendar year may until January 1, 2004, decline optional membership with respect to the member's elected position"; in (3) substituted (a) through (d) requiring the board to prescribe the form of the written application required by subsection (1) and to give each employer the form, requiring each employee or elected official in a position covered by subsection (1) to obtain the form and complete and return it, requiring filing of the application, and requiring the board to retain a copy for "If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement"; inserted (4) providing that an employee or elected official who fails to file the application in time waives membership; in (5), (6), (7), and (8)(a) near beginning inserted "or elected official"; in (7) at beginning inserted exception clause; in (8)(a) substituted "for a position" for "while employed in a position"; in (8)(b) near middle substituted "employed in" for "a member in"; deleted former (8) that read: "(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 402 at beginning of (1) inserted exception clause, before "members" inserted "active", and after "system" substituted "or decline this optional membership" for "at their option"; inserted (1)(a)(ii) allowing members receiving benefits or distribution under defined benefit plan at time of election to become active members; inserted (2)(c) allowing elected local officials to decline optional membership; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 429 in (2)(b) in two places and in (4) near beginning of second sentence after "service" inserted "credit"; in (3) near middle of third sentence substituted "membership service" for "membership credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (3) in first sentence substituted "employee shall sign" for "employee shall execute" and after "membership and" inserted "file it with the employer" and in second sentence after "employer shall" inserted "file the statement with the board and" and after "retain" inserted "a copy of"; and in (4) in first sentence substituted "member may purchase" for "member may qualify" and at beginning of second sentence substituted "Purchase" for "Qualification". Amendment effective March 21, 2001.

Chapter 285 in (1)(f) after "rest homes" deleted "in counties of the third, fourth, fifth, sixth, and seventh class". Amendment effective October 1, 2001.

Chapter 357 in (2)(a) at beginning inserted exception clause; and inserted (2)(b) concerning legislators becoming members; and made minor changes in style. Amendment effective April 23, 2001.

Retroactive Applicability: Section 3, Ch. 357, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all persons who were legislators on July 1, 1999."

1999 Amendments — Composite Section: Chapter 51 in (1)(f) after "third" inserted "fourth, fifth". Amendment effective March 15, 1999.

Chapter 58 in (1) after "option" substituted "by filing an irrevocable, written application with the board within 180 days of commencement of their employment" for "at any time during their employment in a covered position by filing a membership card with the board"; inserted (2) establishing date by which employees or officials who are not members must file an irrevocable, written application with board; inserted (8) regarding waiver of membership if member or official fails to file irrevocable written application with board within time limit; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 in (1)(b) at beginning before "employees" deleted "part-time", after "does not" inserted "cumulatively", and substituted "960 hours of covered employment with all employers under this chapter" for "960 hours of employment covered by this chapter"; in (3) inserted second sentence denying membership credit or service credit for employment for which optional membership was declined; inserted (4) allowing qualification of service from date of employment to commencement of membership; inserted (5) providing status of active member, inactive member, and retired member upon employment in position for which membership is optional; inserted (6) providing that decision to decline optional membership is not reversible unless there is 30-day break in service; and inserted (7) providing that membership is mandatory in certain positions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments — Composite Section: Chapter 208 in (1)(f) inserted references to counties of the third, fourth, and fifth class; and made minor changes in style. Amendment effective April 7, 1997.

Chapter 370 in (1)(b), after "exceed", substituted "a total of 960 hours of employment covered by this chapter" for "the equivalent of 120 working days"; inserted (2) concerning an employee's decline of optional membership; and made minor changes in style. Amendment effective April 23, 1997.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2102 Optional membership.
ARM 2.43.2114 Required employer reports.
ARM 2.43.3401 Retirement options for elected officials other than legislators.

19-3-413. Optional membership — elected officials.

Compiler's Comments

2017 Amendment: Chapter 195 in (1)(a) in exception clause inserted reference to 19-20-302(1)(g) and (2); and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: Section 32, Ch. 248, L. 2015, provided: "[This act] is effective January 1, 2016."

Part 5
Service Credit

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2109 Receipt of service credit on or after termination of employment.
ARM 2.43.2308 Most recent service purchased first.
Title 2, chapter 43, subchapter 34, ARM PERS — elected officials.

19-3-501. Absence not included in service.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present section regarding absence from service for former section that read: "Except as provided in 19-3-502, 19-3-503, and 19-3-504, time during which a member is absent from compensated employment with an employer may not be allowed in computing service." Amendment effective July 1, 1993.

19-3-503. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) at end after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "10 years of service credit". Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning after "least" substituted "5 years of membership service" for "10 years of service credit" and near middle after "service credit" inserted "and membership service"; deleted former (1)(b) that read: "(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; in (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning application to purchase military service; inserted (3) concerning cost of purchasing service credit and membership service; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(1), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 22, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 near beginning of (1)(a) after "subsection (2)" substituted "and subject to 19-3-514, a member with at least 10 years of service credit" for "a member with 10 years or more of service credits", after "retirement" substituted "file a written application" for "make a written election", after "purchase service" substituted "credit for up to 5 years" for "credits for all or any portion", and at end after "1945" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2)"; in (1)(b) substituted language regarding purchase of military service for former language that read: "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system"; in (2) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (2)(a) at end after "benefit" substituted "based on that military service" for "the member may not qualify the member's military service under subsection (1)"; and inserted (2)(b) and (2)(c) providing that a member cannot purchase military service if eligible to receive other credit for that service. Amendment effective March 21, 2001.

Section 32, Ch. 7, L. 2001, purported to amend this section. However, the temporary version terminated July 1, 2001, prior to the effective date of the amendment, which was October 1, 2001.

1999 Amendments — Composite Section: Chapter 58 near end of (1) substituted "19-2-707" for "19-2-705"; deleted former (2)(b) that read: "(b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 494 at beginning of (1)(b) inserted exception clause; at end of (2) inserted "or (3)"; inserted (3) allowing qualification of Korean conflict and Vietnam conflict military service in PERS; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

1997 Amendment: Chapter 287 at beginning of (1)(a) inserted exception clause and at end inserted "or is ineligible under subsection (2)(a)"; in (1)(b), after "member", substituted "shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system" for "shall contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and as many succeeding years as are required to qualify this service, with regular interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not purchase more of this service credit than the member has service credits in excess of 10 years"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1)(a), near beginning, substituted "service credits" for "state service qualified under this chapter", before "all or any portion" substituted "purchase service credits for" for "qualify", after "August 15, 1945" deleted "for the purpose of calculating retirement benefits", and near end, before "credit", inserted "service"; in (1)(b), in first sentence, substituted "pension trust fund" for "retirement fund", substituted "regular contribution rate" for "normal contribution rate", and before "interest" inserted "regular" and in second sentence substituted "purchase" for "qualify", after "service" inserted "credit", and substituted "service credits" for "state service"; in (2), before "service retirement benefit", substituted "military" for "normal"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In three places inserted reference to the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2316 Reserve military service.

19-3-504. Absence due to illness or injury.

Compiler's Comments

2009 Amendment: Chapter 283 in (1) in second sentence after "member" inserted "files with the board a written notice of the member's intent to purchase the time of absence and" and after "complies with" substituted "subsection (2)" for "subsections (2) and (3)"; in (2)(a) near beginning of first sentence after "employment-related" inserted "illness or", near middle after "service" inserted "or upon termination of employment if the member cannot return to service due to the illness or injury", at end after "system" inserted "during the absence", and in second sentence near end after "service" inserted "or terminates employment"; deleted former (3) that read: "(3) At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2)"; in (4)(a) at beginning before "absence" inserted "the entire"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in (2)(a) near end and in (3) near beginning before "service" deleted "covered"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 deleted former (4) that read: "(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 370 in (1), in first sentence after "illness", deleted "determined within 1 year after the end of the absence as arising out of and in the course of the member's employment" and at end inserted "if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment" and at end of second sentence substituted "service" for "credits"; in (2)(a), near middle after "may", inserted "upon the member's return to service" and after "retirement system" deleted "upon the member's return to service"; in (2)(b), in first sentence after "contribute", substituted "employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest" for "an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing" and in second sentence, after "make", substituted "an interest payment" for "a contribution"; in (5), at end after "19-2-602", inserted "or for the period of time during which retirement benefits are received if the member retires during the absence"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), in first sentence, substituted "employment is considered membership service" for "employment shall be considered as spent in service" and at end, after "service", deleted "for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits" and at beginning of second sentence inserted "However, the member may not earn service credits for this period" and at end substituted "service credits and membership credits" for "the calculation and qualification of benefits"; in (2)(a), before "interest", inserted "regular" and substituted "covered service" for "covered employment"; in (2)(b) inserted third sentence regarding employer contribution for all employees; in (3) substituted "covered service" for "covered employment"; at end of (4) substituted "covered service" for "covered employment"; in (5), after "member", deleted "so absent", after "contribute" inserted "for an absence", and before "contributions" deleted "normal"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: At end of (4) substituted "before termination of covered employment" for "not to exceed 24 monthly payments".

1983 Amendment: In middle of (1), substituted "service retirement benefits under Title 19, chapter 3, part 9," for "retirement benefits"; inserted "under Title 19, chapter 3, part 12," after "survivorship allowances"; at end of (2)(a) inserted "plus interest accruing ... period of absence"; near beginning of (2)(b) substituted "contribute under subsection (2)(a)" for "continue his contributions"; in (2)(b) inserted last two sentences allowing employer to pay interest on its contribution and requiring employee to pay employer's interest if not paid by employer; at beginning of (3) substituted "At some time after returning to covered employment," for "within 6 months after he returns to service"; at end of (3) deleted former sentence, which read "The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board."; and made minor phraseology changes.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2323 Service credit for periods of absence due to illness or injury.

19-3-505. Purchase of previous employment with employer.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in first sentence at end inserted "and membership service"; in (2)(a) after "A purchase" deleted "of service credit"; in (2)(b) in first sentence near beginning substituted "all contributions that the member would have contributed" for "the amount that the member and the member's employer would have contributed" and deleted former second sentence that read: "However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c)"; in (2)(c) in first sentence near beginning inserted "or retroactive employer contributions and regular interest"; inserted (2)(d) providing that if an employer establishes a policy of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(a) after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in first sentence after "coverage may" substituted "file a written application with the board to purchase" for "request to qualify" and at end after "employment" substituted "for service credit" for "as membership service by filing written application with the board" and inserted second sentence requiring that the application contain salary information; inserted (2)(a) providing that a purchase of service is subject to board approval; near beginning of first sentence of (2)(b) substituted "approves the request" for "approves the application" and after "pay" deleted "to the board the sum of"; deleted former (3) that read: "(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (4) that read: "(4) Payment may be made in one sum at the time of filling notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board." Amendment effective July 1, 1999.

Chapter 562 in (1) after introductory clause substituted "a member" for "any person", after "employment" inserted "for which optional membership was declined or employment", after "employer" substituted "prior to the employer's contract coverage may request to qualify" for "that is not service may convert", after "employment" substituted "as" for "to", and after "written" substituted "application" for "notice"; and in (2) at beginning substituted "If the board approves the application, the member shall pay to the board" for "The person shall pay to the retirement system", substituted "member and the member's employer" for "person and the person's employer", and substituted "period of employment if the employment had been covered" for "period of service converted if the employer had been an employer covered". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), in two places, substituted "employment" for "service" and before "service" deleted "creditable"; in (2)(a), near middle of first sentence after "employer", inserted "covered by the retirement system", in first and second sentences, before "interest", inserted "regular", and at end of second sentence, after "interest", inserted reference to subsection (2)(b); in (2)(b), near beginning before "retroactive", inserted "payment of"; at end of (3), after "requests", deleted "as prescribed in 19-3-304"; in (4), in first sentence, inserted reference to additional contributions and after "basis" substituted "before retirement" for "before termination of covered employment"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (4), at end of first sentence, inserted "before termination of covered employment" and deleted second and third sentences that read: "Installment payments shall not exceed 24 monthly payments. When the monthly payment exceeds 5% of compensation in the initial month of payment, the board may allow smaller payments over a period to exceed 24 months."

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.

ARM 2.43.2308 Most recent service purchased first.

Case Notes

Public Defender Considered Employee Entitled to Purchase Service Credits: Lewis worked as a county public defender for about 2½ years and then began working for the state Department of Transportation. Lewis sought to purchase service credits pursuant to the applicable 1979 version of this section for the time spent as a public defender. The District Court affirmed the finding of the Public Employees' Retirement Board that Lewis's service was creditable service (definition changed to credited service or service credit in 1993 and deleted in 2003), as defined in 19-3-104 (renumbered 19-2-303), that did not qualify for conversion to membership service, so Lewis was denied the right to purchase service credit. On appeal, the Supreme Court reversed. The definition of membership service in 19-3-104 (renumbered 19-2-303) was service with respect to which contributions are paid. No contributions were paid, so Lewis's service was not membership service and therefore was also not creditable service. Lewis was an employee rather than an independent contractor, the county was a participating member of the public employees' retirement system, and Lewis's service was not creditable service. Thus, Lewis was entitled to purchase service credits in the retirement system. (Note that the statutes were substantially revised beginning in 1993.) In re Lewis, 2004 MT 160, 322 M 13, 92 P3d 1218 (2004).

19-3-510. Employment in United States government.

Compiler's Comments

2007 Amendment: Chapter 128 in (1) near middle substituted "the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq." for "Title IV, the Intergovernmental Personnel Act of 1970"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 in (1) near end after "service" inserted "credit"; and in (2)(b) near beginning after "purchase" inserted "service credit for". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) in introductory clause substituted "may purchase" for "may qualify"; in (2)(b) at beginning substituted "purchase" for "qualify"; in (3) near middle after "determination of" substituted "highest average compensation, provided that the highest average compensation does not" for "final average salary, provided that the final average salary cannot"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in four places, before "retirement system", deleted "public employees'"; in (1) substituted "federal employment as service" for "federal service as creditable service"; in (1)(a), before "service", inserted "membership"; in (1)(b) substituted "full-time service" for "full-time employment", before "state" substituted "former" for "prior", and after "completing" substituted "employment" for "service"; in (2)(a) substituted "pension trust fund" for "account"; in (2)(b) substituted "the period of federal employment under this section" for "this service under 19-3-505" and at end substituted "service under the retirement system" for "active status as a state or local government employee"; in (3) substituted first "final average salary" for "final compensation as defined in 19-3-104" and substituted second "final average salary" for "final compensation"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.

ARM 2.43.2308 Most recent service purchased first.

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 400, L. 2023. Amendment effective July 1, 2024.

2003 Amendment: Chapter 429 in (2) near middle, in (5) near beginning of first sentence and near end of second sentence, and in (6) near middle of first sentence after "service" inserted "credit"; in (3)(b) at end inserted exception clause; inserted (3)(c) concerning service under teachers' retirement system; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "retirement" substituted "file a written application with the board to purchase" for "make a written election with the board to qualify", near middle before "the member's service" deleted "all of", and at end inserted "for the service"; at beginning of (2) substituted "The cost of purchasing service" for "The amount that must be paid or transferred to the retirement system to qualify this service"; in (3)(b) at beginning substituted "Service credit" for "Military service credit" and after "system" substituted "is subject to the provisions and limitations of 19-3-514" for "must be included in the 5-year maximum military service credit provided for in 19-3-503"; in (4) after "credit" substituted "that a member may purchase" for "qualified"; in (5) near beginning of first sentence after "member" substituted "purchases" for "qualifies" and near middle of second sentence after "necessary to" substituted "purchase" for "qualify"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 in (2), at end of introductory clause after "subsections", substituted "(2)(a) and (2)(b) as follows" for "(2) and (3)" and deleted clause that read: "In addition to the amounts directly paid or transferred by the member under subsection (3)"; in (2)(a), after "transfer", deleted "to the public employees' retirement system"; at end of (4) and (5) substituted "subsection (2)" for "subsections (2) and (3)"; inserted (6) regarding erroneous classifications; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Retroactive Applicability: Section 42, Ch. 370, L. 1997, provided: "[Section 15] [amending 19-3-511] applies retroactively, within the meaning of 1-2-109, to the period beginning January 1, 1995."

1995 Amendment: Chapter 412 in (1), in first sentence at beginning, substituted "An active member" for "A member" and at end inserted "for which the member either has received or is eligible to receive a refund" and in second sentence, after "paid", inserted "or transferred"; in (2), at beginning, inserted "In addition to the amounts directly paid or transferred by the member under subsection (3)" and at end substituted "payable by the member" for "determined in accordance with subsection (3)"; in (3), in two places in first sentence, substituted reference to member for reference to employee, near beginning, after "pay", inserted "either directly or by transferring contributions on account with the teachers' retirement system", and near end, after "system", deleted "as defined in 19-20-302"; in (6), near beginning, substituted "an active member" for "a member"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in (1), near end of first sentence before "service", deleted "creditable"; in (3), after "membership", inserted "with the teachers' retirement system" and near end, before "retirement system", inserted "public employees'"; in (4), (5), and (6) substituted "service credit" for "creditable service"; in (6), in three places, substituted "survivorship benefit" for "death benefit" and in first sentence, before "beneficiary", inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (2), after "equal to", substituted "72% of the amount determined in accordance with subsection (3)" for "5% of the average final compensation, as defined in 19-4-101, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the teachers' retirement system. If the member had less than 3 full years of membership service, the average final compensation must be based on the compensation reported to the teachers' retirement board by the employer"; and deleted former (3)(b) and (3)(c) that read: "(b) If the sum of the rates provided in 19-3-701 and 19-3-801 exceeded the sum of the rates provided in 19-4-602 and 19-4-605 at the time the employee terminated active membership, as defined in 19-4-302, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:

(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided for in 19-3-701 and 19-3-801 and the sum of the rates provided in 19-4-602 and 19-4-605; plus

(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(c) If the member chooses not to make the contribution provided for in this section, he shall receive credit for the service transferred based on the ratio between the retirement systems' employee and employer contribution rates provided for in 19-3-701, 19-3-801, 19-4-602, and 19-4-605". Amendment effective February 27, 1991.

Retroactive Applicability: Section 3, Ch. 64, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to service credits transferred between the public employees' retirement system and the teachers' retirement system on and after October 1, 1989."

1989 Amendment: Deleted former (1) that read: "(1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) earned compensation for all full-time service and part-time service as defined in 19-4-101; and

(b) the amount of the first full year's teaching salary earned in Montana after any period of creditable service not included in subsection (1)(a) multiplied by the number of years or partial years granted by the teachers' retirement system"; at end of (1) substituted "to qualify this service under this section is the sum of subsections (2) and (3)" for "to qualify this service under subsection (2) is the sum of the following"; in (2) substituted language relating to transfer of amounts from teachers' retirement system to public employees' retirement system for "(a) from the teachers' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-3-701 and 19-3-801, based on the assumed salary, less the amount paid by the employee in subsection (3)(b)"; in (3)(a), at beginning, substituted "the employee shall pay an amount equal to his accumulated contributions" for "from the employee, the amount of his accumulated contributions" and at end, before "retirement system", inserted "teachers'"; inserted (3)(b) relating to calculation of additional required payments; inserted (3)(c) relating to credit for transferred service when member does not make contributions; in (4) substituted "subsection (1)" for "subsection (2)"; in (5) substituted "this section" for "subsections (2) and (4)" and substituted "subsections (2) and (3)" for "subsection (3)"; in (6), before "contributions", deleted "employee and employer" and substituted "subsections (2) and (3)" for "subsection (3)(a)"; and made minor changes in punctuation and form.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2317 Purchase of refunded service or service from another MPERA-administered retirement system.

19-3-512. Purchase of service credit from other public retirement systems.

Compiler's Comments

2013 Amendment: Chapter 178 deleted former (3) that read: "(3) Service credit purchased under this section may not be used to qualify a member to purchase military service under 19-3-503"; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 throughout section after references to service inserted "credit"; and in (1) at end inserted "service credit for". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning of introductory clause substituted "Subject to 19-3-514, a member with at least 5 years" for "A member with 5 or more years" and at end substituted "purchase" for "qualify"; in (2) in two places in introductory clause substituted "purchase" for "qualify"; in (2)(a) after "retirement" substituted "file a written application with the board" for "make a written election with the board to qualify the service"; in (2)(b) at beginning substituted "pay" for "contribute to the pension trust fund" and after "cost of" deleted "granting"; in (3) and (4) at beginning substituted "Service purchased" for "Service qualified"; in (4) at beginning of second sentence substituted "If, upon the member's retirement, the member's purchased service cannot" for "If a member's qualified service may not", near middle after "member" substituted "must" for "may choose to", and after "refund of the" substituted "amount paid to purchase the service, plus regular interest on that amount" for "accumulated contributions made to qualify the service"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (3) that read: "(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 deleted former (4)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 deleted (2)(b)(i) that required a member to contribute the actuarial cost based on "the member's compensation in the sixth year of service covered under the public employees' retirement system"; at end of (2)(b), after "valuation", inserted "of the system"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "membership service" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (2)(b)(ii), at beginning, deleted "the normal contribution rate according to"; in (3) inserted reference to making additional contributions; in (5), in two places, substituted "retirement benefit" for "retirement allowance", in first sentence substituted "service credit" for "creditable service", and in second sentence, before "contributions", inserted "accumulated"; deleted (5)(b) that read: "(b) apply the contributions made to qualify the service under the provisions of 19-3-702"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At end of introductory clause of (1), after "qualify", deleted "up to 5 years of"; at end of (1)(a), after "contribution", deleted "before becoming a member of the public employees' retirement system"; inserted (1)(b) that read: "(b) public service employment that occurred before the public employer adopted a public retirement system"; inserted first sentence of (2) that read: "A member may not qualify more than 5 years of service under this section"; and made minor changes in form. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.

Attorney General's Opinions

Qualification of Prior PERS Service and Non-PERS Service: Reinstatement of membership in PERS with past service credit under 19-3-704 (renumbered 19-2-603) does not preclude a member from earning credit under this section for non-PERS service that occurred during the period between initial membership and reinstatement of membership in PERS. 42 A.G. Op. 74 (1988).

19-3-513. Application to purchase additional service.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 99 in (3) inserted "or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904(2)" (rendered void by Ch. 369); in (4) at beginning deleted "Once a member has at least 25 years of membership service" and at end inserted "if applicable"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 369 in (3) inserted "or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904"; in (4) at beginning deleted "Once a member has at least 25 years of membership service" and at end inserted "if applicable"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 inserted (4) providing for adjustment of early retirement reduction. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end deleted "that the member has qualified under the retirement system, up to a maximum of 5 years of additional service"; at beginning of (2) substituted "To purchase this service" for "For each year of service credit purchased" and after "member shall" substituted "pay" for "contribute to the pension trust fund"; deleted former (3)(a) and (3)(b) that read: "(a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board." Amendment effective July 1, 1999.

Chapter 494 in (3)(a) after "years of service under" deleted "19-3-503"; and made minor changes in style. Amendment effective July 1, 1999, and terminates July 1, 2001.

1997 Amendment: Chapter 287 in (1), near beginning of first sentence after "person", deleted "who became a member of the retirement system before July 1, 1989"; in first sentence in (2), after "member", substituted "shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system" for "shall contribute to the pension trust fund an amount equal to the member's compensation for the 12-month period immediately preceding the date the member elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-315 and 19-3-316"; and after exception clause in (3)(a) deleted "after January 1, 1990". Amendment effective July 1, 1997.

Coordination — Amendments Void: Section 41(1), Ch. 370, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-3-513, then [section 16 of this act], amending 19-3-513, is void." House Bill No. 170 was passed and approved as Ch. 287, L. 1997, and amended 19-3-513. Therefore, the amendments to 19-3-513 in Ch. 370, L. 1997, are void.

1993 Amendment: Chapter 265 in three places, after "service", inserted "credit"; in (1), at end of first sentence, substituted "retirement benefit" for "retirement allowance"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", before "compensation" deleted "normal", and at end deleted "in effect on and after July 1, 1993" and in second sentence inserted reference to making additional contributions; in (4), after "section", inserted "is not membership service and"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end of first sentence of (2) substituted "contained in 19-3-701 [renumbered 19-3-315] and 19-3-801 [renumbered 19-3-316] in effect on and after July 1, 1993" for "on the date he elects to purchase the service".

Effect of Coordination Instruction: Section 7, Ch. 73, L. 1989, provided: "If House Bill No. 234 [Ch. 558] is passed and approved, the employee and employer contribution rates provided for in [section 1(2)] [19-3-513(2)] are the rates in effect on and after July 1, 1993, if a member purchases service under [section 1] [19-3-513] before July 1, 1993." The effect of this instruction is to void the language in 19-3-513(2) that provides that the combined employer and employee contribution rates are those in effect on the date the employee elects to purchase the service and to implement the rates currently found in 19-3-701(1)(e) (renumbered 19-3-315(1)(e)) and 19-3-801(1) (renumbered 19-3-316(1)). The Code Commissioner will submit to the 1991 Legislature legislation amending 19-3-513 to reflect the coordination instruction.

Effective Date: Section 8, Ch. 73, L. 1989, provided that this section is effective March 13, 1989.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2318 "1-for-5" additional service.

19-3-514. Service purchase limit — exception.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 292 in (1) at end after "19-3-513" inserted "and 19-3-515"; in (2) in two places before "under" inserted "credit"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 429 in (2) in three places after "service" inserted "credit". Amendment effective July 1, 2003.

Version Not Codified: Section 28, Ch. 99, L. 2001, was not codified because of its short duration. The section was effective March 21, 2001, and terminated June 30, 2001. The only difference between sec. 28 and sec. 29 was that sec. 29(1) contains a reference to 19-3-503.

Effective Date: Section 132(2), Ch. 99, L. 2001, provided that this section is effective June 30, 2001.

19-3-515. Purchase of federal volunteer service.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2314 Eligible federal volunteer service.

19-3-521. Service credit for legislative members.

Compiler's Comments

2003 Amendment: Chapter 429 in middle substituted "must receive membership service and service credit" for "must be credited with membership service". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 at end substituted "regular contributions" for "normal contributions". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-522. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 9
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

19-3-901. Eligibility for service retirement.

Compiler's Comments

2013 Amendment: Chapter 240 in (3) inserted introduction; in (3)(a) substituted "subsections (1)(a), (1)(b), and (2), the member is treated as having" for "subsections (1) and (2), the member has"; inserted (3)(b) concerning nonforfeitable right to service retirement benefit; and made minor changes in style. Amendment effective April 22, 2013.

2011 Amendments — Composite Section: Chapter 99 in (1)(b) near beginning substituted "at least 65 years of age and is employed" for "age 65 while employed"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 369 in (1) inserted "hired prior to July 1, 2011"; in (1)(b) following "65" inserted "before or"; inserted (2) concerning members hired on or after July 1, 2011; in (3) inserted reference to (2); and made minor changes in style. Amendment effective July 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2001 Amendment: Chapter 99 inserted (2) providing that in each circumstance described in subsection (1), the member is considered to have attained normal retirement age; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service"; in two places substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In second sentence, after "65", inserted "while employed in a position covered by a public employee retirement system" and in third sentence substituted "creditable" for "state". Amendment effective July 1, 1991.

19-3-902. Eligibility for early retirement.

Compiler's Comments

2011 Amendment: Chapter 369 in (1) inserted "hired prior to July 1, 2011"; inserted (2) concerning members hired on or after July 1, 2011; and made minor changes in style. Amendment effective July 1, 2011.

1993 Amendment: Chapter 265 in first sentence substituted "has 5 years of membership service" for "completed 5 years of qualified service" and in second sentence substituted "membership service" for "state service". Amendment effective July 1, 1993.

1981 Amendment: Changed age for early retirement from 55 to 50 years; and added last sentence allowing early retirement after 25 years of state service.

19-3-904. Amount of service retirement benefit.

Compiler's Comments

2015 Amendment: Chapter 248 in (3) substituted current text for former (3) that read: "(3) Instead of the benefit provided under subsection (1) or (2), a member may receive a monthly benefit that is the actuarial equivalent of double the member's accumulated contributions if that benefit is greater than the benefit the member would have received under subsection (1) or (2)". Amendment effective January 1, 2016.

2011 Amendment: Chapter 369 substituted current text for: "(1) Except as provided in subsection (2), the monthly amount of service retirement benefit payable to a member following retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) For a member with at least 25 years of membership service, the monthly amount of service retirement benefit must be equal to one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit instead of the amount calculated under subsection (1)(a)." Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1) near middle after "amount of" inserted "service" and after "following" deleted "service"; in (2) near beginning after "amount of" inserted "service" and at end inserted "instead of the amount calculated under subsection (1)(a)"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (1)(a) near middle substituted "highest average compensation" for "final average salary"; in (1)(b) at end of introductory clause inserted "sum of"; inserted (1)(b)(ii) regarding the actuarial equivalent of additional contributions and regular interest; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at beginning of (1) inserted exception clause; inserted (2) concerning retirement benefit for 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001. In (1) the code commissioner substituted references to subsections (1)(a) and (1)(b) for references to subsections (1) and (2) to reflect the Ch. 217 amendment.

1999 Amendment: Chapter 562 in (2) substituted "monthly benefit" for "monthly annuity" and substituted "member's regular contributions plus regular interest" for "member's accumulated regular contributions"; deleted former (2) that read: "(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1501, the member's beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day the member's retirement allowance commenced over the total of the retirement allowance payments made to the retired member"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted "monthly amount of retirement benefit" for "annual amount of retirement allowance" and at end substituted "greater of subsection (1)(a) or (1)(b)" for "sum of (a), (b), and (c)"; deleted former (1)(a) that read: "(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences"; in (1)(a) substituted "final average salary" for "final compensation" and substituted "total service credit" for "creditable service and additional service purchased under 19-3-513"; substituted (1)(b) regarding monthly annuity for "any retirement allowance payable under 19-3-905"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 73 at end of (1)(b) provided that additional service purchased by member will be included in calculating retirement allowance. Amendment effective March 13, 1989.

Chapter 558 at beginning of (1)(b) substituted "one fifty-sixth" for "one-sixtieth". Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989".

Administrative Rules

ARM 2.43.2105 Basic period of service.

ARM 2.43.2318 "1-for-5" additional service.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

19-3-905. Adjustment of benefit for certain members.

Compiler's Comments

1993 Amendment: Chapter 265 substituted present text regarding adjustment of benefit for certain members for former section that read: "The annual amount of retirement allowance payable to a member following his service retirement must be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation." Amendment effective July 1, 1993.

1989 Amendment: In introductory clause, before "member", deleted "person who was a" and after "member" substituted "following his service retirement must" for "on July 1, 1973, shall". Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

Ad Hoc Cost-of-Living Increase: Section 1, Ch. 663, L. 1983, provided: "Effective July 1, 1983, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system or his beneficiary must be increased as follows:

(1) $1 for each year of creditable service, up to a maximum of $30, for a member retired before July 1, 1981; or

(2) 50 cents for each year of creditable service, up to a maximum of $15, for a member retired on or after July 1, 1981, but before January 1, 1983."

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-906. Early retirement benefit.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 99 in (3) at end after "19-3-513" deleted "once the member has at least 25 years of membership service"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 369 in (1)(a) inserted "Until October 1, 2011, for a member hired prior to July 1, 2011" and substituted "the early retirement benefit payable" for "retirement benefit payable to a member"; in (1)(a) and (1)(b) substituted "19-3-904(1)" for "19-3-904"; deleted former (3) that read: "The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513 once the member has at least 25 years of membership service"; inserted (2), (3), and (4) concerning actuarial reductions; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 in (3) after "any" substituted "one-for-five service" for "additional service credit" and at end after "19-3-513" inserted "once the member has at least 25 years of membership service". Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in (1) near end substituted "membership service" for "service credit"; and in (3) after "service" inserted "credit". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in four places substituted references to retirement benefit for references to retirement allowance; in (1), near beginning before "amount", deleted "annual" and near end substituted "service credit" for "creditable service"; in (2)(a) and (2)(b) substituted "membership service" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (3) requiring adjustment of actuarial reduction upon purchase of additional service. Amendment effective March 13, 1989.

1987 Amendment: Near end of (2)(b), after "had", inserted "he".

1981 Amendment: Inserted "or upon completion of 30 years of creditable service" after "age 60" in (1); added (2) providing formula for reduction of early retirement allowance.

19-3-908. Retirement incentive program — window of eligibility.

Compiler's Comments

2013 Amendment: Chapter 178 in (7) in second sentence substituted "minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid" for "minus any retirement benefits already paid". Amendment effective July 1, 2013.

2005 Amendment: Chapter 329 in (1) near middle substituted "who is involuntarily terminated from service" for "whose service is involuntarily terminated"; and in (3) in three places inserted "from service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(a), (2)(b), (2)(c), and second sentence in (7) after "service" inserted "credit"; and in (3) near end after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 66 in (7) in first sentence after "jurisdiction for" inserted "960 or more hours in a calendar year in a position covered by the public employees' retirement system or for" and after "year" inserted "in a position covered under any other retirement system". Amendment effective March 16, 2001.

1993 Special Session Amendment: Chapter 27 inserted (2)(b) concerning purchase of service for qualifying county assessors and deputy assessors; at beginning of (4) inserted "Subject to subsection (2)(b)" and at end substituted "subsection (6)" for "subsection (5)"; inserted (5) concerning county assessors and deputy assessors in county not electing participation; adjusted subsection references; and made minor changes in style. Amendment effective December 27, 1993.

Retroactive Applicability: Section 171(1), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply retroactively to terminations on or after June 25, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 567, L. 1993, provided: "A statement of intent is required for this bill because [section 1] [19-3-908] gives the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide an active member of the public employees' retirement system who is eligible for normal or early retirement with an incentive to terminate service within the timeframe or window prescribed in this bill. The incentive provided in this bill is that the employer, at no cost to an eligible member, will buy for the eligible member up to 3 years of additional service for the purpose of calculating the member's retirement benefit.

The employer of an eligible member will pay the total cost for purchasing the additional service, up to 3 years, that the member is eligible to purchase under existing statute. It is the intent of the legislature that the state and the university system be mandated to provide this retirement incentive but that providing the incentive be optional for contracting employers under the public employees' retirement system.

It is also the intent of the legislature that the employer may pay for the additional service on an installment basis over as many as 10 years. Interest would be charged at a rate set according to the retirement board's policy.

It is not the intent of the legislature to provide this retirement incentive to anyone who is an inactive member of the retirement system or who is ineligible for early or normal retirement within the prescribed window or to change the benefit formula used to determine benefits under the retirement system."

Temporary — Montana University System Voluntary Termination for Teachers' Retirement System Members: Section 2, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all members of the teachers' retirement system employed on a full-time basis on or before February 1, 1993, who are eligible for normal service retirement under 19-4-801 [19-20-801] and 19-4-802 [19-20-802]. The termination incentive, combined with employer contributions due the teachers' retirement system under 19-4-101(5)(d) [19-20-101(5)(d)], must be an amount equal to 1 year of the combined member and employer contributions established in 19-4-602 [19-20-602] and 19-4-605 [19-20-605] for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years.

(2) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Temporary — Montana University System Voluntary Termination for Optional Teachers' Retirement System Participants: Section 3, Ch. 567, L. 1993, provided: "(1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all optional retirement participants who are employed on a full-time basis on or before February 1, 1993, and who are at least 50 years of age on or before the date of termination. The incentive must be an amount equal to 1 year of the combined member and board of regents contributions established in 19-21-203 for each 5 years of service with the Montana university system, not to exceed the amount of combined contributions for 3 years.

(2) A participant who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804 [19-20-804], shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993." Effective April 28, 1993, terminates June 30, 1995, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Reports on Effect of Incentives: Section 4, Ch. 567, L. 1993, provided: "The department of administration, in cooperation with the university system and the public employees' retirement board, shall report to the 54th legislature on the effect of the retirement incentive offered to members of the public employees' retirement system employed by the state, including the university system. The board of regents, in cooperation with the teachers' retirement board, shall report to the 54th legislature on the effect of the voluntary termination incentives offered to members of the teachers' retirement system employed by the Montana university system. These reports must include, but are not limited to:

(1) a summary of the positions from which employees terminated employment under the provisions of [section 1] [19-3-908];

(2) whether positions vacated under [section 1] [19-3-908] were refilled and when; and

(3) the cost or savings resulting from the implementation of [section 1] [19-3-908]." Effective April 28, 1993, and applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Retroactive Applicability: Section 5, Ch. 567, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993."

Effective Date: Section 7, Ch. 567, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 28, 1993.

Administrative Rules

ARM 2.43.2319 Purchase of "1-for-5" service by employers for reduction in force employees.

ARM 2.43.2609 Return to employment within same jurisdiction.

19-3-909. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 10
Disability Retirement Benefits

Part Case Notes

Incapacity Not Result of Employment: District Court reversed decision of Public Employees' Retirement Board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance. This was improper since District Court substituted its judgment for that of Board and since "disease", as used in section 68-901, R.C.M. 1947 (now repealed), did not include "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers". State ex rel. Bailey v. Grande, 154 M 437, 465 P2d 334 (1970).

19-3-1002. Eligibility for disability retirement.

Compiler's Comments

2011 Amendment: Chapter 369 in (2) in first sentence after "member who" inserted "was hired prior to July 1, 2011, and" and after "older" inserted "or was hired on or after July 1, 2011, and is 65 years of age or older"; in (3)(b) after "1991" inserted "and before July 1, 2011"; inserted (4) relating to members hired on or after July 1, 2011; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 329 in (1) at end substituted "19-3-1008" for "19-3-1008(1)". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) near middle after "service" inserted "retirement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (2) in second sentence after "member's" inserted "written"; in (3)(a) in third sentence after "completed" substituted "written election" for "election form"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 217 at end of (3)(b) inserted reference to 19-3-1008(3). Amendment effective July 1, 2001.

1993 Amendment: Chapter 265 in (1), at end of exception clause, deleted "and 19-3-1004", after "member" inserted reference to February 24, 1991, near middle substituted "has at least 5 years of membership service" for "has completed 5 years of creditable service", and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; in (2), in first sentence before "member", inserted "active", substituted "membership service" for "creditable service", and near end, after "service retirement", inserted "in order" and in third sentence, after "disabled", deleted "under the provisions of 19-3-1003"; in (3)(a), near beginning of first sentence after "member", substituted "in service" for "employed" and in fourth sentence substituted "membership service" for "creditable service" and at end, after "while", substituted "an active member" for "in active service, as defined in 19-3-1001"; in (3)(b) substituted "membership service" for "creditable service" and after "while" substituted "an active member" for "in active service, as defined in 19-3-1001"; and made minor changes in style. Amendment effective July 1, 1993.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

1991 Amendment: Near beginning of (1) inserted reference to subsection (3) and at end inserted "as provided in 19-3-1008(1)"; in (2), near end of fourth sentence before "duty-related", substituted "any" for "the"; and inserted (3) regarding a one-time election of coverage and setting out the terms of the election. Amendment effective February 24, 1991.

1989 Amendment: In (2), in fourth and fifth sentences, substituted "state compensation mutual insurance fund" for "workers' compensation division" and "state fund" for "division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

1983 Amendment: At beginning of (1), inserted "Except as provided in subsection (2) and 19-3-1004"; and inserted (2) allowing certain members to waive service retirement for disability retirement.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

Case Notes

Proof That Multiple Sclerosis Caused Disability: A doctor for the claimant for state retirement disability benefits testified that the claimant had multiple sclerosis (MS) prior to 1988 and that it became disabling (in regard to his job) in that year and remained disabling after that year. He was not conclusively diagnosed with and told that he had MS until 1991. The Public Employees' Retirement Board, which denied benefits, presented no medical evidence and did not deny that a job disability due to MS existed since 1988, the year when the claimant resigned. Instead, the Board relied on the claimant's 1988 indications that he was resigning to preserve a higher payout of unused benefits (his position was about to be reclassified downward) and that he felt he could do the job. His doctor's uncontradicted testimony was entitled to special weight and should not have been disregarded absent specific legitimate evidence and reasons to the contrary. The claimant's 1988 statements showed only that he did not believe that he was disabled and did not show that he in fact was not. They could have been made during a period of remission when symptoms were minor and he thought himself in good health. The lower court properly ruled that the Board's treatment of the claimant's doctor's testimony was erroneous and that the denial of benefits was also erroneous. Weber v. Pub. Employees' Retirement Bd., 270 M 239, 890 P2d 1296, 52 St. Rep. 162 (1995).

19-3-1007. Benefit for duty-related disability.

Compiler's Comments

2001 Amendment: Chapter 99 at end of (1) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "retirement benefit" for "annual amount of retirement allowance" and near end substituted "final average salary" for "final compensation" and deleted last two sentences that read: "However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded workers' compensation, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period"; in (2) substituted "disability retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1), near middle of second sentence after "awarded", substituted "workers' compensation" for "compensation by the workers' compensation division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Case Notes

No Offset of Workers' Compensation Payments: Plaintiff injured his back while operating a snowplow. He was an employee of the county, thus coming under the provisions of the Public Employees' Retirement Act (sections 68-101 through 68-1320, R.C.M. 1947, now repealed) and the Workers' Compensation Act, Title 39, ch. 71. The Public Employees' Retirement Board was without authority to make any deductions in the retirement payments to the plaintiff for total and permanent disability, compensable under workers' compensation, resulting from the accident. State ex rel. Ebel v. Schye, 130 M 537, 305 P2d 350 (1956).

19-3-1008. Benefit for disability.

Compiler's Comments

2011 Amendment: Chapter 369 inserted (4) relating to monthly retirement benefit amount under 19-3-1002(4); and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1)(a), (2), and (3) after "service" inserted "credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in three places substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 217 at beginning of (2) inserted exception clause; inserted (3) concerning disability retirement for member with 25 years of membership service; and made minor changes in style. Amendment effective July 1, 2001.

1993 Amendment: Chapter 265 throughout section substituted "final average salary" for "final compensation"; in two places substituted "service credit" for "creditable service"; in four places substituted "retirement benefit" for "retirement allowance"; in (1) substituted present text regarding monthly retirement benefit for former text that read: "(1) The annual amount of retirement allowance payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is the sum of (1)(a), (1)(b), and (1)(c) of this section as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (1)(c)(i) or (1)(c)(ii) as follows:

(i) a pension which, together with the annuity provided under subsection (1)(b), shall make the retirement allowance equal to"; in (1)(a), before "additional service", substituted "including any" for "and"; in (2), near beginning before "amount", substituted "monthly" for "annual" and near end, before "additional service", substituted "including any" for "and"; deleted former (3) that read: "(3) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member"; in (3), in three places, substituted references to disability retirement benefit for references to disability retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (1) substituted "under the provisions of 19-3-1002(1)" for "for other than duty-related reasons"; inserted (2) setting the amount of retirement allowance payable to a member eligible under 19-3-1002(3); inserted (4) regarding continuance of retirement allowance for members retired prior to February 24, 1991; and made minor changes in style. Amendment effective February 24, 1991.

1989 Amendments: Chapter 73 at end of (1)(c)(i) provided that additional service purchased by member will be included in calculating disability retirement allowance. Amendment effective March 13, 1989.

Chapter 558 in (1)(c)(i) substituted "one fifty-sixth" for "one-sixtieth". Amendment effective April 15, 1989.

Applicability: Section 7, Ch. 558, L. 1989, provided: "[This act] applies to members retiring on or after April 15, 1989."

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in (1) in second sentence before "physician" inserted "board-approved", after "surgeon" deleted "appointed by the board", near end after "by the" deleted "retired member and the", and after "board" inserted "the disabled member, and the physician or surgeon and at the board's expense"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (3)(b) substituted "forfeits" for "terminates"; and in (4) near middle substituted "member" for "member's service" and "terminated service" for "been discontinued". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) near end of fourth sentence after "member's" inserted "disability"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (2) in third sentence after "member may" substituted "file a written application with the board requesting that the board reconsider" for "make a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration" substituted "must be filed" for "must be made". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) near end of third sentence substituted "may make a written application to the board to request the board to reconsider" for "may request the board to reconsider" and in fourth sentence substituted "The written application" for "The request" and after "made" deleted "in writing". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding termination of the right to reinstatement; inserted (3)(c) providing that the section does not affect reinstatement standards; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "the essential elements of either the position" for "either the duties of the position" and after "retired or the" substituted "position" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disabled member or member for references to recipient of a disability retirement allowance or recipient and substituted references to retirement benefit, disability retirement benefit, or benefit for references to retirement allowance, disability retirement allowance, or allowance; in (1), in second sentence, substituted "at a place mutually agreed upon by the retired member and the board" for "at the place of residence of the recipient or another place mutually agreed upon"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning of (1) substituted "discretion" for "pleasure"; inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person", after "whose" inserted "disability", and after "canceled" substituted "because the board has determined that he is no longer incapacitated must be reinstated" for "shall be reinstated"; near beginning of (4) substituted "recipient" for "person" and after "whose" inserted "disability"; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

Case Notes

Reinstatement of Prior Member: Once the PERS board agreed to reinstate a disabled claimant as a member of PERS it was required by statute to start his retirement disability from the date of the injury. State ex rel. Stowe v. Bd. of Administration, 172 M 337, 564 P2d 167 (1977).

19-3-1016. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 11
Reemployment of Retired Members

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

19-3-1103. Disability benefit reduced by earnings.

Compiler's Comments

2013 Amendment: Chapter 178 in (1)(a) substituted "is self-employed or employed in a position not covered by the retirement system" for "engages in a gainful occupation during any month other than in a position covered by the retirement system" and after "system" inserted second clause concerning submission of documentation; in (1)(b) substituted "each month of employment" for "that month"; inserted (1)(d) concerning failure to submit documentation; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendment: Chapter 99 in (1)(b) at beginning substituted "The board shall annually adjust" for "The board, upon the written application of a recipient of a disability retirement benefit, may adjust"; deleted former (2) that read: "(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at beginning of (1)(b) substituted "The board, upon the written application" for "For the purpose of calculating a reduction under subsection (1)(a), the board, at the request". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, disability retirement benefit, or monthly benefit for references to retirement allowance, disability retirement allowance, or monthly allowance; in (1)(a), at beginning, substituted "If the recipient of a disability retirement benefit engages" for "Should the recipient of a retirement allowance because of disability engage" and after "other than" substituted "in a position covered by the retirement system" for "as an employee as defined in 19-3-104"; in (1)(b), after "compensation", inserted "as it was"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: Inserted (1)(b) allowing adjustment of monthly compensation by inflationary factor; and inserted (2) allowing change in retirement status.

1981 Amendment: Added (2) exempting benefit adjustments granted by Legislature.

19-3-1104. Cancellation of disability retirement benefit upon reemployment.

Compiler's Comments

1997 Amendments: Chapter 42 after "receiving a" inserted "disability". Amendment effective March 12, 1997.

Chapter 370 after "receiving a" inserted "disability", after "person's" inserted "disability", and after "benefit" substituted "must be" for "is"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in two places substituted "retirement benefit" for "retirement allowance" and after "reinstated" inserted "to service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2608 Return to covered employment by retiree — report.

19-3-1105. Refunds and benefits for reemployed retired members.

Compiler's Comments

2017 Amendment: Chapter 195 in (1)(a)(i) and (2)(a)(i) near beginning inserted "upon termination of service and pursuant to 19-2-602"; in (1)(b) at end inserted "but only with respect to the service credit earned after reemployment"; in (2)(b)(ii) substituted "19-3-904 or 19-3-906" for "19-3-902 or 19-3-904"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (1) substituted current text concerning an initial retirement date before January 1, 2016, for former text that read: "(1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment"; inserted (2) concerning an initial retirement date on or after January 1, 2016; inserted (3) concerning members who return to active service; inserted (4) concerning postretirement benefit adjustments; and made minor changes in style. Amendment effective January 1, 2016.

2007 Amendment: Chapter 128 in (2) in first sentence near middle after "cancellation" inserted "of a disability benefit" and at end inserted "or 19-3-906, as applicable". Amendment effective October 1, 2007.

2001 Amendment: Chapter 99 inserted (1) extending initial retirement benefits enacted after initial retirement of member with at least 2 years of service credit accrued after reemployment; deleted former (2) that read: "(2) Except as otherwise expressly provided by law, the member must receive the benefit of provisions enacted subsequent to initial retirement only if the member accrues at least 2 years of service credit subsequent to reinstatement and then only with respect to the service credit"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in four places substituted references to service credit for references to creditable service; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions.

Compiler's Comments

2017 Amendment: Chapter 195 in (4) in exception clause inserted reference to 19-3-412 and at end substituted "employment covered by the retirement system" for "covered employment"; inserted (7)(b) limiting which compensation is covered by retirement system; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (4) inserted exception clause and substituted "active service" for "active membership"; in (5) after "subsections (1) and (2)" substituted "but are subject to" for "or"; in (5)(b) at end substituted "19-3-413" for "19-3-412"; in (6) at beginning deleted "Except as provided in subsection (5)"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 inserted (7)(b) concerning independent contractor services; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendments — Composite Section: Chapter 99 in (1) in first sentence inserted "has been terminated from employment for at least 90 days and"; in (2) substituted "retired member who is 65 years of age or older but less than 70 ½ years of age, who has been terminated from employment for at least 90 days, and" for "retiree 65 years of age or older"; in (5)(b) near middle inserted "as a retired member"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 369 in (1) in first sentence following "who" inserted "was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who"; in (2) in first sentence following "older" inserted "and under 70 ½ years of age, who has been terminated from employment for at least 90 days, and"; inserted (3)(b) relating to joint and several liability; inserted (6) relating to reportable earnings; and made minor changes in style. Amendment effective July 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2009 Amendment: Chapter 283 in (3) at beginning of first sentence before "retiree" inserted "The employer of", after "system" deleted "and the returning employee's employer", at end after "during any" substituted "pay period" for "month", and inserted second sentence allowing certification of hours and compensation to be submitted electronically; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 inserted (6) defining employment covered by the retirement system. Amendment effective October 1, 2007.

2003 Amendments — Composite Section: Chapter 402 inserted (5)(b) providing that elected official returning to covered employment who declines optional membership not subject to hour or earnings limitations; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 429 in (1) in first sentence after "service retirement benefit" inserted "or early retirement benefit"; and in (2) near end of second sentence before "service" deleted "covered". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 66 in (1) in three places substituted "960" for "640"; and in (2) near beginning after "subject to the" deleted "640-hour". Amendment effective March 16, 2001.

Chapter 99 in (2) near middle of first sentence after "annualized" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (3) after "system" substituted "and the returning employee's employer shall certify" for "shall report". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 460 in four places substituted "640" for "600" and in two places, before "reduced", inserted "temporarily"; in (1), before "service", inserted "active"; in (2), in first sentence after "earn", inserted "in any calendar year", after "amount" substituted "that, when added to" for "equal to 50% of", after "benefits" inserted "will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year", after "provides the" substituted "higher limit on earned" for "greater", and after "compensation to the retiree" deleted "in any calendar year" and in second sentence, after "$1", substituted "of compensation" for "in other income"; inserted (5) regarding retired member 70½ years of age or older; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), at beginning of first sentence, substituted "A retired member under 65 years of age receiving a service retirement benefit" for "A person under 65 years of age receiving a service retirement allowance, not as a beneficiary" and at end, after "calendar year", inserted "without returning to service and without any effect to the retiree's retirement benefit" and at beginning of second sentence substituted "retirement benefit" for "retirement allowance"; near end of (2), after "earned in", inserted "covered service beyond the applicable limitation during"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near beginning after "person", inserted "under 65 years of age", in middle of first sentence, after "beneficiary", substituted "may return to employment covered by the retirement system" for "who is not eligible for membership may return to covered employment", at end of first sentence substituted "600 hours" for "60 working days", and in second sentence, after "allowance", substituted clause relating to dollar reduction for work in excess of 600 hours in a calendar year for "of a retiree so employed will be reduced by $1 for each $3 earned in excess of $5,000 for each calendar year"; inserted (2) relating to retirement allowance reductions for retirees 65 years of age or older; inserted (3) relating to required report of hours worked and compensation; inserted (4) relating to election to return to active membership; and made minor changes in style. Amendment effective March 29, 1991.

1985 Amendment: Near end of first sentence substituted "calendar year" for "fiscal year"; and in second sentence, increased dollar amounts for "$2" to "$3" and from "$3,500" to "$5,000".

1981 Amendment: Changed "reduced by any earnings in excess of the minimum wage per month on $1 for $1 basis" to "reduced by $1 for each $2 earned in excess of $3,500 for each calendar year".

Administrative Rules

ARM 2.43.2114 Required employer reports.
ARM 2.43.2608 Return to covered employment by retiree — report.
ARM 2.43.3401 Retirement options for elected officials other than legislators.
ARM 2.43.3524 Retirees not entitled to election.

19-3-1112. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-1113. Contributions required for retirees who return to work.

Compiler's Comments

Effective Date: Section 5, Ch. 239, L. 2013, provided that this section is effective July 1, 2013.

Part 12
Survivorship Benefits and Death Payments

Part Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-3-1201. Eligibility for death payments.

Compiler's Comments

2011 Amendment: Chapter 99 deleted former (2) that read: "(2) within 6 months after the discontinuance of service but before retirement"; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in introductory clause substituted "death payment" for "death benefit"; inserted (5) providing for death while an inactive member; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in introductory clause, near end before "beneficiary", inserted "designated" and at end substituted "member who dies" for "member or former member who dies in any of the following statuses"; in (3) substituted "disability retirement benefit" for "retirement allowance because of disability" and substituted "the benefit" for "such allowance"; in (4), after first "disabled", deleted "as defined in 19-3-1001" and at end substituted "disability retirement benefit" for "retirement allowance because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At beginning inserted "Upon receipt of a written application filed with the board by a designated beneficiary"; and in (2) and (3) increased time from 4 months to 6 months. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

19-3-1202. Amount of death payment.

Compiler's Comments

2011 Amendment: Chapter 99 inserted (2)(a) regarding beneficiary of member who was inactive for less than 6 months; in (2)(b) substituted "a member who was inactive for 6 or more months at the time of death" for "an inactive member"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 in (1) near beginning after "amount of" inserted "death" and near middle substituted "the designated beneficiary of a deceased member" for "those eligible for death payments"; and in (1)(b) at beginning inserted "subject to subsection (2)". Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 inserted (2) excluding beneficiary of inactive member from payment; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in introduction substituted "amount of payment to be made to those eligible for death payments" for "amount of death benefit"; in (2) substituted "service credit" for "creditable service" and at end, after "credit", deleted "provided, however, that this portion of the death benefit is not payable if the board receives a certification from the state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment"; in (3), before "interest", inserted "regular" and at end substituted "payment is made" for "benefit is paid"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (2), near middle, substituted "state compensation mutual insurance fund" for "workers' compensation division of the state of Montana". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

1981 Amendment: Inserted "and (3)" in the first sentence; deleted "together with regular interest on the accumulated normal contributions to the date of the member's death" at the end of (1); added (3) including accumulated interest in death benefit.

Attorney General's Opinions

No Requirement for Full Year of Service: A deceased state employee who has served 8 months of state employment is entitled to that portion of the death benefit allowed under the Public Employees' Retirement System. 36 A.G. Op. 56 (1976).

19-3-1203. Election of optional death annuity.

Compiler's Comments

2011 Amendment: Chapter 99 in first sentence substituted "19-3-1202" for "19-3-1201". Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 in first sentence near beginning after "of a" inserted "deceased" and near middle substituted "death payment provided for in 19-3-1201" for "lump-sum death payment". Amendment effective October 1, 2007.

2001 Amendment: Chapter 99 near middle of first sentence after "elect" inserted "by filing a written application with the board" and deleted former second sentence that read: "Election of an optional death annuity must be by written application"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence, at beginning, substituted "The designated beneficiary of a member" for "A member or his beneficiary after his death" and substituted "lump-sum death payment" for "death benefit", in second sentence, after "death", substituted "annuity" for "benefit", and inserted third sentence regarding exemption from increases; and made minor changes in style. Amendment effective July 1, 1993.

19-3-1204. Survivorship benefit elected by beneficiary.

Compiler's Comments

2007 Amendment: Chapter 128 in (1) near middle, (1)(c) near end, and (2) near end before "death payment" deleted "lump-sum"; in (1)(a) at beginning before "member" inserted "deceased"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (2) at beginning substituted "A" for "The" and at end substituted "death payment" for "payment of the member's account". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (1) near middle of introductory clause after "payment may" substituted "instead elect a survivorship benefit by filing a written application with the board" for "elect, by written application, a survivorship benefit instead"; in (2) after "member may" inserted "by filing a written application with the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 inserted (2) providing for elective survivorship benefit; in (3)(b) after "behalf" inserted "and no payment has been made"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section, before "beneficiary", inserted "designated"; in three places substituted "survivorship benefit" for "survivorship allowance"; in (1) substituted "lump-sum death payment" for "death benefit"; in (1)(a) substituted "membership service" for "creditable service"; in (1)(c), at end, substituted "lump-sum death payment" for "death benefit"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1)(b), after "person", deleted "of legal age"; deleted former (2) that read: "(2) The conditions listed in subsection (1) do not apply to a survivorship allowance granted under 19-3-1305"; and inserted (2) relating to minor beneficiaries. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Inserted (2) exempting allowances granted under 19-3-1305.

19-3-1205. Amount of survivorship benefit.

Compiler's Comments

2011 Amendment: Chapter 369 at beginning of (1) inserted "For a member hired prior to July 1, 2011"; in (1)(a) substituted "19-3-906(1)" for "19-3-906"; inserted (2) relating to survivorship benefits for beneficiaries of members hired on or after July 1, 2011; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1), (2), and (3) substituted "membership service" for "service credit". Amendment effective July 1, 2003.

1997 Amendment: Chapter 42 in (1) substituted "early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50" for "early retirement benefit that would have been payable to the member commencing at age 50 pursuant to 19-3-906". Amendment effective March 12, 1997.

1995 Amendment: Chapter 412 in (1), near beginning, substituted "early retirement benefit" for "service retirement benefit", substituted "age 50 pursuant to 19-3-906" for "age 60 pursuant to 19-3-904", and near end substituted "age 50 or earned 25 years of service credit" for "age 60"; and inserted (2) relating to a deceased member who had attained age 50 or earned 25 years of service credit at the time of death. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendment: Chapter 265 in two places substituted "service retirement benefit" for "service retirement allowance"; in introduction, at beginning, substituted "survivorship benefit" for "annual amount of survivorship allowance" and before "beneficiary" inserted "designated"; in (2) substituted "earned 30 years of service credit" for "completed 30 years of service"; and made minor changes in style. Amendment effective July 1, 1993.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-3-1210. Death payments to designated beneficiaries of retired members.

Compiler's Comments

2015 Amendment: Chapter 248 in (3) inserted second sentence concerning contribution reductions. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 inserted (1) concerning death of member receiving option 1 retirement benefit; in (2) at beginning substituted "If a retired member receiving an option 2 or 3 retirement benefit under 19-3-1501 dies with no surviving contingent annuitant" for "If a retired member dies without designating a contingent annuitant under 19-3-1501"; inserted (3) concerning applicability of section; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 near middle after "beneficiary or" inserted "if there is no surviving designated beneficiary, the member's"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 near middle after "beneficiary" inserted "or estate". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 near beginning after "retired member" deleted "receiving a regular retirement benefit", after "paid the" substituted "amount" for "excess", and substituted "contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account" for "contributions on the day that the member's retirement benefit commenced over the total of the retirement benefit payments made to the retired member". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-3-1211. Refund when former member dies after transferring to another system.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 400, L. 2023. Amendment effective July 1, 2023.

1993 Amendment: Chapter 265 substituted reference to 19-3-403(4) for reference to 19-3-403(8), before "beneficiary" inserted "designated", and after "beneficiary" deleted "nominated by him to receive any death benefit payable under 19-3-1201"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Two Retirement Systems Valid: Although a county, as an employer, is prohibited from making a contribution to both the Public Employees' Retirement System and a private union pension trust, unionized county employees may make individual contributions to a private union pension trust by assignment of benefits due them as wages even though the county made a contribution to the Public Employees' Retirement System for county employees. 35 A.G. Op. 51 (1973).

19-3-1212. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 15

Optional Forms of Benefit Payments

19-3-1501. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2015 Amendment: Chapter 248 in (5) near beginning substituted "terminating service" for "retirement"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (1) inserted last sentence concerning option 1 benefit; in (2), (3), and (5) after "retirement benefit" inserted reference to subsection (2); inserted (6) concerning changing selected option; in (8)(a) substituted "original option 1 retirement benefit" for "original retirement benefit"; in (8)(c) after "option" inserted "under subsection (2)"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (1)(c)(iii) regarding death of all surviving contingent annuitants; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (1)(a) inserted second and third sentences and (1)(a)(i) and (1)(a)(ii) providing conditions for option 2; in (3) at beginning substituted "If the member or designated beneficiary or the named" for "If a benefit recipient or the recipient's"; in (5) at beginning of introductory clause deleted "Upon filing a written application with the board", near middle after "benefit" substituted "pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have" for "that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert", and at end after "benefit" inserted "available at the time of the member's retirement"; in (5)(a) after "died" inserted "in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death"; in (5)(b) inserted second sentence regarding reversion of the benefit; deleted former (5)(b) that read: "(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change"; deleted former (6) that read: "(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:

(i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement"; inserted (6) regarding a member who applies to revert; inserted (7) regarding calculation of the benefit of a member who selects an alternative; in (8) after "(5)" deleted "or (6)"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; substituted (1)(c) providing for a continuation of the optional retirement benefit to one or more contingent annuitants if the initial payee dies before the end of a period certain and for how it's determined for former (1)(c) that read: "(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) and two places in (6)(a)(ii) before "family law order" deleted "dissolution settlement or"; in (5)(a)(ii) at end inserted "as defined in 19-2-907"; near end of (6)(a) inserted "designate a different contingent annuitant, or select a different option"; in (6)(a)(i) substituted "may" for "must"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of introductory clause after "annuitant" deleted "whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; at beginning of (5)(a) substituted "Upon filing a written application with the board" for "Upon written application to the board"; in (6)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 in (5)(a) inserted "that became effective before October 1, 1999"; in (5)(a)(ii) at beginning substituted "the member's marriage to the original contingent annuitant has been dissolved" for "the member has been divorced from the original contingent annuitant" and at end substituted "dissolution settlement or family law order" for "divorce settlement"; inserted (6) allowing optional retirement benefits to revert back to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (7) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 near beginning of (5)(a) substituted "written application" for "written request"; and in (5)(b) substituted "written application" for "request". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retirement benefit, optional retirement benefit, regular retirement benefit, or monthly retirement benefit for references to retirement allowance, optional retirement allowance, regular retirement allowance, or monthly retirement allowance; in (1), in first sentence after "member", inserted "or the survivorship benefit of a designated beneficiary" and at end substituted "original benefit" for "regular retirement allowance" and in second sentence, before "payable", substituted "initially" for "a reduced amount", before "lifetime" inserted "or designated beneficiary's", and at end, after "subsequent benefit", inserted remainder of clause concerning payment to contingent annuitant; in (1)(a) and (1)(b) substituted "reduced amount after the death of the initial payee and payable" for "reduced retirement allowance"; in (1)(c) substituted "upon the initial payee's death, other" for "such other" and substituted "equivalent amounts" for "equivalent benefit"; at end of (2) substituted "benefit" for "regular retirement allowance"; in (3), at beginning, substituted "benefit recipient" for "member" and substituted "before the first payment has been made" for "before the member has received the first payment"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: Inserted (5) allowing retired member to change options in case of divorce or death of contingent annuitant.

Case Notes

Constitutional Authority of Public Employees' Retirement Board to Make Actuarial Calculations — No Overbroad Delegation of Legislative Authority: The District Court held that 2001 amendments contained in House Bill No. 294, which included a definition of actuarial equivalent that changed the method by which the Public Employees' Retirement Board calculated certain benefits, unconstitutionally delegated unconstrained discretion to the Board in violation of the separation of powers doctrine in Art. III, sec. 1, Mont. Const. On appeal, the Board asserted that Art. VIII, sec. 15, Mont. Const., gave the Board the authority to make actuarial evaluations and thus to implement the 2001 amendments, so there was no constitutional violation. The Supreme Court agreed. Article III, sec. 1, Mont. Const., allows one branch of government to exercise power properly belonging to another branch if the constitution expressly directs or permits that exercise. Because Art. VIII, sec. 15, Mont. Const., delegated authority to the Board to make actuarial determinations, the District Court committed reversible error in concluding that the Legislature and House Bill No. 294 (2001) unconstitutionally delegated authority to the Board to make determinations allowed by another section of the constitution. Baumgardner v. Pub. Employees' Retirement Bd., 2005 MT 199, 328 M 179, 119 P3d 77 (2005), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

19-3-1502. Nonapplication of part to defined contribution plan.

Compiler's Comments

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Part 16

Postretirement Benefits and Benefit Increases

19-3-1605. Guaranteed annual benefit adjustment.

Compiler's Comments

2021 Amendment: Chapter 172 in (4) substituted current text for former text (see 2021 Session Law for former text); in (5)(a) near middle substituted "the applicable percentage increase in subsection (4)(c)" for "the applicable percentage rate in subsection (4)"; in (5)(b) near middle substituted "the applicable percentage increase in subsection (4)(c) must be reduced to 0%" for "the applicable percentage rate is 0%"; and made minor changes in style. Amendment effective July 1, 2021.

2013 Amendment: Chapter 390 in (2)(c) substituted "subsection (4)(b)" for "subsection (5)"; deleted former (4) and (5) that read: "(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007"; and inserted (4) and (5) concerning applicable percentage rate. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2007 Amendment: Chapter 371 in (1) at end, in (2)(a) near middle and near end, in (3)(b) near end, and in (3)(c) near middle substituted reference to applicable percentage rate for "3%"; inserted (4) specifying percentage rate for current and future benefit recipients; inserted (5) specifying applicable percentage rate for contingent annuitant; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill.

However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Administrative Rules

ARM 2.43.2324 Guaranteed annual benefit adjustment coverage.

19-3-1607. Nonapplication of part to defined contribution plan.

Compiler's Comments

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

Part 21
Defined Contribution Plan

Part Compiler's Comments

Board Request for Internal Revenue Code Ruling: Section 64, Ch. 471, L. 1999, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling or opinion from the commissioner of the internal revenue service as to whether the defined contribution retirement plan established pursuant to [this act] constitutes a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code."

Certification of Startup — Beginning of Vesting of Rights: Section 65(2) and (3), Ch. 471, L. 1999, provided: "(2) The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [this part] is ready to become operational and shall provide a copy of the certification to the code commissioner.

(3) Rights under [sections 42 through 63] [this part] do not vest until the defined contribution retirement plan becomes operational and is certified as provided in this section."

Payment of Local Government Administrative Expenses: Section 66, Ch. 471, L. 1999, provided: "To the extent that a local government unit is required to incur administrative expenses to start the defined contribution retirement plan that exceed the amount provided in 1-2-112(4)(a), the expenses must be paid by the public employees' retirement board as defined contribution plan administrative expenses."

Loan for Startup Costs: Section 74, Ch. 471, L. 1999, provided: "To pay the startup costs of the defined contribution retirement plan, the public employees' retirement board is authorized to take a long-term loan from the department of administration, which shall provide for the loan from the investment fund type established under the provisions of House Bill No. 645. The loan must be repaid with interest under terms and conditions determined by the department."

Applicability of Contract of Employment: Section 80, Ch. 471, L. 1999, provided: "Contract rights of employment are not applicable with regard to the right to elect either the defined contribution plan or the optional retirement program until the plan choice period begins. Contract rights of employment are not applicable with regard to rights in the defined contribution plan or the optional retirement program until the defined contribution plan or the optional retirement program is elected."

Part Administrative Rules

Title 2, chapter 43, subchapter 35, ARM Defined contribution retirement plan.

Part Collateral References

Disability Benefits in the New Optional Defined Contribution Public Employees' Retirement System Plan, Leg. Serv. Div. (2000).

A Defined Contribution Retirement Plan—An Option for Members of the Public Employees' Retirement System, Leg. Serv. Div. (1998).

19-3-2101. Definitions.

Compiler's Comments

2013 Amendment: Chapter 282 deleted definition that read: ""Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title"; inserted definition of university system retirement program; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendment: Chapter 490 in definition of member near beginning after "means" substituted "a person" for "an employee". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 79(1), Ch. 471, L. 1999, provided that this section is effective October 1, 1999.

19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services.

Compiler's Comments

2015 Amendment: Chapter 140 in (1) in fourth sentence inserted "including assets of the long-term disability plan pursuant to 19-3-2141"; and made minor changes in style. Amendment effective March 30, 2015.

2001 Amendment: Chapter 490 in (1) in second sentence near middle after "and as a "qualified" inserted "governmental"; in (2) near beginning after "The board" substituted "may" for "shall"; and deleted former (3) that read: "(3) The board shall contract for a qualified consultant to assist in preparation of the request for bid or request for proposal for plan services." Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (2) and (3) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsection (1) of this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3501 Adoption of defined contribution plan document and trust agreement.

ARM 2.43.3506 Adoption of State of Montana public employees pooled trust.

ARM 2.43.5104 Adoption of State of Montana public employees pooled trust.

Case Notes

Disproportionate Employer Contributions to Retirement Plans — Defined Contribution, Defined Benefit Plans — No Substantive Due Process or Equal Protection Violation: The plaintiffs, all of whom were public employees participating in the state's defined contribution or university retirement plans (contribution plans), sued the Montana Public Employee Retirement Administration. The plaintiffs alleged that they were being treated differently from employees in the state's defined benefit plan because the percentage of their employer's contribution into their own individual plans was less than the percentage of employer contribution that went into the defined benefit plan trust. The District Court disagreed, noting that the plaintiffs all had chosen voluntarily between joining one of the contribution plans and joining the benefit plan and that they received the employer contribution they bargained for when they chose to join a contribution plan. On appeal, the Supreme Court affirmed, ruling that the plaintiffs had received the flexibility to control their accounts in exchange for a lower contribution into their individual accounts and that their substantive due process rights had therefore not been violated. Wrzesien v. St., 2016 MT 242, 385 Mont. 61, 380 P.3d 805.

19-3-2103. Legislative intent.

Compiler's Comments

2003 Amendment: Chapter 429 in (4) substituted "member" for "participant"; and in (6) substituted "members" for "employees". Amendment effective July 1, 2003.

Effective Date: Section 79(2), Ch. 471, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

19-3-2104. Board powers and duties — rulemaking.

Compiler's Comments

2005 Amendment: Chapter 329 deleted (2)(a) through (2)(e) requiring board rules on the following: "(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;

(b) the treatment of dormant or inactive accounts;

(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;

(d) minimum asset, reserve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and

(e) the commencement of benefits in the plan pursuant to this part and as provided in 19-2-908"; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 79(2), Ch. 471, L. 1999, provided that this section is effective on passage and approval. Approved April 27, 1999.

Administrative Rules

ARM 2.43.2312 Purchase of service through direct trustee-to-trustee transfer of funds.
ARM 2.43.2602 Application process for disability benefits.
Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.
Title 2, chapter 43, subchapter 35, ARM Defined contribution retirement plan.

19-3-2105. Administrative expenses and fees.

Compiler's Comments

Effective Date: Section 79(3), Ch. 471, L. 1999, provided that this section is effective July 1, 1999.

19-3-2106. Limited contract right.

Compiler's Comments

2013 Amendment: Chapter 282 in two places substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 43(1), Ch. 490, L. 2001, provided that this section is effective July 1, 2001.

19-3-2111. Plan membership — written election required — failure to elect — effect of election.

Compiler's Comments

2009 Amendment: Chapter 283 deleted former (1)(a)(i) that read: "(i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 in (1)(a)(ii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(a)" for "12 months after the member's rehire date"; in (1)(b) near middle after "within" substituted "the 12-month period provided for in subsection (2)(a)" for "12 months of the member's hire date"; and in (2)(a) at end inserted "and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board". Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (1)(a)(i), (1)(a)(ii), and (1)(b) near end after "terminates" deleted "covered". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 at end of (1)(a)(i), (1)(a)(ii), and (1)(b) inserted "regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period"; in (2)(c) near middle of second sentence substituted "a member" for "an employee"; and inserted (7) concerning purchase of service credit and transfer of membership. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (5) near end substituted "from the first day" for "on the first day"; and in (6) at end after "defined contribution plan" deleted "or, for university employees making an election pursuant to 19-3-2112, the optional retirement program". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3510 through 2.43.3512 Rules on choosing membership in defined contribution retirement plan.

ARM 2.43.3515 Purchase of service not permitted by participant in defined contribution retirement plan.

ARM 2.43.3517 Family law orders, executions, and income-withholding orders and elections.

ARM 2.43.3520 Election for employees in optional PERS membership positions.

ARM 2.43.3523 Membership in other Title 19 retirement plans.

ARM 2.43.3524 Retirees not entitled to election.

19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.

Compiler's Comments

2013 Amendment: Chapter 282 in (1) substituted "university system retirement program" for "university system's optional retirement program"; throughout section substituted "university system retirement program" for "optional retirement program"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 128 in (2)(a)(i) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months after that date"; in (2)(a)(ii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months after the member's hire or rehire date"; in (2)(a)(iii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months of the member's hire date"; and in (2)(b) at end inserted "and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board". Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) near end after "terminates" deleted "covered". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 throughout section substituted "member" for references to a university system employee; at end of (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) inserted "regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period"; in (2) after "transfer" inserted "membership"; in (2)(f) at beginning inserted exception clause and after "plan under" inserted "chapters 3 and 21"; inserted (2)(g) concerning optional retirement program; inserted (2)(j) concerning purchase of service credit and transfer of membership; in (3) after "transfer" inserted "membership"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1) near beginning after "Montana university system" deleted "as provided for in 20-1-101" and near middle after "instead of electing the" substituted "defined contribution plan, elect to transfer" for "plan, make a one-time irrevocable election on a form prescribed by the board to transfer"; inserted (2) regarding election to transfer to optional retirement program; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3512 Election eligibility and confirmation.

ARM 2.43.3525 Montana University System employee elections.

19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.

Compiler's Comments

2013 Amendment: Chapter 282 in (1)(a), (1)(b), and (2)(b) in two places substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2007 Amendment: Chapter 128 in (2)(a) near end and in (2)(b) near middle of first sentence after "plan" inserted "pursuant to 19-3-2111 or 19-3-2112"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 at beginning of (1)(a) and (1)(b) substituted "member" for "participant"; near end of (2)(a) and two places in (2)(b) after "membership service" inserted "and service credit"; in (2)(b) near end of first sentence after "service" inserted "credit" and near beginning of second sentence substituted "member" for "employee" and after "excess of" substituted "the member's length of service in" for "the employee's length of service as a member of"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) at beginning substituted "A participant who terminates" for "An employee who terminated" and near middle after "who returns to covered employment" substituted "in less than 24 months" for "after a break in service of less than 24 consecutive months"; in (1)(b) at beginning substituted "A participant" for "Except as provided in subsection (2), an employee" and near middle after "returns to covered employment" substituted "after 24 months" for "after a break in service of 24 consecutive months"; deleted former (2) that read: "(2) (a) An employee who returns to covered employment after terminating plan membership in the defined contribution plan or the optional retirement program shall return to the plan previously selected if the employee has accessed money derived from the employee's former retirement account by:

(i) receiving a lump-sum distribution of the member's former retirement account, unless the distribution was forced pursuant to 19-3-2126(1)(b);

(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that has at any time received a transfer of funds from the member's former retirement account or any account to which the member has transferred funds from a former retirement account; or

(iii) receiving a regular benefit, payment, or distribution from an account outside the defined contribution plan in which there is money from the member's former retirement account.

(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2114. Amount available to transfer.

Compiler's Comments

2021 Amendment: Chapter 172 substituted current section text for former text (see 2021 Session Law for former text). Amendment effective July 1, 2021.

2011 Amendment: Chapter 99 in (2)(a) and (3)(b)(i) inserted "initial" before "month" and after "received" inserted "through the last month that the contributions were received prior to July

1, 2011"; inserted (2)(b) and (3)(b)(ii) specifying percentage of compounded interest; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 329 in (1)(a) substituted "an active member of the system" for "a system member"; in (1)(a)(i) at beginning inserted "for amounts contributed prior to July 1, 2002" and at end inserted "from the month that the contributions were received"; inserted (1)(a)(ii) relating to amounts contributed on or after July 1, 2002, and the amount that the board shall transfer from the defined benefit plan to the member's retirement account; in (2) near middle substituted "allocated" for "credited" and at end inserted "from the month that the contributions were received"; inserted (3) relating to an employee who was an inactive member of the defined benefit plan on the date that the plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan and what the board shall transfer from the defined benefit plan to the member's retirement account; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(b) in two places before "service" inserted "membership". Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) near end after "on the total of the" inserted "transferred"; and in (2) at end after "the employee's hire date" substituted "plus 8% compounded annual interest" for "plus interest credited at the actuarially assumed rate of return on the defined benefit plan assets as of the plan's latest actuarial valuation". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3504 Defined contribution retirement plan default investment fund.
ARM 2.43.3531 Timing of transfers to defined contribution retirement plan.

19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.

Compiler's Comments

2003 Amendment: Chapter 429 in (1)(a) near end substituted "eligible retirement plan" for "qualified plan" and at end inserted "as allowed under applicable federal law"; in (2)(b) in two places after "service" inserted "credit"; and substituted (2) concerning direct rollover of eligible distributions for former text that read: "(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.

(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code." Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1)(a) near middle after "the board shall accept" substituted "the rollover of contributions and the income on those contributions" for "the transfer or rollover of assets" and at end substituted "vested account" for "retirement account" and deleted former last sentence that read: "If a member is transferring assets from another plan provided for in this title, the member must, for the purposes of becoming vested pursuant to 19-3-2116, receive credit for the employee's prior membership service under that plan"; inserted (1)(b) regarding transfer of service from another retirement system; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.2312 Purchase of service through direct trustee-to-trustee transfer of funds.

ARM 2.43.3504 Defined contribution retirement plan default investment fund.

ARM 2.43.3512 Election eligibility and confirmation.

ARM 2.43.3515 Purchase of service not permitted by participant in defined contribution retirement plan.

19-3-2116. Vesting — mandatory termination of membership — forfeitures.

Compiler's Comments

2005 Amendment: Chapter 329 in (4) and (5) substituted "service" for "covered employment"; and in (6) substituted "plan membership, as provided in 19-3-2123" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) at beginning substituted "A member's contribution account includes" for "A member is fully vested with", near middle after "contributions" inserted "and is vested", and at end deleted "but is not considered a vested member unless the member meets the criteria under subsection (2)"; in (2) at beginning substituted "A member's employer contribution account includes" for "A member is not vested with" and near middle substituted "is vested only when" for "does not attain the status of a vested member until"; inserted (3) concerning rollovers of contributions; inserted (4) concerning termination of covered employment; in (5) near end after "membership" deleted "by removing from the plan the member's entire vested account balance" and at end inserted "and subject to 19-3-2126" and deleted former second sentence that read: "The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117"; inserted (6) concerning allocation of nonvested accounts; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in (1) near end after "a vested member" deleted "as defined in 19-2-303"; in (3) in first sentence near middle after "the member's entire" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2117. Allocation of contributions and forfeitures.

Compiler's Comments

2015 Amendment — Coordination: Chapter 170 in (2) substituted "subsections (3) and (4)" for "subsection (3) and adjustment by the board as provided in 19-3-2121"; in (2)(b) after "allocated" deleted "in the following order"; deleted former (2)(b)(ii) that read: "(ii) to the long-term disability plan trust fund to provide disability benefits to eligible members"; in (2)(c) substituted "and continuing until June 30, 2015, an amount equal to" for "continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b)"; inserted (2)(d) regarding allocations beginning July 1, 2015, to defined benefit plan and to member's retirement account; inserted (4) regarding allocations to member's retirement account after board's verification that plan choice rate unfunded actuarial liability is paid off; and made minor changes in style. Amendment effective July 1, 2015.

The amendment to this section made by sec. 3, Ch. 190, L. 2015, was rendered void by sec. 6, Ch. 190, L. 2015, a coordination instruction.

Preamble: The preamble attached to Ch. 170, L. 2015, provided: "WHEREAS, employer contributions equal to 2.37% of compensation for covered members in the Public Employees' Retirement System Defined Contribution Retirement Plan (PERS-DCRP) and the Montana University System Retirement Program (MUS-RP) are statutorily allocated to the Public Employees' Retirement System Defined Benefit Retirement Plan (PERS-DBRP) as the plan choice rate; and

WHEREAS, additional employer contributions equal to 0.37% of a member's compensation are also allocated to the plan choice rate and this percentage will increase by 0.1% each year through 2024; and

WHEREAS, the plan choice rate was established to pay the portion of the PERS-DBRP unfunded actuarial liabilities associated with PERS members who elected to join the PERS-DCRP rather than the PERS-DBRP plan and also to pay for any increase to the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, section 19-3-2121, MCA, requires that the plan choice rate be adjusted if it is actuarially determined to be too high or too low to pay off the associated unfunded actuarial liabilities within an established timeframe and if there is an actual change in the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, the normal cost of benefits in the PERS-DBRP has never significantly changed because of PERS members selecting the PERS-DCRP; and

WHEREAS, the Public Employees' Retirement Board's actuary determined that as of June 30, 2014, the unfunded actuarial liability associated with the plan choice rate is $5,903,188, and is estimated to be fully paid off within the next 2 to 3 years."

2013 Amendment: Chapter 390 in (2) substituted "Subject to subsection (3) and adjustment" for "Subject to adjustment"; in (2)(b) substituted "pursuant to 19-3-316(4)(b), the percentage specified in subsection (3) of this section" for "pursuant to 19-3-316, 0.27%"; inserted (2)(c) concerning unfunded liabilities; inserted (3) concerning percentage of compensation; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 390, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery have resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Public Employees' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, a reasonable increase in contributions for current participants is necessary to help return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed and enacted alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, which have failed to reduce system costs enough to restore the system to actuarial soundness; and

WHEREAS, in light of significant strains on the Montana economy, on state and local government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1% imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure that the retirement system is funded in an actuarially sound manner."

Severability: Section 13, Ch. 390, L. 2013, was a severability clause.

2011 Amendments — Composite Section: Chapter 99 in (2)(b) at beginning deleted "on July 1, 2007, through June 30, 2009, 0.135% of compensation and". Amendment effective July 1, 2011.

Chapter 369 in (2)(b) at beginning deleted "on July 1, 2007, through June 30, 2009, 0.135% of compensation and"; deleted former (2)(b)(i) that read: "(i) to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 371 in (2)(a) at beginning deleted "on or after July 1, 2002"; inserted (2)(b) requiring certain percentages of compensation to be allocated to specified accounts, plans, or funds at specified times; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2005 Amendment: Chapter 329 in (1) at beginning deleted "Each plan member's retirement account must be credited with" and at end inserted "and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account"; in (2) after reference to 19-3-2121 deleted "beginning on the plan's effective date" and near end inserted "received on or after July 1, 2002"; in (2)(d) at beginning deleted "Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendments — Composite Section: Chapter 114 in (2)(c) substituted "19-3-112(1)(b)" for "19-3-112(1)(c)". Amendment effective October 1, 2003.

Chapter 429 in (1) substituted "member" for "employee". Amendment effective July 1, 2003.

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(a), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 5, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, at end of (2) inserted "an amount equal to"; at beginning of (2)(a) substituted "4.19%" for "4.49%"; inserted (2)(c) requiring allocation of 0.04% of compensation to education fund; inserted (3) requiring allocation of 0.3% of compensation to long-term disability plan trust fund; in (4) at end of second sentence substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (2) in introductory clause at end after "contributions under 19-3-316" inserted "an amount equal to"; inserted (2)(c) regarding allocation to the education fund; in (4) in version effective on occurrence of contingency or July 1, 2002, and in (3) in version effective on occurrence of contingency in second sentence at end after "19-3-2116 to meet" substituted "the plan's administrative expenses, including startup expenses" for "the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and

19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.2114 Required employer reports.

ARM 2.43.3504 Defined contribution retirement plan default investment fund.

ARM 2.43.3505 Establishment of long-term disability trust fund.

ARM 2.43.3531 and 2.43.3532 Rules regarding transfer of defined benefit retirement plan funds to defined contribution retirement plan.

ARM 2.43.3533 Reallocation of certain PERS employer contributions to DCRP member accounts.

Case Notes

Disproportionate Employer Contributions to Retirement Plans — Defined Contribution, Defined Benefit Plans — No Substantive Due Process or Equal Protection Violation: The plaintiffs, all of whom were public employees participating in the state's defined contribution or university retirement plans (contribution plans), sued the Montana Public Employee Retirement Administration. The plaintiffs alleged that they were being treated differently from employees in the state's defined benefit plan because the percentage of their employer's contribution into their own individual plans was less than the percentage of employer contribution that went into the defined benefit plan trust. The District Court disagreed, noting that the plaintiffs all had chosen voluntarily between joining one of the contribution plans and joining the benefit plan and that they received the employer contribution they bargained for when they chose to join a contribution plan. On appeal, the Supreme Court affirmed, ruling that the plaintiffs had received the flexibility to control their accounts in exchange for a lower contribution into their individual accounts and that their substantive due process rights had therefore not been violated. Wrzesien v. St., 2016 MT 242, 385 Mont. 61, 380 P.3d 805.

19-3-2122. Investment alternatives — notice of changes — default fund.

Compiler's Comments

2001 Amendment: Chapter 490 in (1) in first sentence near beginning after "The board shall" deleted "contract with a vendor or vendors to" and in second sentence at end after "may be used" inserted "unless exempt from the commission's regulation"; in (3) at beginning deleted "Subject to a competitive bidding process"; in (6) near end after "member's entire account" deleted "balance"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date — Contingent Effective Date: Section 79(2), Ch. 471, L. 1999, provided that subsections (1) through (3) and (7) of this section are effective on passage and approval. Approved April 27, 1999.

Section 79(4), Ch. 471, L. 1999, provided that subsections (4) through (6) of this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3502 through 2.43.3504 Rules regarding investment options for defined contribution retirement plan funds.

19-3-2123. Payout of vested account balances when terminating plan membership.

Compiler's Comments

2009 Amendment: Chapter 284 in (1) near middle after "annuity" inserted "and, effective January 1, 2008, a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A"; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 27(12), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(12) Section 19-3-2123(1) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection."

2001 Amendments — Composite Section: Chapter 423 at beginning inserted exception clause; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in introductory clause near beginning after "after termination of" substituted "service" for "covered employment", near middle after "plan membership by" substituted "filing" for "making", and after "removing the member's" inserted "vested"; in (3) after "the member's" inserted "vested"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3545 Distribution to participant.

19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.

Compiler's Comments

2021 Amendment: Chapter 172 in (3) near middle inserted "if the member was born before July 1, 1949, or less than 72 years of age if the member was born after June 30, 1949"; and made minor changes in style. Amendment effective July 1, 2021.

2001 Amendments — Composite Section: Chapter 423 near beginning of (1) inserted reference to 19-3-2142; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) near middle after "after termination of" substituted "service" for "covered employment" and after "leave the member's" inserted "vested"; in (2) near beginning after "termination of" substituted "service and upon filing a written application with" for "covered employment, upon written application to"; in (3) near middle after "who returns to" substituted "service" for "covered employment"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3545 Distribution to participant.

ARM 2.43.3546 Distribution upon death of participant.

19-3-2125. Death benefits.

Compiler's Comments

2001 Amendment: Chapter 490 in second sentence at end after "to the member's" substituted "vested account balance subject to this part" for "account balance and all rights established in and subject to this part"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.3546 Distribution upon death of participant.

19-3-2126. Refunds — minimum account balance — adjustment by rule.

Compiler's Comments

2009 Amendment: Chapter 284 in (3) in first sentence substituted "$1,000" for "$5,000"; in (4)(a) in first sentence after "eligible" inserted "rollover distribution"; in (4)(b) at end after "plan" inserted "allowed under applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A"; in (5) decreased account balance from $5,000 to $1,000; in (6) at end after "inflation" inserted "and in accordance with the requirements of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations"; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 27(13), Ch. 284, L. 2009, provided: "The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:

(13) Section 19-3-2126(4)(b) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection."

2005 Amendment: Chapter 329 in (2) in third sentence and in (3) in second sentence after "feasible" deleted "after the member's termination"; in (4) near beginning substituted "member terminating service" for "terminating member"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 at end of (1) inserted "balance"; in first sentence of (2) and (3) before "member" deleted "nonvested"; in (2) inserted second sentence and in (3) inserted third sentence concerning allocation of nonvested accounts; in (4)(a) in second sentence near middle before "retirement plan" inserted "an eligible" and after "rollover" deleted "and is qualified"; in (4)(b) before "retirement plan" substituted "eligible" for "qualified"; deleted former (4)(c) that read: "(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum"; inserted (5) concerning termination of service with account balance greater than $5,000; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section — Coordination: Pursuant to sec. 14(2)(b), Ch. 423, L. 2001, a coordination instruction, the amendments to this section made by sec. 9, Ch. 423, L. 2001, were replaced as follows: in version effective on occurrence of contingency or July 1, 2002, deleted former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (1) prohibiting refund of vested account before termination of service; inserted (2) requiring payment on termination of nonvested member's account balance of less than $200; inserted (3) requiring payment on termination of nonvested member's account balance of $200 to $5,000 in lump sum if a written application is not made; inserted (4) requiring direct rollover distribution according to federal law of terminating member's account of $200 or more and payment in lump sum of balance not eligible for rollover; and made minor changes in style. Amendment effective on contingency or July 1, 2002, whichever is earlier.

Chapter 490 in (1) substituted text prohibiting refund before termination of service for former (1)(a) and (1)(b) that read: "(a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to 19-3-2123.

(b) If the member fails to remove the member's account balance, the board may close the account by paying to the member a lump-sum distribution of the member's entire account balance"; inserted (2) through (4) regarding termination of nonvested and vested members; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Section 41, Ch. 490, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that this section is "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2133. Employee investment advisory council.

Compiler's Comments

2013 Amendment: Chapter 178 in (2) after "2-15-122" inserted "except for payment of travel expenses"; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 inserted (2) providing that the advisory council is not subject to 2-15-122; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 429 in introductory clause in first sentence after "shall" deleted "by August 1, 1999" and in second sentence substituted "four times a year" for "quarterly"; and in (1) after "concerning the" deleted "establishment and". Amendment effective July 1, 2003.

2001 Amendment: Chapter 490 in first sentence after "August 1, 1999" substituted "create" for "appoint". Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Effective Date: Section 79(3), Ch. 471, L. 1999, provided that this section is effective July 1, 1999.

19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.

Compiler's Comments

2021 Amendment: Chapter 172 inserted (3)(d) regarding the provisions of 19-3-1103 and 19-3-1104; and made minor changes in style. Amendment effective July 1, 2021.

2017 Amendment: Chapter 195 in (3)(c)(i) after "until the member reaches" substituted "70" for "65". Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (6) inserted second sentence concerning recovery of disability benefits paid in error. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (4) substituted "19-2-406" for "19-3-1005". Amendment effective July 1, 2013.

2011 Amendment: Chapter 369 in (1) inserted "For members hired prior to July 1, 2011"; inserted (2) relating to members hired on or after July 1, 2011; in (3)(b) inserted "for members hired prior to July 1, 2011"; inserted (3)(c) relating to members hired on or after July 1, 2011; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1)(a) near end after "service" inserted "credit"; near beginning of (1)(b) substituted "membership service" for "service credit"; at beginning of (2)(b) inserted "if the member's disability occurred when the member was 60 years of age or less" and near end substituted "65" for "60"; inserted (2)(c) concerning disability occurring after age 60; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment — Coordination: Pursuant to sec. 14(1), Ch. 423, L. 2001, a coordination instruction, this section was amended as follows: in (1)(a) inserted exception clause; and inserted (1)(b) concerning eligible member with at least 25 years of service. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and

19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

ARM 2.43.3505 Establishment of long-term disability trust fund.

ARM 2.43.3540 Disability benefits for members of defined contribution retirement plan.

19-3-2142. Disability benefit recipients to remain members — access to account prohibited.

Compiler's Comments

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date — Contingency: Section 17, Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001].

(2) [Section 1(1) through (5) and sections 2 through 9] [19-3-2141(1) through (5) and 19-3-2142, 19-2-303, 19-2-406, 19-3-2117, 19-3-2121 (now repealed), 19-3-2123, 19-3-2124, and 19-3-2126] are effective contingent upon certification, as provided in section 65, Ch. 471, L. 1999, that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-3-2143. Implementation.

Compiler's Comments

Saving Clause: Section 15, Ch. 423, L. 2001, was a saving clause.

Contingent Voidness: Section 16, Ch. 423, L. 2001, provided: "If the defined contribution retirement plan enacted by Chapter 471, Laws of 1999, cannot be implemented because of an unfavorable internal revenue service determination or ruling, then [this act] is void." In a letter dated May 23, 2002, certification was received that the Internal Revenue Service has determined that the defined contribution retirement plan is a qualified plan.

Effective Date: This section is effective April 30, 2001. Section 17(1), Ch. 423, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 30, 2001]."

CHAPTER 5
JUDGES' RETIREMENT

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.

ARM 2.43.1302 Definitions.

ARM 2.43.1405 Request for release of information.

ARM 2.43.2120 Reinstatement — credit for lost time.

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.3401 Retirement options for elected officials other than legislators.

Part 1
General Provisions

19-5-101. Definitions.

Compiler's Comments

2013 Amendment: Chapter 386 in definition of compensation inserted (b) concerning excluded bonuses; in definition of highest average compensation inserted (b) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 in definition of highest average compensation at end deleted "in the retirement system"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 substituted highest average compensation for final average salary as defined term; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 inserted definition of final average salary; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 455 in definition of compensation substituted "2-16-403" for "2-16-404". Amendment effective April 14, 1995.

1993 Amendment: Chapter 265 inserted definition of compensation; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means the person whom the contributor nominates by written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the fund standing to his credit"; substituted definition of current salary for former definition of final salary that read: ""Final salary" means the annual current salary for the office retired from"; deleted definition of fund that read: ""Fund" means the Montana judges' retirement system pension trust fund"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; in definition of retired judge substituted "retirement benefit" for "retirement allowance"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; and deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana." Amendment effective July 1, 1993.

1989 Amendment: In definition of beneficiary substituted "witnessed" for "duly acknowledged"; and deleted former (10) that read: "(10) "Penalty retirement age" means 70 years of age." Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of fund changed "agency account" to "pension trust fund".

Passage After Veto: Chapter 218, L. 1969, was passed by the constitutional majority of both houses of the 41st Legislative Assembly over the veto of the Governor.

Administrative Rules

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-5-102. Judges' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 before "judges' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-5-103. Call of retired judges and justices and inactive vested members for duty.

Compiler's Comments

2015 Amendment: Chapter 21 in (1)(b) in last sentence after "duties" deleted "preliminary to the final disposition of cases"; and in (3) in first sentence before "8 years" inserted "at least". Amendment effective February 17, 2015.

2005 Amendment: Chapter 329 in (3) in first sentence near beginning substituted "discontinued service" for "terminated service". Amendment effective July 1, 2005.

2001 Amendment: Chapter 48 in (1)(a) after "voluntarily retired after" inserted "at least", after "call for duty by the" deleted "supreme court or the", after "aid and assist" deleted "the supreme court", after "under directions that the" substituted "chief justice" for "supreme court", and at end substituted "or to serve as water judge" for "including"; in (1)(b) at beginning of first sentence inserted "When called, a retired judge's or justice's duties include" and at end substituted "on behalf of the court to which the judge or justice is called to serve" for "on behalf of the supreme court, district court, or water court or to serve as water judge"; inserted (3) allowing certain judges or justices to be called for duty and requiring a judge or justice called for duty to be reimbursed and compensated; and made minor changes in style. Amendment effective March 16, 2001.

1999 Amendment: Chapter 233 in second sentence in (2) after "addition" deleted "for each day of duty"; in (2)(a) at beginning substituted "the daily salary" for "one-twentieth of the monthly salary", after "is rendered" deleted "minus an amount equal to one-twentieth of the monthly retirement benefit that the retired justice or judge is receiving, if any", and at end inserted "up to a total of 180 days in a calendar year"; inserted (2)(b) regarding amount of compensation for each day of duty after 180 days in calendar year; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 370 in (1), in first sentence after "call", inserted "for duty" and in third sentence, after "perform any", deleted "and all"; in (2), in four places, substituted "duty" for "service"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (2), near beginning of first sentence after "service", deleted "as herein provided" and near end of second sentence substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendments: Chapter 256 deleted "temporary" before "service" in two places in (2).

Chapter 425 substituted, at beginning of (1), "Every judge or justice who has voluntarily retired after 8 years of service shall" for "Every judge or justice receiving retirement pay under the provisions of this chapter shall,"; near end of (2) inserted ", if any," after "the monthly retirement allowance the retired judge or justice is receiving".

1981 Amendment: Inserted "or any water court" in the first sentence; added "supreme court, district court, or water court, or to serve as water judge" at end of the first sentence.

Case Notes

District Court's Failure to Comply With Notice — No Violation of Due Process — Plaintiffs Had Actual Notice: The plaintiffs argued that the District Court did not provide them with proper notice of a retired judge's assumption of jurisdiction, in violation of both 3-1-804 and their constitutional right to due process, and that the retired judge therefore should have granted their motion for substitution. On appeal, the Supreme Court determined that the District Court failed to comply with either 3-1-804 or the Chief Justice's order by not serving on the plaintiffs' counsel notice of the retired judge's assumption of jurisdiction when the order was issued. However, the Supreme Court reasoned that this procedural irregularity did not prejudice the plaintiffs because they had actual notice of the retired judge's involvement in the case. The plaintiffs could not reasonably have concluded, based on these facts, that anyone other than the retired judge presided over their case. The court record at all relevant times clearly identified the retired judge as the presiding judge, and no other judge participated in any hearing or entered any rulings. The purpose of the notice rule in 3-1-804 is to ensure that parties are informed when a new judge assumes jurisdiction. As applied, the District Court's failure to comply with 3-1-804 did not prejudice the plaintiffs, because the plaintiffs had actual notice when the retired judge assumed jurisdiction in the case. Absent prejudice, the Supreme Court would not disturb the District Court's denial of the plaintiffs' motion for substitution. Labair v. Carey, 2017 MT 286, 389 Mont. 366, 405 P.3d 1284.

Retired Judge — Proper Authority of Appointed Interim Retired Replacement to Rule on Summary Judgment: A retired District Court Judge was directed by the Chief Justice of the Montana Supreme Court to assume temporary judicial authority over 16 of a retiring judge's pending cases. In addition, the Chief Justice ordered the judge to assume full judicial authority over all proceedings required by law. Pursuant to this direction, the District Court Judge had the proper authority to rule on a motion in a case outside of the 16 cases. Capital One, NA v. Guthrie, 2017 MT 75, 387 Mont. 147, 392 P.3d 158.

Appointed Retired Judge Subject to Substitution Under 3-1-804: The plaintiff filed a lawsuit in Lake County. The defendant moved for substitution under 3-1-804 and a second judge assumed jurisdiction. The second judge then requested a retired District Court Judge to preside over the case, who was appointed by the Chief Justice of the Supreme Court. The plaintiff then moved to substitute the retired judge under 3-1-804. The judges then issued an order returning jurisdiction to the original judge or the Chief Justice. The petitioner sought supervisory control, arguing that 3-1-804 does not apply to sitting retired judges. The Supreme Court held that specific assignments of retired District Judges under 19-5-103 are contemplated by the language of 3-1-804. Cushman v. 20th Judicial District Court, 2015 MT 311, 381 Mont. 324, 360 P.3d 492.

Authority of Retired Judge to Decide Summary Judgment Motion When Ordered to Finish Preretirement Business: A retired District Court Judge was ordered by the Chief Justice of the Supreme Court, pursuant to this section, to be reactivated for the purpose of completing matters unfinished at the time of retirement, including the disposition of the present case. Based on that statutory authority and the Supreme Court order, the judge had authority to decide defendant's motion for summary judgment, to issue a related memorandum and order, and to enter final judgment. Walch v. Univ. of Mont., 260 M 496, 861 P2d 179, 50 St. Rep. 1186 (1993). See also Capital One, NA v. Guthrie, 2017 MT 75, 387 Mont. 147, 392 P.3d 158.

Appointment of Defeated District Judge: Judge Sykes, a retired judge who was defeated for reelection, was appointed by the Chief Justice to hear several cases. A party to one of the cases appealed the appointment of a defeated judge. The court held that Judge Sykes is a member of the "pool" of retired judges and can be called in by the Chief Justice to preside under the provisions of Art. VII, sec. 6, Mont. Const. Section 3-5-201, which requires District Judges to be elected, does not overcome the constitutional power given to the Chief Justice. Judge Sykes was not appointed pursuant to this section, and it is therefore not applicable. State ex rel. Welch v. District Court, 209 M 397, 680 P2d 327, 41 St. Rep. 783 (1984).

Judge's Reappointment to Finish Case Started Before Retirement: That trial Judge retired prior to his issuance of orders in the case at issue did not make the orders void. Under the decision in State ex rel. Wilcox & Bradley v. District Court, 678 P2d 209, 41 St. Rep. 397 (1984), the trial Judge had authority to perform all functions of an active District Judge, including the issuance of final orders and judgments. In re Pegg's Estate, 209 M 71, 680 P2d 316, 41 St. Rep. 558 (1984).

District Judge to Approve and Adopt Work of Retired Judge: In a case involving the question of whether or not retired judges may be called into service pursuant to Art. VII, sec. 6, Mont. Const., by the Chief Justice of the Supreme Court, those opposing the use of retired judges argued that under this section retired judges are not empowered to enter final judgment in a case. The Supreme Court noted that this section is a legislative grant of power and must yield to the constitutional grant of power. However, the court then found that this section and the constitutional provision address two situations, are mutually exclusive, and are not inconsistent. The court held that this section addresses the situation in which a District Judge needs help in legal research, the preparation of opinions, and preliminary matters. State ex rel. Wilcox v. District Court, 208 M 351, 678 P2d 209, 41 St. Rep. 397 (1984), followed in St. v. Holmes, 212 M 526, 687 P2d 662, 41 St. Rep. 1535 (1984).

19-5-105. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-5-106. Judges' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.3401 Retirement options for elected officials other than legislators.

19-5-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2011 Amendment: Chapter 335 in (1) inserted "or associate water judge". Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (3) near end after "service" inserted "credit". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 in (1) substituted present text regarding election to remain under public employees' retirement system for former (1) and (2) that read: "(1) A judge or justice who was a member of the PERS prior to December 31, 1984, may elect to remain under that system by notifying the public employees' retirement board in writing of the election on or before October 1, 1985.

(2) Every other judge of a district court, justice of the supreme court, and the chief water judge provided for in 3-7-221 must be a member of the Montana judges' retirement system"; inserted (2) regarding judge pro tempore; inserted (3) regarding inactive vested member; and inserted (4) regarding inactive nonvested member. Amendment effective July 1, 1993.

1991 Amendment: In (2) inserted reference to Chief Water Judge; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: Near beginning of (1) substituted "December 31, 1984" for "March 2, 1967", and at end of (1) substituted "October 1, 1985" for "October 1, 1967".

Administrative Rules

ARM 2.43.2104 Membership cards.
ARM 2.43.2309 Service purchases by inactive vested members.

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-5-401. Payments into pension trust fund.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "pension trust fund" for "fund" and substituted "division" for "public employees' retirement division of the department of administration"; in second sentence, after "commingled with", inserted "other pension trust", substituted "division" for "PERS", and before "judges' retirement system" deleted "Montana"; and made minor changes in style. Amendment effective July 1, 1993.

19-5-402. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member shall contribute into the fund a sum equal to" and substituted "member's compensation" for "member's monthly compensation beginning on the first day of the member's term". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 substituted (1) regarding member's contribution rate for former subsection that read: "(1) Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to 7% of his monthly salary beginning on the first day of his term. This sum shall be deducted from his salary and credited to his account in the fund." Amendment effective July 1, 1993.

1991 Amendment: Inserted (2) requiring employer to pick up and pay a member's contributions for service rendered after June 30, 1991; inserted (3) providing that those contributions become part of the member's contributions except for tax purposes and requiring a separate accounting; and inserted (4) regarding payment, deduction, and remission of contributions. Amendment effective July 1, 1991.

1983 Amendment: Near middle of section after "salary" inserted "except that a member ... first day of his term"; and before "sum" substituted "This" for "which".

19-5-403. Refunds in case of resignation or discharge.

Compiler's Comments

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "retirement benefit" for "retirement allowance", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning, after "contributor", inserted "willingly", after "resigns" deleted "of his own volition", near middle, before "deductions", inserted "accumulated", and at end inserted "upon the board's receipt of his written application for a refund"; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.2901 Refunds to members.

Attorney General's Opinions

Effect When Judge or Justice Seeks New Position — Retirement Fund: A District Court Judge or Supreme Court Justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under 19-5-503. A District Court Judge or Supreme Court Justice who runs for another judicial position that would entitle him to membership in the Montana Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under 19-5-503. 39 A.G. Op. 24 (1981).

19-5-404. State employer contribution — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2021 Amendment: Chapter 272 in (1) at beginning substituted "Beginning July 1, 2023, and except as provided in subsections (2) and (3)" for "Except as provided in subsection (2)" and near middle decreased the employer contribution rate from 25.81% to 14.0%; in (2) at beginning of first sentence inserted "Beginning July 1, 2023, and except as provided in subsection (3)" and near middle of first sentence decreased the contribution from the natural resources operations state special revenue account from 25.81% to 14.0%; inserted (3) providing conditions to increase the employer contribution rate to 25.81%; inserted (4) and (5) providing a 0% contribution rate for employer contributions and for contributions from the natural resources operations state special revenue account for the specified time period; and made minor changes in style. Amendment effective July 1, 2021, and subsections (4) and (5) terminate June 30, 2023.

2017 Special Session Amendment: Chapter 1 in (1) and (2) substituted "0%" for "25.81%". Amendment effective January 1, 2018, and terminates June 30, 2019.

Applicability: Section 4, Ch. 1, Sp. L. November 2017, provided: "[This act] applies to the first full pay period in January 2018 through the last full pay period in June 2019."

2007 Amendment: Chapter 432 in (2) substituted "the natural resources operations state special revenue account, established in 15-38-301" for "the renewable resource grant and loan program account in the state special revenue fund". Amendment effective July 1, 2007.

2005 Amendment: Chapter 329 in (1) substituted "pay as employer contributions" for "contribute monthly to the pension trust fund a sum equal to" and substituted "paid to all of the employer's employees, except those properly excluded from membership" for "of each member"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendments: Chapter 287 at beginning of (1) inserted exception clause, after "fund" substituted "a sum equal to 25.81%" for "a sum equal to 6%", and deleted second and third sentences that read: "In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to 34.71% of the total compensation paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the division to be credited to the pension trust fund"; in (2), after "amount", substituted "equal to 25.81%" for "equal to 34.71%"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (2) inserted second sentence requiring a judicial funding request to implement this section. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in three places before "fund", inserted "pension trust", near end of first sentence, after "6% of the", substituted "compensation" for "salary", in second sentence, after "34.71% of the", substituted "total compensation" for "salaries", in third sentence substituted "division" for "public employees' retirement division of the department of administration", and deleted last sentence that read: "The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund"; and in (2) substituted "judges' pension trust fund" for "judges' retirement fund" and after "34.71% of the" substituted "compensation" for "salary". Amendment effective July 1, 1993.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, Laws 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, Laws 1993.

1991 Amendments: Chapter 344 in (1) inserted last sentence concerning appropriation of court fees to judges' retirement fund. Amendment effective April 4, 1991.

Chapter 364 inserted (2) relating to funding of retirement for Chief Water Judge.

Effective Date: Section 3, Ch. 364, L. 1991, provided: "[This act] [enacting subsection (2) of this section] is effective July 1, 1991."

1989 Amendment: (Temporary) Near middle of second sentence, after "25-1-201", inserted "(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)". Amendment effective July 1, 1989, and terminates July 1, 1991.

(Effective July 1, 1991) Near middle of second sentence, after "25-1-201", inserted "(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)" and substituted "34.71%" for "31%". Amendment effective July 1, 1991.

Review of Actuarial Valuation: Section 5, Ch. 664, L. 1989, provided: "The public employees retirement board shall provide to the 52nd legislature, by January 10, 1991, a copy of the most current actuarial valuation of the judges' retirement system. The legislature shall review the actuarial soundness of the judges' retirement system, and the 52nd legislature may eliminate or modify the effect of [this act]."

1987 Amendments: Chapters 318 and 642 in second sentence, after "68% of", substituted "certain filing fees as required" for "the fees collected".

1983 Amendment: Increased percentage of district court fees transmitted to state from 60% to 68%; and increased percentage deposited in retirement fund from 20% to 31%.

19-5-409. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 near middle of (3) and beginning of (4) after references to service inserted "credit"; and near end of (4) before "service retirement" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near beginning of (1) after "member may" substituted "file a written application" for "make a written election" and near end after "member has" substituted "in" for "qualified under"; and in (3) at beginning substituted "A member may not purchase" for "A member may elect to qualify no". Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2318 "1-for-5" additional service.

19-5-410. Application to purchase military service credit.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2005 Amendment: Chapter 329 in (1)(a) near end inserted "service credit and membership service for" and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation"; in (1)(b) inserted "active" and substituted "service credit and membership service under subsection (1)(a)" for "service under this section"; inserted (2) allowing a member with at least 5 years of membership service to file an application to purchase service credit and membership service for up to 5 years of military service; inserted (3) requiring a member purchasing service under this section to pay the actuarial cost of the service credit; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 11, Ch. 26, L. 2003, and sec. 11, Ch. 289, L. 2003, provided that [this act] is effective July 1, 2003.

Administrative Rules

ARM 2.43.2311 Limitations on purchases of service.

ARM 2.43.2316 Reserve military service.

19-5-411. Service purchase limitation.

Compiler's Comments

Effective Date: Section 11, Ch. 26, L. 2003, and sec. 11, Ch. 289, L. 2003, provided that [this act] is effective July 1, 2003.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

19-5-501. Eligibility for service retirement.

Compiler's Comments

2013 Amendment: Chapter 240 in (1) at beginning substituted "Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a vested member who" for "A member who has at least 5 years of membership service and" and substituted "is eligible to receive the nonforfeitable service retirement benefit" for "may retire and receive the service retirement benefits"; and made minor changes in style. Amendment effective April 22, 2013.

2003 Amendment: Chapter 429 near end of (1) before "retirement benefits" inserted "service". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (1) after "age of 65" inserted "has attained normal retirement age and" and after "receive the" deleted "proportional"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 176 in (1) near middle reduced age from 65 to 60; and made minor changes in style. Amendment effective March 30, 2001.

1993 Amendment: Chapter 265 in three places substituted references to retirement benefits or benefits for references to retirement allowances or allowances; near beginning of (1) substituted "has at least 5 years of membership service" for "has completed at least 5 years or more service"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (2) inserted second sentence concerning judge pro tempore.

Applicability: Sections 2 and 3, Ch. 12, L. 1987, provided that the repeal of the mandatory retirement age from the judges' retirement system was effective on passage and approval (approved February 13, 1987) and applies retroactively, within the meaning of 1-2-109, to membership in the judges' retirement system on or after January 1, 1987.

19-5-502. Service retirement benefit.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) and (2) inserted reference to 19-5-902; and made minor changes in style. Amendment effective July 1, 2017.

2003 Amendment: Chapter 429 in introductory clause at beginning substituted "After termination" for "Upon retirement" and after "service" inserted "and upon application for service retirement"; and in (1) in two places substituted "service credit" for "credited service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (2) substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 in introductory clause substituted "the service retirement benefit must be as follows" for "a member must receive a service retirement benefit equal to"; at beginning of (1) inserted "for members not covered by 19-5-901"; inserted (2) requiring benefit for members covered by 19-5-901 to be calculated using final average salary; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 ⅓% per year of his final salary for the first 15 years' service and 1.785% per year for each year's service after 15 years." Amendment effective July 1, 1993.

1989 Amendment: Near end substituted "1.785%" for "1%"; and at end substituted "after 15 years" for "thereafter". Amendment effective July 1, 1991.

Review of Actuarial Valuation: Section 5, Ch. 664, L. 1989, provided: "The public employees retirement board shall provide to the 52nd legislature, by January 10, 1991, a copy of the most current actuarial valuation of the judges' retirement system. The legislature shall review the actuarial soundness of the judges' retirement system, and the 52nd legislature may eliminate or modify the effect of [this act]."

Administrative Rules

ARM 2.43.2105 Basic period of service.

Case Notes

1989 Retirement Benefit Increase Not Applicable to Judge Who Retired After Date of Enactment but Before Effective Date of Legislation: Gulbrandson was an active member of the judges' retirement system at the time of enactment of Ch. 664, L. 1989, which provided an increase in state funding to the system and an increase in retirement benefits for those years served by a judge after the 15th year. Implementation of the increase under this section was delayed until July 1, 1991. Gulbrandson voluntarily retired prior to the delayed effective date. The Supreme Court held that based on the plain meaning of the statute, Gulbrandson was not entitled to the increased retirement benefit upon his retirement prior to July 1, 1991. Denial of the benefit did not impair Gulbrandson's contract with the system in violation of Art. II, sec. 31, Mont. Const., because the statute affecting his contract at the time of retirement did not include the benefit increase. Moreover, denial of the benefit does not violate equal protection provisions of Art. II, sec. 4, Mont. Const., because although Ch. 664 effectively created two classes of retired judges, it operates equally upon those within each class. Nearly all such legislation creates classifications regarding applicability, benefits, and recipients of retirement benefits. The fact that some of the classifications are imperfect does not necessarily mandate a conclusion that they violate equal protection. Under the rational basis test, which is the proper test in this case, the legitimate government interest of encouraging judges with significant years of service to remain in service longer was met. Thus, the 1989 amendment to this section was not unreasonable or arbitrary or devoid of rational basis. Gulbrandson v. Carey, 272 M 494, 901 P2d 573, 52 St. Rep. 843 (1995), following Hughes v. Judges Retirement Bd., 282 NW 2d 160 (Mich. 1979), and distinguishing Leonard v. Seattle, 503 P2d 741 (Wash. 1972).

Attorney General's Opinions

Increased Retirement Allowance Prospective Only: The 1989 amendment to this section increasing the benefit allowance from 1% to 1.785%, which became effective July 1, 1991, was intended to encourage judges to remain on the bench rather than to benefit judges who had already retired. Therefore, absent a legislative implication of retroactivity, the increase did not apply retroactively to judges who retired prior to July 1, 1991, regardless of whether they retired before or after the date the amendment was enacted in 1989. 44 A.G. Op. 44 (1992).

19-5-503. Involuntary retirement benefit.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near middle before "retirement age" inserted "normal" and after "filing" inserted "with the board"; in (2) near middle after "reaching" substituted "normal retirement age" for "service retirement age"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 deleted former (2) that read: "(2) If a member elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member must, upon filing an application in the manner prescribed by the board, be paid the service retirement benefit provided for in 19-5-502"; and in (2) near beginning before "discontinued" deleted "involuntarily" and substituted "receive a retirement benefit" for "receive an involuntary retirement benefit". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), near beginning, substituted "member" for "contributor", substituted "membership service" for "total service", and at end, after "be paid", substituted remainder of subsection regarding involuntary retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit"; in (2), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", and at end, after "be paid", substituted remainder of subsection regarding service retirement benefit for former text that read: "whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; in (3), near beginning, substituted "member" for "contributor", substituted "having earned at least 12 years of service credit" for "having completed 12 years of total service", before "retirement age" inserted "service", near end, after "receive", inserted "an involuntary retirement benefit that is the actuarial equivalent of", and after "benefits" deleted "under this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Near beginning of (2), after "contributor" inserted "elected or appointed to office prior to July 1, 1983"; and inserted (3) allowing benefits in certain cases for contributors involuntarily discontinued from service.

Administrative Rules

ARM 2.43.3403 Involuntary retirement.

Attorney General's Opinions

Effect When Judge or Justice Seeks New Position — Retirement Fund: A District Court Judge or Supreme Court Justice who runs for an elective public office other than a judicial position is not entitled to receive an involuntary retirement allowance under 19-5-503. A District Court Judge or Supreme Court Justice who runs for another judicial position that would entitle him to membership in the Montana Judges' Retirement System and loses the election is entitled to receive an involuntary retirement allowance under 19-5-503. 39 A.G. Op. 24 (1981).

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.2903 Payment to an estate.

19-5-601. Disability retirement benefit.

Compiler's Comments

2013 Amendment: Chapter 178 in (1) substituted "disability of a vested member" for "disability of a member"; in (2) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 in (1) at beginning inserted exception clause; in (2) after "salary" deleted "the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901", before "one-half" deleted "the greater of", and at end after "compensation" deleted "or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901"; inserted (3) requiring a member who was retired at the time of becoming disabled to continue to receive the same retirement benefit; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 in (1) after "member's" deleted "final"; in (2) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

Coordination Instruction — Amendment Voided: Section 41(3), Ch. 370, L. 1997, voided the amendments to 19-5-601 made by sec. 16, Ch. 287, L. 1997, and amended the section as follows: in second sentence in introduction, after "service", substituted "or duty for the Montana judiciary, the member's disability retirement benefit must be" for "to the Montana judiciary in the line of duty, the member must receive a benefit equal to"; at beginning of (1) inserted "the greater of" and after "salary" substituted "or the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901" for "or the benefit provided in 19-5-502, whichever is greater"; and inserted (2) outlining retirement benefit for person covered under 19-5-901. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. If such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half of his final salary or the allowance provided in 19-5-502, whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

19-5-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in (1) in second sentence near beginning after "made by a" inserted "board-approved", after "surgeon at" substituted "a place mutually agreed on by the board, the disabled member, and the physician or surgeon and" for "the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29, Ch. 412, L. 1995, provided that this section applies retroactively to any service performed by an individual for a County Sheriff's Department and to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit for references to disability retirement allowance, retirement allowance, or disability allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

Part 7
Optional Benefit Payments

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2603 Acceptable proof of date of birth.

19-5-701. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2015 Amendment: Chapter 248 in (5) near beginning substituted "terminating service" for "retirement"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (1) inserted last sentence concerning option 1 benefit; in (2), (3), and (5) after "retirement benefit" inserted reference to subsection (2); inserted (6) concerning changing selected option; in (8)(a) substituted "original option 1 retirement benefit" for "original retirement benefit"; in (8)(c) after "option" inserted "under subsection (2)"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (1)(c)(iii) regarding death of all surviving contingent annuitants; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (1)(a) inserted second and third sentences and (1)(a)(i) and (1)(a)(ii) providing conditions for option 2; in (3) at beginning substituted "If the member or designated beneficiary or the named" for "If a benefit recipient or the recipient's"; in (5) in introductory clause after "(1)(b)" deleted "that is initially effective on or after October 1, 1999"; in (5)(a) at beginning after "the" inserted "original"; in (5)(b) near beginning of first sentence before "contingent" inserted "original", near middle after "dissolved and the" substituted "original contingent annuitant" for "beneficiary", and in second sentence near end before "contingent" inserted "original"; deleted former (5)(b) that read: "(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement"; in (6) in introductory clause substituted "A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives" for "A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant"; inserted (6)(a) through (6)(c) setting out alternatives for a member who applies to revert; in (7) substituted benefit calculation requirement for a member who selects an alternative for former (7) that read: "(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change"; inserted (8) requiring that a written application be filed within 18 months of the death of or dissolution of marriage to the contingent annuitant; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) in second sentence near end inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to a period certain commencing at the time that the initial payee first begins receiving the benefit and available as a 10- or 20-year period, depending on whether the member retired at 75 or 65 years of age or younger; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant and what each must receive; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and near middle after "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "family law order" for "divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "benefit" deleted "payable" and after "annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant on the application; in (4) after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert back to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1) substituted present text regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election; and inserted (4) regarding death of member after retirement and within 30 days from election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Part 8

Survivorship Benefits and Death Payments

19-5-801. Payments upon employment-related death.

Compiler's Comments

2013 Amendment: Chapter 178 in (3) after "19-5-701" inserted "and 19-5-802(2) through (4)". Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 in (1) at beginning inserted exception clause; in (2) near beginning after "benefit is the" deleted "greater of the following:

(a) the equivalent of the contingent annuitant's benefit, if applicable"; inserted (3) providing that 19-5-701 applies if the member was retired at the time of death; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 in (2) at end of introductory clause inserted "following"; in (2)(a) substituted "the equivalent of the contingent annuitant's benefit, if applicable" for "actuarial equivalent of"; in (2)(b) at end after "death" deleted "or of the contingent annuitant's benefit, if applicable"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 near middle of first sentence, after "service", inserted "or duty" and in second sentence, before "actuarial", inserted "greater of the", after "member's" inserted "service", and after "benefit" substituted "standing to the member's credit on the date of death or of the contingent annuitant's benefit, if applicable" for "provided for in 19-5-502". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and substituted second sentence regarding survivorship benefit for former second sentence that read: "Such retirement allowance shall consist of:

(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(2) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-5-802. Payments upon death from other than employment-related cause.

Compiler's Comments

2015 Amendment: Chapter 248 in (1) substituted "If a vested member" for "If an active vested member"; in (4) inserted "the member's designated beneficiary or, if there is no surviving designated beneficiary"; in (5) inserted second sentence concerning reductions in accumulated contributions. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 inserted (1) concerning death of vested member before retirement age; in (2) substituted "When a retired member not covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies" for "If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2)"; in (3) substituted "When a retired member covered under 19-5-901 and receiving an option 1 retirement benefit under 19-5-701 dies" for "If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2)"; deleted former (3) that read: "(3) If a vested member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503"; inserted (4) concerning death of retired member with option 2 or 3 benefit; inserted (5) concerning applicability of section; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 in (3) at beginning after "If a" inserted "vested". Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 in (1) and (2) substituted "19-5-701(2)" for "19-5-701"; and in (3) near beginning after "reaching" inserted "normal" and near end after "retirement" substituted "benefit" for "options". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) in first sentence substituted text relating to calculation of postretirement death payment for member not covered by 19-5-901 for former text that read: "If a retired member who is not covered under 19-5-901 and who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701 dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump sum"; and in (2) substituted text relating to calculation of postretirement death payment for member covered by 19-5-901 for former text that read: "Upon the death of a retiree who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701 and who is covered under 19-5-901, the member's designated beneficiary must be paid the unpaid balance of the retiree's benefit. The benefit must be calculated by subtracting the total benefits paid to the member during the member's lifetime from the member's total amount of contributions and interest on account as that amount was on the day that the member retired." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 in first sentence in (1), after "member", substituted "who is not covered under 19-5-901 and who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701" for "who chose a regular retirement benefit"; inserted (2) requiring payment to beneficiary of unpaid benefits upon death of covered retiree; in (3), before "options", inserted "involuntary retirement"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence, substituted "member who chose a regular retirement benefit" for "judge or justice", substituted "payments equal to" for "in payments", substituted "member's retirement benefit" for "member's annuity and the state annuity", near end, before "beneficiary", inserted "designated", and after "beneficiary" inserted "in a lump sum" and inserted second sentence regarding actuarially equivalent annuity; in (2), before "beneficiary", inserted "designated" and after "entitled to" inserted "a monthly survivorship benefit that is"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Part 9

Postretirement Benefits and Benefit Increases

19-5-901. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-5-902. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(b)(ii) substituted "2005" for "2001"; deleted former (3)(b)(ii)(B) that read "(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward"; in (4) substituted "may" for "shall"; in (5) in two places inserted "previously" and in two places inserted "or this section"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

CHAPTER 6
HIGHWAY PATROL OFFICERS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 31-231, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 6, Ch. 361, L. 1974, as amended by sec. 1, Ch. 349, L. 1975.

Severability: Section 31-231, R.C.M. 1947, was a severability clause.

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.
ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2308 Most recent service purchased first.

Part 1
General Provisions

19-6-101. Definitions.

Compiler's Comments

2017 Amendment: Chapter 195 in definition of highest average compensation in (b) after "Lump-sum payments for" deleted "severance pay, including payment for". Amendment effective July 1, 2017.

2013 Amendment: Chapter 386 in definition of compensation inserted (b)(ii) concerning excluded bonuses; in definition of highest average compensation inserted (c) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 substituted definition of compensation for former definition that read: ""Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made"; in definition of highest average compensation in first sentence after "monthly compensation" substituted "during any 36 consecutive months of membership service" for "received by a member for any 3 years of continuous service upon which contributions have been made" and after "served" substituted "at least 36 months" for "3 years" and in second sentence after "paid to" substituted "the member upon termination of employment" for "an employee upon termination of service"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in (1) substituted "any pretax deduction allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1993 Amendments: Chapter 265 inserted definitions of compensation and survivor; deleted definition of account that read: ""Account" means the Montana highway patrol officers' retirement pension trust fund"; deleted definition of accumulated deductions that read: ""Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602"; deleted definition of Board that read: ""Board" means the public employees' retirement board provided for in 2-15-1009"; deleted definition of Department that read: ""Department" means the public employees' retirement division of the department of administration"; in introductory clause of definition of dependent child substituted "member" for "patrol officer"; substituted definition of final average salary for definition of final salary and in first sentence substituted "monthly compensation" for "annual compensation", after "compensation received by a member" deleted "before any deductions have been made and exclusive of maintenance, allowances, and expenses", and at end substituted "months served" for "years served" and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and at end substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means a person who has accumulated deductions in the account standing to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member"; deleted definition of retired patrol officer that read: ""Retired patrol officer" means a person in receipt of a retirement allowance under this chapter"; deleted definition of retirement age that read: ""Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state of Montana"; in definition of surviving spouse, in two places, substituted references to retired member for references to retired patrol officer; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

1989 Amendment: In (1) changed "patrolmen's" to "patrol officers'"; in (7), (11), and (15) changed "patrolman" to "patrol officer"; and in (15) changed "patrolman's" to "patrol officer's".

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1985 Amendments: Chapter 86 deleted former (6) that read: ""Compulsory retirement age" means 60 years of age"; and at end of (12) deleted "or 60 years of age, whichever occurs first".

Chapter 278 near beginning of (4), after "means", inserted "a surviving spouse or dependent child or, if there is no surviving spouse or dependent child" and at end of (4) substituted "under 19-6-602 [now repealed]" for "under this chapter by a member's written designation, duly acknowledged and filed with the department"; and inserted definitions of dependent child and surviving spouse.

1983 Amendment: In (1), substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Deleted former subsection (9), defining "involuntary retirement", and former subsection (12), defining "optional retirement age"; added "or 60 years of age, whichever occurs first" at the end of (12).

Administrative Rules

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-6-102. Highway patrol officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 before "highway patrol officers' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

1989 Amendment: Changed "patrolmen's" to "patrol officers'".

19-6-106. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-6-107. Highway patrol officers' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2109 Receipt of service credit on or after termination of employment.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2302 Documentation of service.
ARM 2.43.2308 Most recent service purchased first.

19-6-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2013 Amendment: Chapter 272 in (2)(a) and (3)(a) after "inactive member" inserted "hired before July 1, 2013"; inserted (2)(b) regarding inactive member with at least 10 years of service; inserted (3)(b) regarding inactive member with less than 10 years of service; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2005 Amendment: Chapter 329 in (2)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) providing what a lump-sum payment consists of; in (3)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 inserted (2) regarding inactive vested member; and inserted (3) regarding inactive nonvested member. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2104 Membership cards.

ARM 2.43.2309 Service purchases by inactive vested members.

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension or profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-6-401. Payments into pension trust fund.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 428 near end after "licenses and" substituted "replacement" for "duplicate". Amendment effective October 1, 2005. This amendment was rendered void by the amendment made by Ch. 464.

Chapter 464 inserted first sentence stating that there is a pension trust fund and in second sentence near middle after "on and" substituted "earnings from the investment of" for "increase of the investments and" and after first "fund" deleted "all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from the driver's licenses and duplicate driver's licenses as provided in 61-5-121"; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 429 near middle after "trust fund" inserted "all fees or portions of fees that are required by law to be paid to the retirement system or trust fund" and near end after "must be" substituted "deposited in" for "paid to". Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 near beginning, after "members", deleted "of the Montana highway patrol" and in two places substituted "pension trust fund" for "account". Amendment effective July 1, 1993.

1991 Amendment: Made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 62 at end substituted "account" for "state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement pension trust fund"; and made minor change in grammar. Amendment effective March 10, 1989.

Chapter 217 at end of section changed "patrolmen's" to "patrol officers'". (Deleted by Ch. 62, L. 1989.)

1985 Amendment: Near middle of section, after "this account", inserted "and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121".

1983 Amendment: At end of section, substituted "pension trust fund" for "account in the agency fund".

19-6-402. Member's contribution.

Compiler's Comments

2013 Amendment: Chapter 272 in (1)(a) in introductory clause after "contribute" substituted "the following percentage" for "9%" and inserted (1)(a)(i) through (1)(a)(iv) establishing contribution percentages; in (1)(b) in introductory clause after "19-6-710" inserted "19-6-711, or 19-6-712", after "contribute" substituted "the following percentage" for "9.05%", and inserted (1)(b)(i) through (1)(b)(iv) establishing contribution percentages; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2005 Amendment: Chapter 329 in (1)(a) after "contribute" deleted "into the pension trust fund" and after "member's" deleted "monthly"; and in (1)(b) after "contribute" deleted "to the pension trust fund" and after "member's" deleted "monthly". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 at beginning of (1)(a) substituted "A member not covered under 19-6-710" for "Each member", after "fund" deleted "a sum equal to", and after "compensation" deleted "which must be deposited to the member's credit in the pension trust fund"; inserted (1)(b) requiring covered member to contribute 9.05% of monthly compensation to trust fund; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) increased percentage of monthly salary contributed by member from 7.59% to 9%. Amendment effective July 1, 1991.

1985 Amendments — Increases Cumulative: Chapter 278 in (1) increased contribution rate from 6½% to 6.59%.

Chapter 294 in (1) increased contribution rate from 6½% to 7½%.

Section 5 of Ch. 294 provided that the percentage amount must reflect the sum of the increases in the member's contribution provided in both Ch. 278 and Ch. 294, 7.59%.

Chapter 464 in (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-6-403. Refund of member's contribution.

Compiler's Comments

2001 Amendment: Chapter 99 at end after "member's" substituted "filing of a written application with the board" for "written application to the board". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted "retirement benefit" for "retirement allowance" and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning, after "member", inserted "willingly resigns or", near middle, before "deductions", inserted "accumulated", and at end inserted "upon his written application to the board"; deleted former (2) that read: "(2) If a member resigns of his own volition before becoming entitled to a retirement allowance, his accumulated deductions shall be paid to him"; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: At beginning of (1) substituted "If a member is discharged" for "Where a member resigns of his own volition or is discharged"; and inserted (2) providing for refund of accumulated deductions for members who resign voluntarily.

Administrative Rules

ARM 2.43.2901 Refunds to members.

19-6-404. State employer contribution — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2013 Amendment: Chapter 272 in introductory clause after "contributions" substituted "38.33%" for "36.33%"; and in (1) substituted "28.15%" for "26.15%". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2005 Amendments — Composite Section: Chapter 329 in introductory clause substituted "pay as employer contributions" for "annually contribute to the pension trust fund an amount equal to", after "36.33% of" deleted "the total", and substituted "all of the employer's employees, except those properly excluded from membership" for "the members"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 428 in (2) near end after "licenses and" substituted "replacement" for "duplicate". Amendment effective October 1, 2005. This amendment was rendered void by the amendment made by Ch. 464.

Chapter 464 in introductory clause near beginning after "shall" deleted "annually"; in (1) after "payable" inserted "as appropriated by the legislature"; in (2) at end after "is" substituted "statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund" for "payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121"; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1997 Amendment: Chapter 287 in introductory clause increased contribution rate from "36.28%" to "36.33%"; and in (1) increased rate from "26.10%" to "26.15%". Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in introduction substituted "pension trust fund" for "account" and substituted "total compensation paid to the members" for "salaries paid to the highway patrol officers who are covered by this account"; and in (1) and (2) substituted "the total compensation of the members" for "salaries". Amendment effective July 1, 1993.

1991 Amendment: In introductory clause increased state contribution from 26.75% to 36.28%; and in (1) increased percentage from 16.57% to 26.10%. Amendment effective July 1, 1991.

Credit: Section 6, Ch. 816, L. 1991, a coordination instruction, provided: "If Senate Bill No. 192 is passed and approved, the amount allocated to the Montana highway patrol officers' retirement system in Senate Bill No. 192 must be used as a credit against the state retirement contribution as provided in 19-6-404(1)." Senate Bill No. 192 was enacted as Ch. 735, L. 1991.

1989 Amendments: Chapter 62 at end of introductory clause substituted "following sources" for "general fund. In addition, the state shall contribute to the account"; inserted (1) establishing the 16.57% contribution amount; inserted beginning of (2) establishing the 10.18% contribution amount; and deleted former (2) that read: "(2) The department shall credit all fees deposited as provided in 61-5-121 as part of the state's contribution required in subsection (1)." Amendment effective March 10, 1989.

Chapter 217 in (1) changed "patrolmen" to "patrol officers".

1985 Amendments — Increases Cumulative: Chapter 277 in (1) inserted second sentence referring to fees from driver's licenses and duplicate driver's licenses; and inserted (2) providing that certain fees must be credited as part of state's contribution.

Chapter 278 increased contribution rate from 16.57% to 18.58%.

Chapter 294 increased contribution rate from 16.57% to 24.74%.

Section 5 of Ch. 294 provided that the percentage amount must reflect the sum of the increases in the state's contribution provided in both Ch. 278 and Ch. 294, 26.75%.

1981 Amendment: Changed state's contribution from 16% to 16.57%.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-6-410. State contribution for supplemental benefits — statutory appropriation.

Compiler's Comments

Effective Date: Section 13, Ch. 464, L. 2005, provided that this section is effective July 1, 2005.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2603 Acceptable proof of date of birth.

19-6-501. Eligibility for service retirement benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2013 Amendment: Chapter 240 in (1) at beginning substituted "Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member" for "A member has attained normal retirement age and", before "service" inserted "nonforfeitable", and after "benefit" inserted "under 19-6-502"; inserted (2) concerning nonforfeitable right to service retirement; and made minor changes in style. Amendment effective April 22, 2013.

2001 Amendments — Composite Section: Chapter 99 in (1) and (2) after "1985" inserted "has attained normal retirement age and". The amendment in (2) was rendered void by Ch. 193. Amendment effective March 21, 2001.

Chapter 193 near beginning after "A member" deleted "first employed by the Montana highway patrol on or before July 1, 1985"; deleted former (2) that read: "(2) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service"; and made minor changes in style. Amendment effective April 3, 2001.

1997 Amendment: Chapter 370 deleted former (2) and (3) that read: "(2) A member eligible to receive a retirement benefit, as provided in subsection (1), shall apply in writing to the division.

(3) (a) Except as provided in subsection (3)(b), the retirement benefit may commence on the first day of the month following the member's last day of covered service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible member who has terminated service must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit or retirement benefit for references to service retirement allowance or retirement allowance; at end of (1)(a) substituted "membership service and terminating service" for "creditable service and terminating covered employment"; at end of (1)(b) substituted "membership service, and terminated service" for "creditable service, and terminated covered employment"; in (2), at end, substituted "division" for "department"; in (3)(a) substituted "covered service" for "covered employment" and substituted "inactive member" for "terminated member"; in (3)(b) substituted "member who has terminated service" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: At end of (1)(a) and (1)(b) inserted clause referring to termination of covered employment; at end of (2), after "department", deleted "setting forth at what time he desires to be retired, which may not be less than 30 days or more than 90 days subsequent to the filing thereof"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and near middle, after "employment", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Substituted language of (1) and (2) (see 1985 Session Law for text) for former (1) that read: "A member in service who has completed at least 20 years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof."

1983 Amendment: Inserted (2) specifying date of commencement of retirement allowance.

1981 Amendment: In (1), reduced the minimum creditable service requirement for retirement on a service retirement allowance from 25 years to 20 years.

19-6-502. Service retirement benefit.

Compiler's Comments

2013 Amendment: Chapter 272 after "equal to" substituted "2.6%" for "2.5%". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 429 at beginning substituted "After termination" for "Upon retirement" and after "service" inserted "and upon application for service retirement". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near end after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, a member shall receive a service retirement allowance consisting of the state annuity plus the member's annuity.

(2) The amount of the service retirement allowance must equal 2.5% of his final salary for each year of creditable service." Amendment effective July 1, 1993.

1991 Amendment: In (2) increased allowance from 2% of final salary to 2.5% of final salary; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (2) substituted language establishing amount of service retirement allowance for former language that read: "(2) The service retirement allowance shall be computed as follows:

(a) 20 through 25 years, 2% of his final salary for each year of service;

(b) over 25 years, 2% of his final salary for each year of service through the 25th plus 1% of his final salary for each year of service past 25."

Administrative Rules

ARM 2.43.2105 Basic period of service.

19-6-503. Early retirement benefit for member discontinued from service other than for cause.

Compiler's Comments

2013 Amendment: Chapter 272 in (1) near beginning after "member" inserted "hired before July 1, 2013"; inserted (2) regarding member discontinued from service other than for cause; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 429 near middle before "retirement age" inserted "normal" and near end after "early" inserted "service". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted "5 years of membership service" for "5 years of total service", substituted "division" for "department", and after "be paid" substituted remainder of section regarding early retirement benefit for former text that read: "whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: Near beginning, after "If a member is" substituted "discontinued from service other than for cause after having completed 5 years" for "involuntarily discontinued from service after having completed 10 years".

1981 Amendment: Added "based on a retirement age of 60" at the end of (2).

Attorney General's Opinions

Involuntary Retirement: This section, prior to the 1985 amendments, had to be interpreted to the effect that a patrolman who was discontinued from service, not voluntarily, after having completed 10 years of service but before reaching age 60, could elect to take either of the following as his retirement allowance: (a) the full amount of accumulated deductions standing to his credit; or (b) the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60, pursuant to the following section, had he not discontinued service. Retirement allowances heretofore granted under an erroneous interpretation must stand unchanged by this subsequent reinterpretation. 36 A.G. Op. 24 (1975).

19-6-505. Payment of retirement benefits.

Compiler's Comments

2005 Amendment: Chapter 329 in (3)(c) substituted "pursuant to 19-2-803" for "to the child's appointed guardian for the child's use". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near middle after "dependent child" deleted "and if the member had designated a beneficiary as provided in 19-2-801"; deleted former (5) that read: "(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (4) at beginning substituted "If a retired member dies without a" for "If upon the retired member's death there is no", after "paid" substituted "the amount, if any, of" for "an amount equal to", and substituted "accumulated contributions minus the total of any retirement benefits already paid from the member's account" for "accumulated contributions less any retirement benefits paid to the member before the member's death". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 throughout section substituted references to retired member or member for references to retired patrol officer or patrol officer; in (1), at beginning, substituted "The service retirement benefit must be paid" for "The department shall pay the service retirement allowance provided for in 19-6-502"; in (2) and (3)(a) substituted "the retirement benefit must be paid" for "the department shall pay the retirement allowance"; at end of (3)(a) substituted "remains a dependent child" for "remains dependent as defined in 19-6-101"; in (3)(b), in first sentence, substituted "retirement benefit" for "retirement allowance" and in second sentence substituted "when a child is no longer a dependent child" for "when a child no longer qualifies as dependent as defined in 19-6-101"; in (4) substituted reference to 19-2-801 for reference to 19-6-602, substituted "designated beneficiary must be paid" for "department shall pay to the designated beneficiary", and substituted "accumulated contributions" for "accumulated deductions"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 63 at end of (2) deleted "for as long as the spouse remains unmarried"; and near beginning of (3)(a), after "spouse", deleted "remarries or". Amendment effective July 1, 1989.

Chapter 217 in three places changed "patrolman" to "patrol officer"; and in seven places changed "patrolman's" to "patrol officer's".

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Case Notes

Writ of Mandamus Ordering State Agency to Pay Highway Patrol Benefits to Ex-Wife Improper: The petitioner obtained a writ of mandamus from the lower court directing the Department of Administration to pay one-half of her ex-husband's highway patrol retirement benefits to her as required by the couple's divorce decree. The Supreme Court reversed, holding that the agency had no legal duty to pay the benefits to the petitioner because she was not a beneficiary under the applicable law. State ex rel. Neuhausen v. Nachtsheim, 253 M 296, 833 P2d 201, 49 St. Rep. 559 (1992).

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.2903 Payment to an estate.

19-6-601. Disability retirement benefit.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 178 in (1) and (2) inserted exception clauses; in (1) before "member" inserted "vested"; in (2) before "member" inserted "vested or nonvested"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 272 in (2)(b) substituted "2.6%" for "2.5%". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 429 in (2) after "service" deleted "to the Montana highway patrol" and after "duty" deleted "then the member who is disabled must be retired on a disability retirement benefit of one-half the member's highest average compensation regardless of the member's length of service"; inserted (2)(a) concerning benefit before 20 years of service; inserted (2)(b) concerning benefit after 20 years of service; in (3) before "member" deleted "retired", near middle substituted "under this section" for "as provided in subsection (1)", and at end deleted references to subsections (2) and (3) of 19-6-505; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in two places substituted reference to member for reference to patrol officer; in three places substituted reference to disability retirement benefit or benefit for reference to disability retirement allowance or allowance; in (1), near beginning of first sentence before "disability", deleted "total", after first "member" deleted "permanent in character, regardless of the length of service of the member", before "the actuarial equivalent" substituted "that is" for "in an amount calculated on", and substituted "service retirement benefit under 19-6-502" for "member's annuity and the state annuity" and in second sentence substituted "who is disabled must be retired on a disability retirement benefit" for "who is totally and permanently disabled shall be retired on total retirement allowance" and near end substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1) and (2) changed "patrolman" to "patrol officer".

1985 Amendment: Inserted (2) referring to death of a retired patrolman.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

Case Notes

Evidence of Disability: State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming, and bowling and evidence of four medical doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled insofar as being highway patrolman. State ex rel. Spear v. St. Highway Patrol Retirement Bd., 149 M 7, 422 P2d 348 (1967).

19-6-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in (1) in second sentence before "physician" inserted "board-approved" and after "surgeon" substituted "at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and" for "at the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board" for "submit a written application to the board to request the board to" and in fourth sentence after "must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) in third sentence after "may" inserted "submit a written application to the board to". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in (1), at end of third sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability"; in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (1), near beginning of first sentence after "board", deleted "in its discretion", in third sentence, after "determine", deleted "by reason of physical or mental capacity", and in fifth sentence, at end after "canceled", deleted "when he is notified of the determination of the board"; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; in (4), in second sentence after "department", inserted "of justice"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person" and after "because" inserted "the board has determined that"; in first sentence of (4) substituted "recipient" for "member"; corrected internal reference; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

Part 7
Postretirement Benefits and Benefit Increases

19-6-707. Minimum monthly benefit.

Compiler's Comments

2013 Amendment: Chapter 272 in (1) after "19-6-711" inserted "or 19-6-712"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2007 Amendment: Chapter 128 in (1) near middle after "19-6-710" inserted "or 19-6-711". Amendment effective October 1, 2007.

1997 Amendment: Chapter 287 in (1), after "survivors", inserted "who are not covered by 19-6-710"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to members for references to highway patrol officers or patrol officers; in four places substituted references to survivors or survivor for references to beneficiaries or beneficiary; in (1), after "monthly benefit", deleted "allowance", substituted "service credits" for "creditable years of service", and substituted "base compensation" for "base salary"; at end of (1)(a) substituted "service retirement benefit" for "service retirement allowance"; in (1)(b) substituted "disability retirement benefit" for "disability retirement allowance"; in (1)(c) substituted "recipient of a survivorship benefit" for "beneficiary receiving a survivorship allowance"; in (2)(a), after "monthly benefit", deleted "allowance" and substituted "base compensation" for "base salary"; in (2)(b), in two places after "monthly benefit", deleted "allowance"; in (3), after "Title 19", deleted "chapters 3 through 13", after "monthly benefit" deleted "allowance", and substituted "service" for "employment"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In six places changed “patrolman” to “patrol officer”; and in (1) changed “patrolmen” to “patrol officers” and “patrolman’s” to “patrol officer’s”.

Administrative Rules

ARM 2.43.4003 Highway patrol officers’ minimum benefit adjustments.

19-6-709. Supplemental benefits for certain retirees.

Compiler’s Comments

2005 Amendments — Composite Section: Chapter 329 in (3) at end substituted “until the fiscal year following the member’s termination from service in the covered position” for “until the member’s service in the covered position is terminated. Upon termination of the member’s service, the retired member becomes eligible in the next fiscal year succeeding the member’s termination”. Amendment effective July 1, 2005.

Chapter 464 in (4) near beginning after “amount” substituted “statutorily appropriated under 19-6-410” for “of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4), and 61-3-562(1)(b)”. Amendment effective July 1, 2005, and terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709.

Chapter 596 in (4) near middle substituted “61-3-527(3)” for “61-3-527(4)”. Amendment effective January 1, 2006. This amendment was rendered void by the amendment made by Ch. 464.

The amendment to this section made by sec. 2, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

2003 Amendment: Chapter 429 in (3) in second sentence before “service” deleted “covered”; in (4) substituted “amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4)(b), and 61-3-562(1)(b)” for “lump-sum payment” and after “proportionally” substituted “as a lump-sum benefit payment to each eligible recipient” for “to all eligible recipients”; in (4)(a) after “service” inserted “credit”; and in (4)(b) before “retirement benefit” deleted “service”. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (2)(c) after “disability” inserted “benefit under 19-6-601” and after “survivorship benefit under” deleted “19-6-601 or”; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 191 in (4)(a) in first sentence at beginning substituted “The amount of” for “An amount equal to 25 cents of” and near middle substituted “referred to in 61-3-321(5)(b) and (5)(c) and the fees collected under 61-3-527(4)(b) and 61-3-562(1)(b)” for “provided for in 61-3-321(5)”; in (5) near beginning after “the board shall review” substituted “the amount paid” for “the size of the additional fee collected under 61-3-321(5) and paid”; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 574 deleted former (4)(a) that read: “(a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the board in lump-sum payments to eligible recipients along with their normal retirement benefit payment”; deleted former (4)(c) that read: “(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system”; deleted former (5) that read: “(5) Every 10 years following July 1, 1991, the board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the board’s review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section”; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: “[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000.”

1999 Amendment: Chapter 562 throughout section substituted references to board for references to division. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 287 in (2), after “1991”, inserted “may not be covered by 19-6-710”; and in (4)(b)(iii), after “section”, deleted “after August 31, 1993”. Amendment effective July 1, 1997.

Chapter 532 in (4)(a), in first sentence after "61-3-321", inserted "(5)" and after "must be" substituted "paid from the general fund to" for "deposited in" and at beginning of second sentence, after "The", substituted "payment" for "fee" and after "17-7-502" inserted "to the pension fund"; in (5), after "61-3-321(5) and", substituted "paid to the pension trust fund" for "deposited in the account"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to patrol officer or officer; in (1), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "survivor" for "beneficiary", and after "lump-sum" inserted "benefit"; in (2)(a) substituted "service retirement benefit" for "service allowance"; in (2)(b) substituted "survivor" for "beneficiary"; in (2)(c), after "survivorship", substituted "benefit" for "allowance"; in (3), in first sentence after "Title 19", deleted "chapters 3 through 13", after "lump-sum" inserted "benefit", and near end substituted "service" for "employment" and in second sentence substituted "covered service" for "covered employment"; in (4)(a), in first sentence, substituted "pension trust fund" for "highway patrol fund" and in third sentence substituted "division" for "department" and at end, after "normal", substituted "retirement benefit payment" for "retirement allowance payment"; in (4)(b), after "based on", substituted "service credit" for "years of service"; in (4)(b)(ii) substituted "service retirement benefit" for "service retirement allowance", substituted "monthly benefit" for "monthly allowance", and substituted "service credit reduced" for "years of service reduced"; in (4)(b)(iii), near beginning, substituted "maximum annual increase in the amount of supplemental benefits paid to each individual" for "maximum amount available for payment of supplemental benefits", after "is" deleted "limited to an amount that will provide a percentage increase in the average supplemental benefit of all eligible members that is equal to", and deleted last sentence that read: "The intent of this subsection is to limit each annual individual supplemental benefit payment to no more than the increase in the consumer price index for the previous calendar year"; in (4)(c), after "deposited in the", deleted "account, meaning the highway patrol officers' retirement" and at end substituted "retirement system" for "account"; in (5), in two places, substituted references to Division for references to Department; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 6, Ch. 567, L. 1991, provided that this section is effective July 1, 1991.

19-6-710. Guaranteed annual benefit adjustment.

Compiler's Comments

Contingent Voidness: Section 10, Ch. 258, L. 2015, provided: "(1) The public employees' retirement board shall, as soon as possible, request in writing a ruling or determination from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [Title 19, chapter 6, part 10] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and the code commissioner when the commissioner of internal revenue has issued a ruling or determination.

(2) If the internal revenue service ruling or determination is not favorable, [this act] is void." In a letter dated September 29, 2016, certification was received that the internal revenue service has determined that the deferred retirement option plan constitutes a qualified plan.

2015 Amendment: Chapter 258 in (3) following "provided in" inserted reference to 19-6-1007 and subsection (4); inserted (4) relating to deferred retirement option plan; and made minor changes in style. Amendment effective October 1, 2015, and void on occurrence of contingency.

2013 Amendment: Chapter 272 in (1) inserted "for members hired before July 1, 2013". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill.

However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-6-711. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2013 Amendment: Chapter 272 in (1) inserted "for members hired before July 1, 2013". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

Administrative Rules

ARM 2.43.2324 Guaranteed annual benefit adjustment coverage.

19-6-712. Guaranteed annual benefit adjustment for employees hired after July 1, 2013.

Compiler's Comments

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

Effective Date: Section 17, Ch. 272, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 8
Service Credit

19-6-801. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2013 Amendment: Chapter 272 in (2)(a) before "19-6-805" inserted "subsection (2)(b) and" and after "member" deleted "with at least 5 years of membership service"; inserted (2)(b) regarding applying to buy service credit; inserted (4)(b)(ii) regarding member with 10 years of service paying actuarial cost for service credit; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendments — Composite Section: Chapters 26 and 289 in (1) near beginning after "19-6-805" substituted "an eligible member" for "a member with at least 15 years of service credit"; in (2)(a) at beginning after "member" inserted "with at least 15 years of service credit and" (amendment rendered void by Ch. 429 amendment); and in (2)(b) at beginning after "member" inserted "with at least 5 years of membership service" (amendment rendered void by Ch. 429 amendment). Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", near middle substituted "eligible member" for "member with at least 15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; in (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning application to purchase reserve military service; inserted (3) concerning purchase of service credit and membership service; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(2), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 66, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, near beginning after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit with the Montana highway patrol", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to

19-2-707"; in (2) in introductory clause substituted "purchase this military service" for "qualify this service"; in (2)(a) near beginning of first sentence after "contribute" deleted "to the account", near middle after "16th year" substituted "for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest" for "and as many succeeding years as are required to qualify this service, with interest", and at end substituted "purchase is complete" for "member contributes" and in second sentence after "member may not" substituted "purchase more military service under this subsection (2)(a)" for "qualify more of this service" and after "member has service" substituted "credit" for "with the Montana highway patrol"; in (2)(b) after "shall" substituted "pay the actuarial cost of the member's military service" for "contribute the actuarial cost of the service credit"; inserted (3) outlining conditions that preclude a member from purchasing military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 at end of (1) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 at beginning of (2)(a), after "member", inserted "not covered by 19-6-710"; inserted (2)(b) requiring covered member to contribute actuarial cost of service credit to qualify for credit; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning after "service", inserted "credit", substituted "division" for "department", near end, before "credit", inserted "service", and at end substituted reference to 19-2-705 for reference to 19-6-303; in (2), in first sentence, substituted "determined by the division to be due" for "determined by the department due" and substituted "regular contribution rate" for "normal contribution rate"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2316 Reserve military service.

Attorney General's Opinions

Purchasing of Military Service: Military service may be purchased under this section and used for the computation of the eligibility or length of service period required under 19-6-502, provided the member has met the minimum criteria for vesting in interest under 19-6-503. 36 A.G. Op. 25 (1975).

19-6-803. Application to purchase law enforcement service performed in another state.

Compiler's Comments

2013 Amendment: Chapter 272 in (1)(a) near beginning inserted "subsection (1)(b) and" and after "a member" deleted "with at least 5 years of membership service"; inserted (1)(b) regarding applying to purchase service credit; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 429 in (1) near beginning substituted "membership service" for "service credit"; in (2) in two places, in (2)(b), in (3) in two places, and in (4) in three places after references to service inserted "credit"; and in (2)(a) substituted "purchase the service credit" for "cover the service". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at beginning substituted "Subject to 19-6-805, a member with at least 5 years of service credit may, at any time before retirement, file a written application with the board to purchase" for "Except as provided in subsections (3) through (5), a member with 5 years or more of membership service in the retirement system may qualify", near middle after "service credit" substituted "unless the member is eligible" for "under the retirement system, up to a maximum of 5 years, provided that the member is not eligible", and after "retirement benefit" substituted "in another system or plan for that same service" for "for that out-of-state law enforcement employment"; in introductory clause of (2) substituted "To purchase" for "To qualify" and after "member shall" substituted "pay the actuarial cost of the service" for "(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) and (4) substituted "Service purchased" for "Service qualified"; at beginning of second sentence of (4) substituted "If, upon retirement, a member's purchased service" for "If a member's qualified service" and at end after "the member" substituted "must receive a refund of the amount paid by the member to purchase the service, plus regular interest on that amount" for "may choose to receive a refund of the contributions made to qualify the service"; deleted former (5) that read: "(5) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (3) that read: "(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 in (2)(b)(ii) substituted "actuarial rate" for "total contribution rate"; deleted former (4)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in five places, before "retirement system", deleted "highway patrol officers'"; in (1) substituted "5 years or more of membership service" for "5 years or more of creditable service" and substituted "service credit" for "creditable service"; in (2)(b) substituted "pension trust fund" for "retirement fund"; in (5), in two places, substituted "retirement benefit" for "retirement allowance" and substituted "service credit" for "creditable service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.

ARM 2.43.2308 Most recent service purchased first.

19-6-804. Application to purchase additional service.

Compiler's Comments

2013 Amendment: Chapter 272 in (1)(a) near beginning inserted "subsection (1)(b) and" and after "a member" deleted "with at least 5 years of membership service"; inserted (1)(b) regarding applying to purchase service credit; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 272, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution also requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 and 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Highway Patrol Officers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for current members of the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to the current system members in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, because reasonable increases in employer contributions and future employee contributions and reasonable reductions in benefits for future members alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future members and reduced benefits for future members are necessary to return the system to a position of actuarially sound funding; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning all public employee retirement systems to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that several of the systems, including the Highway Patrol Officers' Retirement System remain actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy and taxpayers, a modest supplemental contribution rate increase applied to current Highway Patrol Officers' Retirement System members, phased in over a 4-year period, in conjunction with additional employer and state contributions, is reasonable and necessary pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the Highway Patrol Officers' Retirement System is funded in an actuarially sound manner; and

WHEREAS, the defined benefit Highway Patrol Officers' Retirement System is integral to the successful recruitment and retention of qualified Montana highway patrol officers."

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; and near end of (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and near end substituted "in" for "qualified under"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for

"For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-6-801, 19-6-803, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2318 "1-for-5" additional service.

19-6-805. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-6-810. Absence because of illness or injury.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) near beginning of second sentence after "member may not" substituted "purchase service credit" for "earn service credits" and near end after "both" substituted "service credit" for "service credits"; and in (3)(a) near beginning after "eligible to" substituted "purchase service credit" for "earn service credits". Amendment effective March 21, 2001.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2323 Service credit for periods of absence due to illness or injury.

Part 9
Survivorship Benefits and Death Payments

19-6-901. Survivorship benefits — employment-related death.

Compiler's Comments

2001 Amendment: Chapter 99 in (2) after "50% of the" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in (1) substituted "service, a survivorship benefit" for "employment, a retirement allowance" and after "dependent child" deleted "or designated beneficiary"; substituted (2) regarding amount of survivorship benefit for former subsection that read: "(2) Such retirement allowance shall consist of:

(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the member, less the amount which is paid to a surviving spouse, dependent child, or designated beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: At end of (1), after "shall be paid to his", substituted "surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505" for "beneficiary"; and in (2)(b), before "beneficiary", substituted "a surviving spouse, dependent child, or designated" for "any such".

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-6-902. Survivorship benefits — death from other causes.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If an active or inactive member" for "If a member" and at end substituted "19-6-505(2) through (4)" for "19-6-505". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding survivorship benefits for former section that read: "If a member dies before reaching retirement age, the department shall pay to his surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505 the actuarial equivalent of the options as provided in 19-6-503." Amendment effective July 1, 1993.

1985 Amendment: Deleted former (1) that read: "If the retired patrolman dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary"; and after "retirement age", substituted "the department shall pay to his surviving spouse, dependent child, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505" for "his beneficiary shall be entitled to".

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Attorney General's Opinions

Payments in Case of Patrolman's Death From Natural Causes: The beneficiary of a deceased patrolman who dies of natural causes before attaining age 60, regardless of his length of service, had a choice under this section (as it read prior to the 1985 amendment) of either: (a) taking the full amount of the accumulated deductions standing to the decedent's credit; or (b) taking an annuity which would be the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to the decedent commencing at age 60 had death not discontinued his service. 36 A.G. Op. 24 (1975).

19-6-903. Death payments in absence of survivors.

Compiler's Comments

2001 Amendment: Chapter 99 substituted language regarding payment of contributions to the member's designated beneficiary for former language that read: "If upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid an amount equal to the member's accumulated contributions. If there is no designated beneficiary, death payments must be paid to the member's estate." Amendment effective March 21, 2001.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Part 10

Deferred Retirement Option Plan (DROP)

Part Compiler's Comments

Contingent Voidness: Section 10, Ch. 258, L. 2015, provided: "(1) The public employees' retirement board shall, as soon as possible, request in writing a ruling or determination from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [Title 19, chapter 6, part 10] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and the code commissioner when the commissioner of internal revenue has issued a ruling or determination.

(2) If the internal revenue service ruling or determination is not favorable, [this act] is void." In a letter dated September 29, 2016, certification was received that the internal revenue service has determined that the deferred retirement option plan constitutes a qualified plan.

Effective Date: This part is effective October 1, 2015.

Part Administrative Rules

Title 2, chapter 43, subchapter 40, ARM Highway Patrol Officers' Retirement System.

19-6-1005. Retirement system contributions — benefit payments to individual DROP accounts — investment returns.

Compiler's Comments

2017 Amendment: Chapter 195 deleted former (2)(b) concerning interest every fiscal yearend; in (3) at beginning of first sentence inserted "Each fiscal yearend a participant's DROP account must be credited with the interest earned that year based on"; and made minor changes in style. Amendment effective July 1, 2017.

Part 11
Reemployment of Retired Members

19-6-1101. Reemployment of retired members — contributions required.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

19-6-1102. Refunds and benefits for reemployed retired members.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 7
SHERIFFS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 68-2622.1, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 1, Ch. 145, L. 1977.

Severability: Section 29, Ch. 178, L. 1974, was a severability clause.

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.
ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.3401 Retirement options for elected officials other than legislators.

Part 1
General Provisions

19-7-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 195 in definition of highest average compensation in (b) after "Lump-sum payments" deleted "for severance pay, including payment". Amendment effective July 1, 2017.

2013 Amendment: Chapter 386 in definition of compensation inserted (b)(ii) concerning excluded bonuses; in definition of highest average compensation inserted (c) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 155 in definition of highest average compensation in (a)(i) inserted "for members hired prior to July 1, 2011", inserted (a)(ii) regarding members hired on or after July 1, 2011, and in (a)(iii) after "served" substituted "the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii)" for "at least 36 months"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendments — Composite Section: Chapter 128 in definition of investigator after "employed" inserted "by the department of justice" and at end deleted "for the department of justice". Amendment effective October 1, 2007.

Chapter 506 in definition of detention officer near end after "set" deleted "by the board of crime control pursuant to 44-4-301" and at end inserted reference to Montana public safety officer standards and training council; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 24, Ch. 506, L. 2007, was a saving clause.

2005 Amendment: Chapter 259 inserted definition of detention officer; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted remainder of definition concerning source of payment for services or authorized leave for "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made"; in definition of highest average compensation in first sentence after "compensation" substituted "during any 36 consecutive months of membership service" for "any 3 years of continuous service from which contributions were deducted", after "has not served" substituted "at least 36 months" for "3 years", and at end substituted "of service" for "served" and in second sentence near middle after "paid to" substituted "the member" for "an employee"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary"; and at end of definition of sheriff inserted "with the requisite professional certification and licensing" and deleted former second sentence that read: "The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system." Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary near beginning of second sentence after "payments for" inserted "severance pay, including payment for compensatory leave"; and made minor changes in style. Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in definition of compensation substituted "any pretax deductions allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1995 Amendment: Chapter 412 in definition of Sheriff, after "undersheriff or", deleted "regularly" and after "appointed" inserted "lawfully trained, appropriately salaried, and regularly"; and inserted second sentence concerning rules adoption requirement. Amendment effective April 13, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 412, L. 1995, provided in part: "A statement of intent is required for this bill because 19-7-101 gives the public employees' retirement board authority to adopt rules that clarify the training and salary requirements for persons to be eligible for membership in the sheriffs' retirement system because of their appointment as deputy sheriffs.

It is the intent of the legislature that only full-time, professional law enforcement officers be eligible for membership in the sheriffs' retirement system. Because persons without the requisite training and salary required to be paid to deputy sheriffs have been erroneously reported to the sheriffs' retirement system in the past, it is the intent of this bill to require the board to adopt rules that will reflect up-to-date training and salary requirements for appointed deputy sheriffs acting in a professional law enforcement capacity.

The legislature intends that persons employed in the following positions and who are not permanent, full-time law enforcement officers employed by county sheriffs not be eligible for membership in this retirement system: jailers; communications officers; other administrative, clerical, or support personnel; and other persons deputized to act as reserve deputies."

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1993 Amendments: Chapter 261 inserted definition of investigator; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana sheriffs' retirement pension trust fund administered by the board"; deleted definition of accumulated contributions or accumulated deductions that read: ""Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person who is nominated by the member in a witnessed document filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of creditable service that read: ""Creditable service" means the aggregate of all of a member's current and prior service"; deleted definition of death benefit that read: ""Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement"; substituted definition of final average salary for definition of final salary and at beginning of first sentence substituted "means the average monthly compensation received by a member" for "means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses" and at end substituted "total compensation earned divided by the number of months served" for "total salary earned divided by the number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and substituted "final average salary" for "final salary"; deleted definition of member that read: ""Member" means any person who has accumulated deductions in the account to his credit"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the member while employed"; deleted definition of membership service that read: ""Membership service" means service for which an amount is deducted from the salary of a member and paid into the account"; deleted definition of prior service that read: ""Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana"; deleted definition of retired Sheriff that read: ""Retired sheriff" means a person receiving a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of service that read: ""Service" means employment as a sheriff"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account"; deleted definition of vested retirement that read: ""Vested retirement" means a retirement not for cause and before retirement age"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In definition of beneficiary substituted "a witnessed" for "an acknowledged"; and made minor change in phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendments: Chapter 45 at end of (3) substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

Chapter 370 at end of (1), before "board", deleted "sheriffs' retirement".

1985 Amendment: In definition of Board after "means the", deleted "sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the"; and inserted definition of death benefit.

1983 Amendment: In definition of account substituted "retirement pension trust fund" for "retirement account".

Administrative Rules

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.
ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.
ARM 2.43.2209 Procedures — compensation must be treated consistently.
ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.
ARM 2.43.2211 Procedures — bona fide cafeteria plans.
ARM 2.43.2214 Implementation and compliance.
ARM 2.43.4203 Detention officer membership in Sheriffs' Retirement System (SRS).
ARM 2.43.4204 Detention officer election to transfer to Sheriffs' Retirement System (SRS).
ARM 2.43.4207 Detention center reports from Sheriffs.

19-7-102. Sheriffs' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "retirement plan" for "retirement system"; in first sentence after "established" substituted "and" for "for Montana members, which is"; and deleted former second sentence that read: "It is an actuarial reserve system for the payment of death, disability, and retirement benefits to members and to the beneficiaries of the members to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted last sentence regarding governing chapters; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

19-7-105. Short title.

Compiler's Comments

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-7-106. Sheriffs' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2109 Receipt of service credit on or after termination of employment.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2302 Documentation of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.3401 Retirement options for elected officials other than legislators.
Title 2, chapter 43, subchapter 42, ARM Sheriffs' Retirement System.

19-7-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2015 Amendment: Chapter 248 in (4) increased the time for filing a written election from 30 days to 90 days; inserted (5) concerning a member's failure to make a membership election; and made minor changes in style. Amendment effective January 1, 2016.

2011 Amendment: Chapter 99 in (5) near beginning inserted "or detention officer"; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendments — Composite Section: Chapter 259 inserted (3) requiring detention officers to join the sheriffs' retirement system but making joining optional for an officer who was a member of the public employees' retirement system on July 1, 2005; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 329 in (6)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (6)(b) providing what a lump-sum payment consists of; in (7)(a) at beginning substituted "An inactive" for "A" and near middle after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5) near end after "service" inserted "credit"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause; in (1)(b) after "1974" substituted "may remain a public employees' retirement system member or elect to become" for "in which case the sheriff may at the sheriff's option become" and at end inserted "by filing a written election with the board at any time before retirement"; at beginning of (2)(a) inserted exception clause; in (2)(b) after "1993" substituted "may remain in the public employees' retirement system or elect to become" for "in which case the investigator has the option of becoming" and at end inserted "by filing a written election with the board at any time before retirement"; inserted (3) allowing a member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system to remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near middle after "retirement system" substituted "must be an active member" for "shall remain members" and at end substituted "19-7-1101(2)" for "19-7-1101"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (4) and (5), near beginning, substituted "5 years" for "15 years"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendments — Composite Section: Chapter 261 inserted (2) requiring that certain investigators be retirement system members; at beginning of (3), after "sheriffs", inserted "and investigators" and at end substituted "subsection (4)" for "subsection (2)"; in first sentence of (4), after "employed", substituted "in a position covered by the retirement system" for "as a sheriff"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (3), at end, substituted reference to 19-7-1101 for reference to subsection (2); substituted (4) regarding inactive vested member for former subsection that read: "A retired sheriff who is employed as a sheriff after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired sheriff so employed must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year"; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

The codifier codified the reference to 19-7-1101 at the end of (3) instead of the reference to subsection (4) because Ch. 265 deleted former (4).

1987 Amendment: In (1), at end of second sentence, inserted exception clause; and inserted (2) excluding retired Sheriff who is temporarily employed as a Sheriff.

Section Not Codified: Section 68-2607(part) was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 7, Ch. 178, L. 1974, as amended by sec. 3, Ch. 59, L. 1977.

Administrative Rules

ARM 2.43.2102 Optional membership.
ARM 2.43.2309 Service purchases by inactive vested members.
ARM 2.43.2608 Return to covered employment by retiree — report.
ARM 2.43.3401 Retirement options for elected officials other than legislators.
ARM 2.43.4203 Detention officer membership in Sheriffs' Retirement System (SRS).
ARM 2.43.4204 Detention officer election to transfer to Sheriffs' Retirement System (SRS).
ARM 2.43.4207 Detention center reports from Sheriffs.

19-7-302. Ineligibility for membership in public employees' retirement system.

Compiler's Comments

2011 Amendment: Chapter 99 in (4) near middle inserted "or detention officer"; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 259 inserted (3) providing that after July 1, 2005, a detention officer is not eligible to join the public employees' retirement system and that the system's laws do not apply to the detention officers, except as provided in 19-7-301; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendments — Composite Section: Chapter 261 inserted (2) restricting investigator membership in the Public Employees' Retirement System; in (3), after "sheriff", inserted "or investigator" and at end substituted "membership in this retirement system" for "July 1, 1974"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 at end of (1), after "sheriffs", deleted "except as provided in 19-7-301"; and made minor changes in style. Amendment effective July 1, 1993.

Style changes in (1) and (3) were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

Administrative Rules

ARM 2.43.4203 Detention officer membership in Sheriffs' Retirement System (SRS).

ARM 2.43.4204 Detention officer election to transfer to Sheriffs' Retirement System (SRS).

ARM 2.43.4207 Detention center reports from Sheriffs.

19-7-312. Transfer of membership — purchase of previous service.

Compiler's Comments

2007 Amendment: Chapter 128 near middle after "member's" inserted "previous", after "system" inserted "or in another system provided for in chapter 5, 6, 8, 9, or 13 of this title", and near end after "system" inserted "by paying the actuarial cost required". Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 after "member's" substituted "service credit" for "creditable service" and at end substituted "19-2-715" for "19-7-802". Amendment effective July 1, 2003.

Effective Date: Section 7, Ch. 261, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 4
Contributions and Refunds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-7-402. Sources of money in fund.

Compiler's Comments

1999 Amendment: Chapter 562 in first sentence substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in introduction substituted "division" for "board", substituted "pension trust fund" for "sheriffs' retirement system account", and after "fund" deleted former (1) and (2) that read: "(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city"; in (2) substituted "contributions by members as required by this chapter" for "contributions by sheriffs as defined in this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

19-7-403. Member's contributions deducted.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2017 Amendment: Chapter 328 in (1) at beginning inserted "Subject to subsection (1)(b)" and near middle substituted "10.495%" for "9.245%"; inserted (1)(b) concerning potential reduction of member's contributions following board's receipt of system's actuarial valuation; and made minor changes in style. Amendment effective July 1, 2017.

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member shall contribute into the pension trust fund", before "compensation" deleted "monthly", and at end deleted "which must be deposited to the member's credit in the pension trust fund". Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 in (4) near end of first sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (1), near middle, substituted "9.245%" for "7.865%"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1) increased percentage from 7% to 7.865%. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendment: In (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

19-7-404. Employer contributions — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2017 Amendment: Chapter 328 in (2)(a) at beginning substituted "If the required contributions under subsections (1) and (3)(a) exceed" for "If the required contribution to the retirement system exceeds"; inserted (2)(b) concerning county imposition of mill levy; inserted (3)(b) regarding additional 3% employer contribution; in (4)(b)(i) near end substituted "that become effective" for "enacted by the legislature"; in (4)(b)(ii) substituted current text for "terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years"; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 283 in (3) near middle after "equal to" substituted "0.58%" for "the following percentage" and at end after "membership" deleted former (3)(a) and (3)(b) that read: "(a) beginning July 1, 2007, 0.29%; and

(b) beginning July 1, 2009, 0.58%"; in (4)(b) after "July 1" deleted "immediately" and after "following the" inserted "the board's receipt of the". Amendment effective July 1, 2009.

2007 Amendment: Chapter 371 in (1) near middle inserted "plus any additional contribution under subsection (3)" and in exception clause after "those" inserted "employees"; inserted (3) requiring additional employer contribution beginning July 1, 2007, and July 1, 2009; inserted (4) requiring periodic review of additional employer contribution and providing for termination of that contribution; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2005 Amendment: Chapter 329 in (1) substituted "pay 9.535% of the compensation paid to all of the employer's employees, except those properly excluded from membership" for "pay monthly 9.535% of each member's gross compensation into the pension trust fund created by this chapter". Amendment effective July 1, 2005.

2001 Amendment: Chapter 574 in (2) near middle after "may" inserted "subject to 15-10-420" and substituted "tax on the taxable value of all taxable property" for "special tax on the assessable property" and deleted former second sentence that read: "This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county." Amendment effective July 1, 2001.

1997 Amendment: Chapter 248 in (1) substituted "9.535%" for "8.535%". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1) increased percentage from 7.67% to 8.535%. Amendment effective July 1, 1995.

1993 Amendments: Chapter 261 at beginning of (1) substituted "employer" for "various counties of Montana"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 265 in (1) substituted "gross compensation" for "gross salary" and substituted "pension trust fund" for "retirement account". Amendment effective July 1, 1993.

1985 Amendment: In (1) increased county contribution from 7.62% to 7.67%.

1981 Amendment: Changed counties' contributions from 7.55% to 7.62%; and added (2) authorizing special county property tax.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Section Not Codified: Section 68-2605(2), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 5, Ch. 178, L. 1974.

19-7-410. Contributions based on total compensation when member receives disability compensation.

Compiler's Comments

2015 Amendment: Chapter 248 near middle after "compensation program" deleted "under the provisions of 7-32-2113". Amendment effective January 1, 2016.

Effective Date: This section is effective October 1, 2005.

Part 5
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2603 Acceptable proof of date of birth.

19-7-501. Eligibility for service retirement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2013 Amendment: Chapter 240 in (1) at beginning inserted "Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6", after "service" substituted "is eligible for a nonforfeitable service retirement benefit under 19-7-503" for "has attained normal retirement age and may retire on a service retirement benefit"; inserted (2) concerning nonforfeitable right to service retirement; and made minor changes in style. Amendment effective April 22, 2013.

2001 Amendment: Chapter 99 near middle after "membership service" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 deleted (2) and (3) that read: "(2) A member electing to retire shall apply in writing to the board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 162 in (1), after "A member", deleted "initially elected or appointed before July 1, 1989" and substituted "20 years" for "24 years"; and deleted (1)(b), which allowed a member elected or appointed on or after July 1, 1989, with at least 24 years of service and who was 50 or more years old to retire on a service retirement benefit. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1)(a), before first "service", inserted "membership" and at end substituted "service retirement benefit" for "service retirement allowance"; in (1)(b), before first "service", inserted "membership", substituted "terminated service" for "terminated covered employment", and at end substituted "service retirement benefit" for "service retirement allowance"; in (3)(a) substituted "retirement benefit" for "retirement allowance", before "service" deleted "membership", and substituted "inactive member" for "terminated member"; in (3)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; in (3)(c), in second sentence, substituted "compensation for purposes of final average salary under the retirement system" for "salary credits" and at end substituted "member contributions" for "employee contributions"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendments: Chapter 122 inserted (1)(a) relating to member initially elected or appointed before July 1, 1989, who has completed at least 24 years of service; in (1)(b) substituted "member initially elected or appointed on or after July 1, 1989" for "sheriff in service", decreased years of service to 24 years from 25 years, and decreased age to 50 years from 55 years; and in (2) made minor change in phraseology relating to application in writing. Amendment effective July 1, 1989.

Chapter 196 near middle of (1), after "55 years", inserted "and terminated covered employment" and at end, after "board", deleted "submitted not less than 30 days or more than 90 days from the desired date of retirement"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and at end, after "service", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 65th birthday"; inserted (3)(c) regarding optional retirement of an elected official; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Composite: Because this section was amended by Ch. 122 and Ch. 196, L. 1989, the amendments made by Ch. 196 have been renumbered as subsections (3)(a) through (3)(c). The renumbering does not affect the meaning of the amendments.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Deleted former (2) that read: "Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs."

1983 Amendment: In (1), deleted last sentence, which read: "The application must state the date he desires to be retired."; inserted (3) specifying date of commencement of retirement allowance.

19-7-502. Retirement option.

Compiler's Comments

2003 Amendment: Chapter 429 in first sentence near beginning after "5" inserted "but less than 20", after "service" deleted "and who has not met the minimum eligibility requirements for service retirement", and before "retirement benefit" deleted "early"; and in second sentence near beginning before "retirement benefit" deleted "early" and after "member's" inserted "service". Amendment effective July 1, 2003.

1997 Amendment: Chapter 248 near beginning substituted "at least 5 years" for "15 years" and after "service" inserted "and who has not met the minimum eligibility requirements for service retirement". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in first sentence, after "service", deleted "who has reached age 50" and after "benefit" inserted "commencing no sooner than the first day of the month following the member's 50th birthday"; and in second sentence substituted "20 years" for "24 years". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted present text regarding early retirement option for former section that read: "If a member has served 15 years of creditable service as a sheriff and has reached the age of 50 years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed 24 years of creditable service or reached age 60, whichever is less." Amendment effective July 1, 1993.

1989 Amendment: Near beginning decreased years of creditable service to 15 from 20 and decreased age to 50 years from 55 years and near end decreased base payment years to 24 from 25 and age to 60 years from 65 years. Amendment effective July 1, 1989.

1981 Amendment: Deleted "had he not retired" and added "or reached age 65, whichever is less" at the end of the section.

19-7-503. Service retirement benefit.

Compiler's Comments

2015 Amendment: Chapter 248 in (3) inserted "the member's designated beneficiary or, if there is no surviving designated beneficiary"; and in (4) inserted second sentence concerning reductions in accumulated contributions. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 inserted (2) concerning death of retired member with option 1 retirement benefit; in (3) substituted "If a retired member who elected an option 2 or 3 benefit under 19-7-1001 dies with no surviving contingent annuitant" for "If a retired member dies without designating a contingent annuitant under 19-7-1001" and substituted "estate" for "designated beneficiary"; inserted (4) concerning applicability of section; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendment: Chapter 99 near middle of (1) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) substituted text relating to calculation of postretirement death payment for member who dies without contingent annuitant for former text that read: "If a member dies after retirement and had not elected an optional retirement benefit provided for in 19-7-1001, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 248 in (1) substituted "2.5%" for "2.0834%". Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (1), before "is 2.0834%", deleted "with 24 years or less of membership service" and at end deleted "up to a maximum of 50% of final average salary"; and deleted former (2), which provided that the benefit must be increased for a member who contributes after 24 years of service credit by 1.35% of the member's final average salary for each year of service credit in excess of 24 years, up to a maximum of 60% of the member's final average salary. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), in two places, substituted "final average salary" for "final salary", near beginning substituted "service retirement benefit" for "service retirement allowance", near middle substituted "membership service" for "creditable service", and near end substituted "year of service credit" for "year of creditable service"; in (2), in two places, substituted "final average salary" for "final salary", near beginning substituted "retirement benefit" for "retirement allowance", after first "service" inserted "credit", and substituted "each year of service credit in excess of 24 years" for "each year of creditable service in excess of 24 years of service"; in (3) substituted "optional retirement benefit" for "optional retirement allowance" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) and in two places in (2) decreased from 25 to 24 the number of years of creditable service; and in (1) increased percentage rate from 2% to 2.0834%. Amendment effective July 1, 1991.

Applicability: Section 2, Ch. 78, L. 1991, provided: "[This act] applies to members of the sheriffs' retirement system, as established in 19-7-102, retiring on or after July 1, 1991."

1985 Amendment: In (1) near beginning after "of any", deleted "member's", and after "allowance" inserted "granted to a member with 25 years or less of creditable service"; in (2), after "years of service by", substituted "1.35% of his final salary for each year of creditable service in excess of 25 years of service, up to a maximum of 60% of his final salary" for "an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of 25 years of service"; and inserted (3) providing for refund of excess contributions in certain cases.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

Administrative Rules

ARM 2.43.2105 Basic period of service.

Case Notes

Disability Retirement Benefits Not Divisible Marital Estate Assets: In a dissolution of marriage proceeding, the parties disagreed about whether the husband's Sheriffs' Retirement System disability benefits should be considered a divisible marital asset. The District Court determined that the income was a divisible marital asset, reasoning that the income was similar to a normal retirement benefit representing deferred compensation for work previously performed during the marriage, and it apportioned the income between the parties on a 50-50 basis. The Supreme Court reversed, finding that the disability retirement benefits were intended to replace future employment income that had been lost due to the disability. Because postdissolution earnings are not part of the marital assets, the Supreme Court found that this income had been improperly included by the District Court. The Supreme Court noted that the disability retirement benefits could be relevant in a determination of whether spousal maintenance was appropriate and directed the District Court to consider this factor on remand. In re Marriage of Elder & Mahlum, 2020 MT 91, 399 Mont. 532, 462 P.3d 209.

Part 6
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.2903 Payment to an estate.

19-7-601. Disability retirement benefit.

Compiler's Comments

2013 Amendment: Chapter 178 in (1) inserted exception clause and before "member" inserted "vested"; in (2) before "member" inserted "vested or nonvested"; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 in (1) at beginning substituted "A member who becomes disabled must be granted a disability retirement benefit that is" for "In the case of the disability of a member, regardless of the member's length of service, a disability retirement benefit must be awarded to the member based on" and before "service retirement" deleted "member's"; in (2) after "service" deleted "as a member" and substituted (2)(a) concerning benefit before completing 20 years of service and (2)(b) concerning benefit after completing 20 years of service for "then the member must be awarded a benefit of one-half of the member's highest average compensation"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 in first sentence, near beginning before "disability", deleted "permanent total", substituted "disability retirement benefit" for "disability retirement allowance", and substituted "member's service retirement benefit under 19-7-503" for "member's annuity and the state annuity"; at beginning of second sentence, before "disability", deleted "total permanent", substituted "benefit" for "allowance", and at end substituted "final average salary" for "final salary"; deleted (2) that read: "(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

Case Notes

Disability Retirement Benefits Not Divisible Marital Estate Assets: In a dissolution of marriage proceeding, the parties disagreed about whether the husband's Sheriffs' Retirement System disability benefits should be considered a divisible marital asset. The District Court determined that the income was a divisible marital asset, reasoning that the income was similar to a normal retirement benefit representing deferred compensation for work previously performed during the marriage, and it apportioned the income between the parties on a 50-50 basis. The Supreme Court reversed, finding that the disability retirement benefits were intended to replace future employment income that had been lost due to the disability. Because postdissolution earnings are not part of the marital assets, the Supreme Court found that this income had been improperly included by the District Court. The Supreme Court noted that the disability retirement benefits could be relevant in a determination of whether spousal maintenance was appropriate and directed the District Court to consider this factor on remand. In re Marriage of Elder & Mahlum, 2020 MT 91, 399 Mont. 532, 462 P.3d 209.

19-7-612. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in (1) in second sentence before "physician" inserted "board-approved" and after "surgeon" substituted "at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and" for "at the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 36 in (3) at end of first sentence substituted "sheriff's office" for "sheriff's department". Amendment effective October 1, 2005.

1997 Amendment: Chapter 370 in (1), at end of fourth sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability"; in (2)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (2)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

Part 7

Postretirement Benefits and Benefit Increases

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2603 Acceptable proof of date of birth.

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-7-711. Guaranteed annual benefit adjustment.

Compiler's Comments

2007 Amendment: Chapter 371 in (1) at end, in (2)(a) near middle and near end, in (2)(b) near middle, and in (2)(c) near middle substituted reference to applicable percentage rate for "3%"; inserted (4) specifying applicable percentage of benefit increase for certain benefit recipients hired before or after July 1, 2007; inserted (5) specifying applicable percentage of benefit increase for certain contingent annuitants; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Administrative Rules

ARM 2.43.2324 Guaranteed annual benefit adjustment coverage.

Part 8
Service Credit

19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 36 in (1) in first sentence in two places substituted "sheriff's office" for "sheriff's department". Amendment effective October 1, 2005.

Chapter 329 in (4) in second sentence near middle after "include the" deleted "appropriate reduction in the retirement benefit for an" and after "retirement benefit" inserted "if any"; in (5)(a) in third sentence substituted "paid pursuant to 19-2-803" for "made to the child's appointed guardian for the child's use"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1) in first sentence after "service" inserted "credit"; and in (4) in two places substituted "service credit" for "service credited". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (2) allowing a member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation to remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system; in (4) near beginning of third sentence after "final salary or" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 in (3) deleted fifth sentence that read: "The combined benefit may not exceed 60% of the member's final salary or final average salary." Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to member or retired member for references to officer and substituted references to retirement benefit, optional retirement benefit, or service retirement benefit for references to retirement allowance, optional retirement allowance, or service retirement allowance; in (3), in third sentence, substituted "highest compensation" for "highest salary"; in (4) substituted "survivor or contingent annuitant and the continuing benefit" for "beneficiary and the continued benefit"; in (4)(a), near beginning of first sentence, substituted "the surviving spouse must receive a benefit equal" for "the officer's surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal" and before "service retirement" deleted "officer's", at beginning of second sentence substituted "If the retired member" for "If the officer leaves one or more dependent children, then upon his death, if he" and after "death" deleted "or remarriage", and in remainder of subsection, in three places, substituted "benefits" for "payments"; in (4)(b), after "benefit", deleted "the officer's beneficiary, designated under 19-7-602, shall receive"; at beginning of (4)(b)(i) substituted "the contingent annuitant must receive a continuing benefit" for "an annuity"; in (4)(b)(ii) substituted "accumulated contributions" for "accumulated deductions" and at end substituted "to the retired member must be paid to the retired member's designated beneficiary" for "to the officer"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

1985 Amendment: In (2) near beginning, after "Eligibility for", inserted "and calculation of"; in (3) inserted second sentence requiring Sheriffs' retirement system portion to be reduced for optional retirement allowance; and inserted (4) establishing formula for determination of benefit after death of retired officer.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. (See 2001 amendment.) Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

19-7-803. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; and deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit." Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation"; at end of (1)(b) substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of military service credit; inserted (3) concerning method of purchasing service credit; deleted former (4) that read: "(4) Military service credit purchased under this section subsection (1) or (2) is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(3), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 76, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 in (1) at beginning inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "prior to retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end deleted "up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit"; in (2) at beginning substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board" and deleted former second and third sentences that read: "The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit"; in (3) substituted language regarding a member's ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1)"; deleted former (3) that read: "(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years"; inserted (4) providing that purchased military service is not considered membership service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "service", inserted "credit", at end of second sentence, after "based on", substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes", in third sentence, after "has service", inserted "credits", and in fourth sentence, after "section", inserted "is not membership service and" and at end, after "service retirement", inserted "benefit"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near end of first sentence, inserted exception clause; and inserted (3) limiting purchase to combined total of 5 years of service. Amendment effective July 1, 1991.

Applicability — Commencement of Increase: Sections 4 and 5, Ch. 31, L. 1987, provided:

"Section 4. Applicability. This act applies retroactively, within the meaning of 1-2-109, to persons retiring after January 1, 1986.

Section 5. Payments for military service made by retired sheriffs — commencement of allowance increase. For a retired sheriff who has retired before the effective date of this act:

(1) payments to qualify military service under section 1 must be made within 60 days of the effective date of this act; and

(2) the increase in the retired sheriff's retirement allowance resulting from qualifying service under section 1 must commence on the first day of the month after the total payment for the service is received by the board."

This act was effective February 20, 1987.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2316 Reserve military service.

19-7-804. Application to purchase additional service.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 26 and 289 deleted former (3) that read: "(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; deleted former (3) that read: "(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(4), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 77, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application" for "Except as provided in subsection (5), at any time before retirement, a member may make a written election"; deleted former (2) that read: "(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service"; at beginning of (3) substituted "Service purchased" for "Service qualified"; inserted (4) regarding crediting of purchased service; deleted former (5) that read: "(5) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 58 deleted former (4) that read: "(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 562 deleted former (5)(a) that read: "(a) credited in any other retirement system under Title 19"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in (1), after first "service", inserted "credit" and at end substituted "membership service" for "creditable service"; and in (3)(b) substituted "pension trust fund" for "retirement fund" and at end, after "based on", substituted "the most recent actuarial valuation of the system" for "(i) the member's compensation for the 12 months immediately preceding the date of his election to cover the service under the sheriffs' retirement system; and

(ii) the total contribution rate in effect at the time the service is purchased." Amendment effective July 1, 1993.

Effective Date: Section 4, Ch. 214, L. 1991, provided: "[This act] is effective July 1, 1991."

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2318 "1-for-5" additional service.

19-7-805. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 9
Survivorship Benefits and Death Payments

19-7-901. Payments in case of death before retirement.

Compiler's Comments

2013 Amendment: Chapter 178 in (2) decreased age from 65 to 60. Amendment effective July 1, 2013.

2001 Amendment: Chapter 99 near beginning of (2) and (3) after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 248 in (2), near beginning, substituted "2.5%" for "2.0834%"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 7, Ch. 248, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1995 Amendment: Chapter 162 in (2) substituted "survivorship benefit equal to 2.0834% of the member's final" for "retirement benefit based on 2% of the final", after "service credit" deleted "up to a maximum of 25 years", substituted "actuarially reduced from age 65" for "reduced on an actuarially equivalent basis from age 65", and substituted "20 years" for "25 years"; in (3) substituted "survivorship benefit that is no less than one-half of the member's final" for "retirement benefit based on one-half of final"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in introductory clause, in two places before "beneficiary", inserted "designated"; in (1) substituted "accumulated contributions" for "accumulated deductions"; in (2), in two places, substituted "retirement benefit" for "retirement allowance", near beginning substituted "final average salary" for "final salary", after first "service" inserted "credit", near middle substituted "reduced on an actuarially equivalent basis" for "reduced actuarially", and substituted "membership service" for "creditable service"; in (3), near beginning, substituted "retirement benefit" for "retirement allowance", substituted "final average salary" for "final salary", and after "salary" deleted "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation"; deleted former (2) that read: "(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1)(b), after "age 65", inserted optional retirement calculation method based on 25 years of service.

Cost-of-Living Increase: Section 1, Ch. 393, L. 1985, provided: "Effective July 1, 1985, a member of the sheriffs' retirement system retired on or before July 1, 1985, or his beneficiary is entitled to receive a 5% increase in his service or disability retirement allowance or survivorship allowance."

1981 Amendment: In (1)(b), combined options for members not eligible to retire and members eligible to retire and substituted "reduced actuarially from age 65" for provisions in retirement allowance calculation relating to eligibility and actuarial equivalents; in (1)(c), combined the option for beneficiary who is other than surviving spouse or minor child and the option for beneficiary who is surviving spouse or minor child; changed "less the amount paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable" to "reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation" in the retirement allowance calculation in (1)(c) that applied to both; deleted option of $100 per month per surviving minor child of the deceased member up to a maximum of $300 per month; deleted subsection (2) that granted that same benefit if beneficiary is not surviving spouse; deleted subsection (3) that established period of benefit (no longer than the time it would have taken the deceased member to reach the age of 65 years or more than 15 years, whichever is greater); and added (2) allowing beneficiaries to elect different option before July 1, 1982.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Part 10
Optional Forms of Retirement Benefits

19-7-1001. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2015 Amendment: Chapter 248 in (5) near beginning substituted "terminating service" for "retirement"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (1) inserted last sentence concerning option 1 benefit; in (2), (3), and (5) after "retirement benefit" inserted reference to subsection (2); inserted (6) concerning changing selected option; in (8)(a) substituted "original option 1 retirement benefit" for "original retirement benefit"; in (8)(c) after "option" inserted "under subsection (2)"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (1)(c)(iii) regarding death of all surviving contingent annuitants; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (1)(a) inserted second and third sentences and (1)(a)(i) and (1)(a)(ii) providing conditions for option 2; in (3) at beginning substituted "If the member or designated beneficiary or the named" for "If a benefit recipient or the recipient's"; in (5) in introductory clause after "(1)(b)" deleted "that is initially effective on or after October 1, 1999"; in (5)(a) at beginning after "the" inserted "original"; in (5)(b) near beginning of first sentence before "contingent" inserted "original", near middle after "dissolved and the" substituted "original contingent annuitant" for "beneficiary"; deleted former (5)(b) that read: "(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement"; in (6) at beginning of introductory clause substituted "A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives" for "A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant"; inserted (6)(a) through (6)(c) setting out alternatives for a member who applies to revert; in (7) substituted benefit calculation requirement for a member who selects an alternative for former (7) that read: "(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of the a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change"; inserted (8) requiring that a written application be filed within 18 months of the death of or dissolution of marriage to the contingent annuitant; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to period certain determinations; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and after first "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "family law order" for "divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) near end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written application, executed and filed with the board with the application for benefits"; in (1)(c) after "equivalent amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 near end of (1) substituted "written application" for "written designation"; inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 3—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

Part 11
Reemployment of Retired Members

19-7-1101. Reemployment of retired members — contributions required.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) and (2) in first sentence substituted "covered employment" for "service"; in (2) in last sentence substituted "retired member in covered employment" for "retired member employed in service"; and in (4) substituted "covered employment" for "work". Amendment effective July 1, 2017.

2013 Amendment: Chapter 239 inserted (3) and (4) requiring retired employees and their employers to make contributions. Amendment effective July 1, 2013.

2007 Amendment: Chapter 128 in (1) near beginning after "service for" substituted "480 hours or more" for "60 or more working days"; in (2) near middle of first sentence after "less than" substituted "480 hours" for "60 working days"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 99 near beginning of (1) after "service for" substituted "60 or more working days" for "at least 60 working days"; in first sentence of (2) after "calendar year" substituted "may not become an active member" for "is excluded from membership"; and made minor changes in style. Amendment effective March 21, 2001.

1993 Name Change: Section 6(2), Ch. 261, L. 1993, provided: "In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise." The term was subsequently changed by the Code Commissioner in this section. Amendment effective July 1, 1993.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2114 Required employer reports.
ARM 2.43.2608 Return to covered employment by retiree — report.

19-7-1102. Refunds and benefits for reemployed retired members.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 8
GAME WARDENS' AND PEACE OFFICERS' RETIREMENT

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.
ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.

Part 1
General Provisions

19-8-101. Definitions.

Compiler's Comments

2017 Amendment: Chapter 195 in definition of highest average compensation in (b) after "Lump-sum payments" deleted "for severance pay, including payment". Amendment effective July 1, 2017.

2013 Amendment: Chapter 386 in definition of compensation inserted (b)(ii) concerning excluded bonuses; in definition of highest average compensation inserted (c) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendments — Composite Section: Chapter 99 in definition of compensation and in definition of highest average compensation in (b) inserted "banked holiday time"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 154 in definition of highest average compensation in (a)(i) inserted "for members hired prior to July 1, 2011", inserted (a)(ii) regarding members hired on or after July 1, 2011, and in (a)(iii) after "served" substituted "the minimum specified period of membership service" for "at least 36 months"; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 366 in definition of motor carrier officer after "transportation" inserted "designated or" and after "pursuant to" inserted "61-10-154 or". Amendment effective October 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted language concerning payment for services or leave for former language that read: "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code are made"; in definition of highest average compensation in first sentence after "compensation" substituted "during any 36 consecutive months of membership service" for "any 3 years of continuous service upon which contributions were made", after "served" substituted "at least 36 months" for "3 years", and at end substituted "of service" for "served" and in second sentence after "paid to" substituted "the member" for "an employee"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 substituted highest average compensation for final average salary as defined term, near beginning of first sentence of definition after "means the" inserted "highest", and at end of second sentence substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

Chapter 149 in definition of final average salary in second sentence near beginning after "severance pay" inserted "including payment for compensatory leave". Amendment effective March 29, 2001.

1999 Amendment: Chapter 58 in definition of compensation substituted "any pretax deductions allowed by the Internal Revenue Code" for "any deductions". Amendment effective July 1, 1999.

1997 Amendment: Chapter 223 inserted definitions of motor carrier officer and peace officer or state peace officer; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 265 inserted definition of compensation; deleted definition of account that read: ""Account" means the Montana state game wardens' retirement pension trust fund"; deleted definition of accumulated deductions or accumulated contributions that read: ""Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon"; deleted definition of actuarial equivalent that read: ""Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; deleted definition of beneficiary that read: ""Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, witnessed and filed with the board"; deleted definition of Board that read: ""Board" means the public employees' retirement board"; deleted definition of contributor that read: ""Contributor" means any person who has accumulated deductions in the account standing to his credit"; substituted definition of final average salary for definition of final salary and near beginning of first sentence substituted "average monthly compensation received by a member" for "average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses", after "total" deleted "retirement", and at end substituted "number of months served" for "number of years served" and in second sentence substituted "retirement benefit" for "retirement allowance" and at end substituted "final average salary" for "final salary"; deleted definition of member's annuity that read: ""Member's annuity" means payments for life derived from contributions made by the contributor"; deleted definition of retired state game warden that read: ""Retired state game warden" means any person in receipt of a retirement allowance under this chapter"; deleted definition of retirement allowance that read: ""Retirement allowance" means the state annuity plus the member's annuity"; deleted definition of state annuity that read: ""State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys"; and made minor changes in style. Amendment effective July 1, 1993.

Section 12 (a coordination instruction), Ch. 640, L. 1993, in definition of final average salary, in second sentence before "sick leave", inserted "severance pay".

1989 Amendment: In definition of beneficiary substituted "witnessed" for "duly acknowledged". Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1987 Amendment: At end of definition of actuarial equivalent substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "actuarial tables in use by the system".

1983 Amendment: In definition of account substituted "pension trust fund" for "account in the agency fund".

1981 Amendment: Added "or "accumulated contributions"" to phrases defined in (2); substituted definition of accumulated deductions or accumulated contributions in (2) for "means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon"; deleted former subsection (8) defining "involuntary retirement"; deleted former subsection (10) defining "optional retirement age"; deleted former subsection (12) defining "retirement age".

Administrative Rules

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-8-102. Game wardens' and peace officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "retirement plan" for "retirement system". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 223 inserted reference to peace officers; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 before "state game wardens' retirement system" deleted "Montana" and inserted reference to chapter 2. Amendment effective July 1, 1993.

19-8-105. Short title.

Compiler's Comments

1999 Amendment: Chapter 51 near middle after "Wardens'" inserted "and Peace Officers'". Amendment effective March 15, 1999.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-8-106. Game wardens' and peace officers' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 3

Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.

ARM 2.43.2105 Basic period of service.

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2120 Reinstatement — credit for lost time.

ARM 2.43.2302 Documentation of service.

ARM 2.43.2308 Most recent service purchased first.

19-8-301. Membership — inactive vested members — inactive nonvested members.

Compiler's Comments

2007 Amendment: Chapter 128 deleted former (1)(h) that read: "(h) motor vehicle inspectors employed by the department of justice"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in (2)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (2)(b) relating to what a lump-sum payment consists of; in (3)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (2) near end after "service" inserted "credit". Amendment effective July 1, 2003.

1999 Amendment: Chapter 491 in (1)(d) substituted "wardens" for "the warden" and substituted "employed by the department of corrections" for "of the state prison system". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 223 in (1), after "19-8-302", inserted phrase requiring listed peace officers to be covered under retirement system as long as employed as peace officers; in (1)(a), after "fish, wildlife, and parks", deleted "shall become a member of the retirement system when first becoming a state game warden. All state game wardens are members of the retirement system so long as they are actively employed in that capacity"; inserted (1)(b) through (1)(i) listing peace officers included in retirement system; in (2) decreased from 10 years to 5 years number of years required for inactive vested membership in retirement system; in (3) decreased from less than 10 years to less than 5 years number of years membership required for inactive nonvested membership status; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), near beginning of first sentence after "state game warden", deleted "including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and" and at beginning of second sentence deleted "Except as provided in 19-8-302"; inserted (2) regarding inactive vested member; inserted (3) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2104 Membership cards.

ARM 2.43.2309 Service purchases by inactive vested members.

19-8-302. Public employees' retirement system — transfer of membership.

Compiler's Comments

2015 Amendment: Chapter 248 inserted (4) concerning a member's failure to make a membership election; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (2) and (3) substituted "90 days" for "30 days". Amendment effective July 1, 2013.

2007 Amendment: Chapter 128 deleted former (2) that read: "(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election that must be received by the board no later than December 31, 2001"; in (2) near end after "membership in the" inserted "game wardens' and peace officers'"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 in (1) near end before "service" deleted "covered". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 near end of (2) after "system by" substituted "filing a written election with the board" for "submitting a written election of intent to the board" (amendment modified by Ch. 442 amendment); and in (3) and in (4) near end after "written election" deleted "of intent". Amendment effective March 21, 2001.

Chapter 442 in (2) near end after "intent" substituted "that must be received by" for "to" and at end substituted "December 31, 2001" for "December 31, 1997". Amendment effective October 1, 2001.

1997 Amendment: Chapter 223 inserted (1) containing exception for becoming member of retirement system; inserted (2) regarding election by members of PERS; in (3), near beginning before "retirement system", inserted "game wardens' and peace officers'" and near middle substituted "within the same state agency" for "in the department of fish, wildlife, and parks"; in (4), after "position", substituted "covered by the game wardens' and peace officers' retirement system" for "as a state game warden"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 deleted former (1) that read: "(1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens"; and in (1) and (2), before "30 days", deleted "August 1, 1977, or no later than" and after "position" deleted "whichever is later". Amendment effective July 1, 1993.

Severability Clause: Section 30, Ch. 130, L. 1963, was a severability clause.

19-8-308. Transfer of service.

Compiler's Comments

2003 Amendment: Chapter 429 near middle after "service" inserted "credit" and at end substituted "19-2-715" for "19-8-902". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 near middle after "member's" deleted "creditable". Amendment effective March 21, 2001.

Effective Date: Section 14, Ch. 223, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 5
Contributions and Refunds

19-8-501. Contributions to pension trust fund.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "pension trust fund" for "account"; near beginning of introductory clause substituted "division" for "board" and after "credited" deleted "by the board"; and made minor changes in style. Amendment effective July 1, 1993.

19-8-502. Member's contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) substituted "member's contribution is" for "member is required to contribute into the pension trust fund", before "compensation" deleted "monthly", and at end deleted "which must be deposited to the member's credit in the pension trust fund". Amendment effective July 1, 2005.

2001 Amendments — Composite Section — Coordination: Section 2(2), Chapter 98, L. 2001, a coordination section, provided that if either House Bill No. 294 or Senate Bill No. 284 and Senate Bill No. 89 and [this act] are passed and approved, then 19-8-502 is amended as follows: near middle of (1) substituted "10.56% of the member's monthly compensation" for "8.5% of the member's monthly compensation". House Bill No. 294 was passed and approved as Ch. 149, L. 2001, and Senate Bill No. 89 was passed and approved as Ch. 309, L. 2001. Amendment effective October 1, 2001.

Chapter 99 in (4) near end of first sentence after "member's" substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 287 in (1) increased contribution rate from "7.9%" to "8.5%"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1), in two places, substituted "pension trust fund" for "account" and substituted "monthly compensation" for "monthly salary"; in (4), near end of first sentence, substituted "final average salary" for "final salary"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendments: Chapter 249 increased member's contribution rate from 7% to 7.9%.

Chapter 464 in (1) near end, after "shall be", deleted "deducted from his salary and"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

19-8-504. Employer's contribution — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 729, L. 2023. Amendment effective July 1, 2023.

Severability: Section 15, Ch. 729, L. 2023, was a severability clause.

2005 Amendment: Chapter 329 substituted first sentence providing what an employer must contribute for "Each month, state employers shall pay to the pension trust fund a sum equal to 9% of the total compensation paid to their covered employees." Amendment effective July 1, 2005.

1997 Amendments — Composite Section: Chapter 223 near beginning substituted "state employers" for "state treasurer", after "trust fund" deleted "out of the department of fish, wildlife, and parks funds", and at end substituted "the total compensation paid to their covered employees" for "all members' salaries". Amendment effective July 1, 1997.

Chapter 287 increased required state contribution monthly rate from "8.15%" to "9%". Amendment effective July 1, 1997.

Chapter 532 inserted second sentence requiring a departmental funding request to defray the state's costs of implementing this section. Amendment effective July 1, 1997.

The codifier has chosen to codify the last sentence although it was plainly intended to refer only to game wardens who are employees of the Department of Fish, Wildlife, and Parks.

1995 Amendment: Chapter 509 at beginning deleted "To fund the employer's portion of the normal cost of benefits under this chapter" and substituted "8.15%" for "7.15%"; deleted (1)(b) that read: "(b) out of funds collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or funds distributed under 3-10-601(4), an amount equal to 1% of all members' salaries"; deleted (2) that read: "(2) In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601 until the unfunded liability in the pension trust fund is fully paid and a verification statement to that effect is given to the state treasurer by the board"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments — Composite Section: Chapter 265 in three places substituted "pension trust fund" for "account", near middle substituted "collections must be paid" for "collections are statutorily appropriated", and near end substituted "is paid" for "is solvent"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 450 at beginning of introductory clause of (1) inserted "To fund the employer's portion of the normal cost of benefits under this chapter" and at end substituted "pension trust fund" for "account"; in (1)(a) and in two places in (1)(b) substituted "funds" for "moneys"; at end of (1)(b) substituted "an amount equal to 1% of all members' salaries" for "all such collections are statutorily appropriated to the account"; at beginning of (2) inserted "In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601" and near middle substituted "fully paid" for "solvent"; and made minor changes in style. Amendment effective July 1, 1993.

The Ch. 265 substitution of "collections must be paid" for "collections are statutorily appropriated" in (1)(b) was rendered meaningless by the Ch. 450 amendment.

1993 Statement of Intent: The statement of intent attached to Ch. 450, L. 1993, provided: "A statement of intent is required for this bill because [section 2] [19-8-1110(4), now repealed] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' [now game wardens' and peace officers'] retirement system who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations."

Coordination: Section 7, Ch. 450, L. 1993, provided: "If Senate Bill No. 203 is not passed and approved, then [this act] is void." Senate Bill No. 203 was passed and approved as Ch. 367, L. 1993; therefore, Ch. 450, L. 1993, is valid.

1991 Amendment: Near middle inserted reference to subsections (1) through (5) of 87-1-601. Amendment effective March 1, 1992.

Applicability: Section 22, Ch. 609, L. 1991, provided: "On passage and approval of [this act], the board of land commissioners shall commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands [functions transferred to department of natural resources and conservation] and the department of fish, wildlife, and parks shall commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992." Approved April 24, 1991.

1987 Amendment: Near middle, after "87-1-601", inserted "or moneys distributed under 3-10-601(4)".

1985 Amendment: Near middle of section, after "all such collections", inserted "are statutorily appropriated to the account".

1981 Amendment: Changed state's contribution from 7% to 7.15%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

Part 6
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

19-8-601. Time of retirement.

Compiler's Comments

2013 Amendment: Chapter 240 in (1) inserted introductory clause; in (1)(a) substituted "and files" for "has attained normal retirement age and may retire with a service retirement benefit by filing"; in (1)(b) after "service" substituted "and applies to" for "may" and at end deleted "and filing a written application with the board"; inserted (2) concerning nonforfeitable right to service retirement; and made minor changes in style. Amendment effective April 22, 2013.

2011 Amendment: Chapter 99 inserted (2) regarding receipt of service retirement benefit by certain vested members; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendment: Chapter 99 at beginning after "A member" deleted "in service", near middle after "50 years" substituted "has attained normal retirement age and" for "and terminated service", and at end after "retirement benefit" substituted "by filing a written application with the board" for "upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 370 deleted (2) that read: "(2) (a) Except as provided in subsection (2)(b), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in three places substituted "retirement benefit" for "retirement allowance"; in (1) substituted "membership service" for "creditable service" and substituted "terminated service" for "terminated covered employment"; in (2)(a) substituted "last day of service" for "last day of covered employment" and substituted "inactive member" for "terminated member"; in (2)(b) substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1), after "service", deleted "and who has", after "50 years" inserted "and terminated covered employment", and at end, after "board", deleted "setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired"; at beginning of (2)(a) inserted exception clause, after "allowance" substituted "may" for "must", and after "employment" inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application'; and inserted (2)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday"; and made minor changes in phraseology and punctuation. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendments: Chapter 249 in (1) changed "55" to "50". Chapters 249 and 86 deleted former (2) that read: "Retirement shall be compulsory at age 60."

1983 Amendment: Inserted (3) specifying date of commencement of retirement allowance.

1981 Amendment: In (1) decreased number of years service needed from 25 years to 20 years.

Applicability: Section 5, Ch. 592, L. 1981, provided: "The amendments made by sections 2, 3, and 4 of this act apply only to persons who join the retirement system following the effective date of this act." Effective October 1, 1981.

Case Notes

Original Action Involving Interpretation of Statute Allowed Without Exhaustion of Administrative Remedies: Game warden mandatorily retired under 19-8-601 lost a complaint proceeding before the Montana Commission for Human Rights, did not pursue further administrative remedies, and brought a District Court action to declare the statute invalid. The exhaustion of administrative remedies doctrine did not preclude redress, because: (1) the court action was an original action and not a judicial review of an administrative action, and (2) the Commission ruling was an interpretation of law that must be made by the judiciary. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Valid Reason for Mandatory Retirement — Legislative, Not Judicial Task: Since compulsory game warden (now game wardens' and peace officers') retirement statute contained no qualifications or justification, it would be in excess of the authority of a court hearing a warden's suit challenging the statute's validity to hold a factfinding hearing to determine whether there was a basis for the age discrimination grounded in the reasonable demands of the position. Such a determination is a legislative function; the effort would be great; and the Legislature, not the courts, has the resources for such an undertaking. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Mandatory Game Warden Retirement Without Exception or Justification — Impliedly Repealed: Sections 49-2-303 and 49-3-201, making it unlawful for an employer to refuse employment or discriminate against an employee because of his age when the reasonable demands of the position do not require an age distinction and requiring state officials and personnel to recruit, appoint, treat, and promote personnel without regard to age, being later enacted statutes than the provision of 19-8-601 requiring compulsory retirement of game wardens at age 60, impliedly repealed the retirement provision in order to effectuate the clear intent of the Legislature to prevent all age discrimination in employment unless age is related to job performance. The antidiscrimination statutes are very broad prohibitions with very limited exceptions and indicate legislative intent to abolish all discrimination in employment except under the most limited circumstances. Furthermore, there must be justification for any age discrimination to bring it within the purview of a Title 49 exception to the antidiscrimination prohibitions, and the exceptions will be strictly construed. The game warden (now game wardens' and peace officers') retirement statute contains no justification or qualification. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983), distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998). (See the 1985 amendment note to this section. The amendment deleted the compulsory retirement provision.)

Compliance With Federal Law — Age Discrimination Act Inapplicable: Validity of this section's provision (as it read prior to 1985 amendment) that "retirement shall be compulsory at age 60" did not depend upon whether the classification of persons over 60 is a reasonable one under the terms of the federal Age Discrimination in Employment Act of 1967, for Congress, in the exercise of its power under the Commerce Clause, may not regulate the working conditions of state employees engaged in purely governmental functions, and the federal act was enacted under the Commerce Clause. Taylor v. Dept. of Fish & Game, 523 F. Supp. 514, 38 St. Rep. 1653 (D.C. Mont. 1981).

19-8-603. Service retirement benefit.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 98 after "equal to" substituted "2.5%" for "2%". Amendment effective October 1, 2001.

Chapter 99 near middle after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 substituted present text regarding service retirement benefit for former section that read: "(1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity.

(2) Except as provided in 19-8-816, the amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service." Amendment effective July 1, 1993.

1989 Amendment: At beginning of (2) inserted exception clause. Amendment effective July 1, 1989.

1985 Amendment: In (1) deleted second and third sentences that read: "The member's annuity is the actuarial equivalent of his accumulated deductions at the time of his retirement. The state annuity is an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 years of service"; and in (2) substituted "The amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service" for "The retirement allowance of any member who contributes after 25 years of service shall be increased by an amount which is the actuarial equivalent of an annuity based on the member's contributions and the state contributions made after 25 years of service and standing to the member's credit at the time of his retirement".

Administrative Rules

ARM 2.43.2105 Basic period of service.

Attorney General's Opinions

Contractual Obligations of Employer to Increase Contributions: Employee contributions to the Montana State Game Wardens' (now Game Wardens' and Peace Officers') Retirement System cannot be increased unless benefits which will accrue to members at retirement are increased; however, the state, through legislation, may increase the employer contributions without any increase in benefits which will accrue to members at retirement. 35 A.G. Op. 4 (1973).

Part 7
Disability Retirement Benefits

Part Administrative Rules

ARM 2.43.2903 Payment to an estate.

19-8-701. Disability retirement benefit.

Compiler's Comments

2013 Amendment: Chapter 178 in (1) inserted exception clause and before "member" inserted "vested"; in (2) substituted "vested member" for "member who has at least 5 years of membership service and"; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 in (1) near beginning substituted "becomes" for "is determined by the board to be" and after "benefit" inserted "under 19-8-603"; substituted (2) concerning benefit of member with 5 years of service who becomes disabled in line of duty either before or after completing 20 years of membership service for former text that read: "If the disability is a direct result of any service to the state in the line of duty and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (2) after "member's" substituted "highest average compensation" for "final average salary". Amendment effective March 21, 2001.

1997 Amendment: Chapter 223 in (2), near beginning, substituted "state" for "department of fish, wildlife, and parks", reduced from 10 years to 5 years number of years of membership service required for disability retirement, and before "one-half" inserted "not less than"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding disability retirement benefit for former section that read: "(1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement, except as provided in 19-8-816.

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary, except as provided in 19-8-816." Amendment effective July 1, 1993.

1989 Amendment: At end of (2) and (3) inserted exception clause. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

19-8-712. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in (1) in second sentence before "physician" inserted "board-approved" and after "surgeon" substituted "at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and" for "at the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 in (2) near middle of third sentence after "recipient may" substituted "file a written application with the board requesting that the board reconsider" for "submit a written application to the board to request the board to reconsider" and in fourth sentence after "reconsideration must be" substituted "filed" for "made in writing". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2) in third sentence after "may" inserted "submit a written application to the board to". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 223 in (4), in two places, substituted reference to member's former employer for "department of fish, wildlife, and parks" and at end of first sentence substituted "peace officer" for "game warden". Amendment effective July 1, 1997.

Chapter 370 in (1), at end of fourth sentence, inserted "or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability"; in (3)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (3)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit for references to disability retirement allowance or retirement allowance; in (2), at end of first sentence, substituted "monthly benefit" for "monthly allowance"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (2) relating to procedure when the Board determines a recipient should no longer be subject to medical review; at beginning of (3) substituted "recipient" for "person" and after "because" inserted "the board has determined that"; in first sentence of (4) substituted "recipient" for "member"; corrected internal reference; and made minor changes in phraseology. Amendment effective March 18, 1989.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

Part 8
Optional Forms of Benefit Payments

Part Compiler's Comments

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend 19-8-802 (now repealed) but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-8-801. Optional forms of benefits — designation of contingent annuitant.

Compiler's Comments

2015 Amendment: Chapter 248 in (5) near beginning substituted "terminating service" for "retirement"; and made minor changes in style. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 in (1) inserted last sentence concerning option 1 benefit; in (2), (3), and (5) after "retirement benefit" inserted reference to subsection (2); inserted (6) concerning changing selected option; in (8)(a) substituted "original option 1 retirement benefit" for "original retirement benefit"; in (8)(c) after "option" inserted "under subsection (2)"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 99 inserted (1)(c)(iii) regarding death of all surviving contingent annuitants; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (1)(a) inserted second and third sentences and (1)(a)(i) and (1)(a)(ii) providing conditions for option 2; in (3) at beginning substituted "If the member or designated beneficiary or the named" for "If a benefit recipient or the recipient's"; in (5) in introductory clause after "(1)(b)" deleted "that is initially effective on or after October 1, 1999"; in (5)(a) at beginning after "the" inserted "original"; in (5)(b) near beginning of first sentence before "contingent" inserted "original", near middle after "dissolved and the" substituted "original contingent annuitant" for "beneficiary", and in second sentence near end before "contingent" inserted "original"; deleted former (5)(b) that read: "(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement"; in (6) in introductory clause substituted "A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives" for "A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant"; inserted (6)(a) through (6)(c) setting out alternatives for a member who applies to revert; in (7) substituted benefit calculation requirement for a member who selects an alternative for former (7) that read: "(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change"; inserted (8) requiring that a written application be filed within 18 months of the death of or dissolution of marriage to the contingent annuitant; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) in second sentence inserted "depending on the option selected"; in (1)(a) and (1)(b) substituted "optional retirement benefit" for "reduced amount"; in (1)(c) substituted "a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows" for "upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board"; inserted (1)(c)(i) relating to period certain determinations; inserted (1)(c)(ii) relating to when there is more than one surviving contingent annuitant; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5)(a)(ii) in two places before "family law order" deleted "dissolution settlement or" and after first "family law order" inserted "as defined in 19-2-907"; in (7)(a)(ii) at end substituted "a family law order" for "the divorce settlement"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) at end of second sentence after "contingent annuitant" deleted "that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits"; in (1)(c) after "amounts" inserted "payable to a contingent annuitant"; in (2) at beginning of first sentence substituted "The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board" for "Election of an optional retirement benefit must be by written application filed" and inserted second sentence requiring identification of a contingent annuitant; in (4) near middle after "member's" substituted "written application electing or changing an election" for "election or changed election" and at end after "void" deleted "and the death is considered as that of a member before retirement"; in (5)(a) near beginning after "that is" substituted "initially effective on or after October 1, 1999" for "effective after October 1, 1999"; in (7)(a) at beginning substituted "Upon filing a written application with the board" for "Upon written application to the board"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendments — Composite Section: Chapter 217 inserted (5) allowing optional retirement benefits to revert to regular retirement benefits in cases of death of contingent annuitant or dissolution of marriage; and inserted (6) requiring written applications for changes regarding optional retirement benefits to be made within 18 months of qualifying event. Amendment effective October 1, 1999.

Chapter 562 inserted (7) allowing retiree receiving optional benefit to change contingent annuitant or option or to convert to regular benefit under certain conditions. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted (1) regarding optional forms of benefits for former (1) and (2) that read: "(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 4—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board"; inserted (2) regarding written application; inserted (3) regarding cancellation of election of option; and inserted (4) regarding death after retirement and within 30 days of election or changed election. Amendment effective July 1, 1993.

1987 Amendment: In (2)(a) substituted "Option 2" for "Option 1"; in (2)(b) substituted "Option 3" for "Option 2"; and in (2)(c) substituted "Option 4" for "Option 3".

Administrative Rules

ARM 2.43.1306 Actuarial rates and assumptions.
ARM 2.43.2601 Application process for service retirement.

Part 9
Service Credit

19-8-901. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2003 Amendment: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit". Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (1)(b) that read: "(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(5), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 87, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service credit may" for "15 years or more of service credit qualified under this chapter may", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written application with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service" and deleted former second sentence that read: "The member may not qualify more years of military service than the member has years of service credits in excess of 15 years"; inserted (2) establishing conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) substituted "written application" for "written election". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 deleted former (1) and (2) that read: "(1) A state game warden inducted into the armed forces of the United States has the option to:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden"; in (1), near beginning, substituted "service credit" for "state service" and at end, after "service", deleted "pursuant to subsections (1) and (2)"; in (2), in first sentence, substituted "pension trust fund" for "retirement fund", after "granting the service" inserted "based on the most recent actuarial valuation of the system as", and after "determined by the board" deleted "based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes" and in second sentence, near end, substituted "years of service credits" for "years of creditable state service"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2315 Credit for service in uniformed services.
ARM 2.43.2316 Reserve military service.

19-8-903. Employment in United States government.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) in introductory clause after "1970" substituted "may purchase" for "may qualify"; in (3) in two places substituted "highest average compensation" for "final average salary"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 223 at end of (2)(b) and (3) substituted "peace officer" for "game warden". Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 throughout section substituted references to member for references to state game warden or warden; in (1) substituted "federal employment" for "federal service" and before "retirement system" deleted "game wardens'"; in (1)(a), at end, substituted "membership service" for "service in the game wardens' retirement system"; in (1)(b), after "full-time service", deleted "covered by the game wardens' retirement system" and substituted "employment" for "service"; in (2)(a), at end, substituted "pension trust fund" for "account"; in (2)(b), at beginning, substituted "pay" for "qualify this service by paying"; in (3), in two places near beginning, substituted "compensation" for "salary", before "retirement system" deleted "game wardens'", after "determination of" substituted "final average salary" for "final salary", after "that the" substituted "final average salary" for "final salary", and near end substituted "highest monthly compensation" for "highest annual salary"; and made minor changes in style. Amendment effective July 1, 1993.

Federal Statute: Title IV, the Intergovernmental Personnel Act of 1970 referred to in this section may be found at 42 U.S.C. 4701 through 4772.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.

19-8-904. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in two places in (2) and in (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-8-901, 19-8-903, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2318 "1-for-5" additional service.

19-8-905. Absence due to injury or illness.

Compiler's Comments

2003 Amendment: Chapter 429 near end of (2)(a) and in (3) before "service" deleted "covered"; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 58 deleted former (4) that read: "(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

Effective Date: Section 43, Ch. 370, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 23, 1997.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2323 Service credit for periods of absence due to illness or injury.

19-8-906. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 10

Survivorship Benefits and Death Payments

19-8-1001. Benefits upon employment-related death.

Compiler's Comments

2015 Amendment: Chapter 248 in second sentence increased survivorship benefit from 2% to 2.5%. Amendment effective January 1, 2016.

2001 Amendment: Chapter 99 near end of first sentence substituted "highest average compensation" for "final average salary", and inserted second sentence regarding amount of survivorship benefit for a deceased member who completed more than 25 years of service credit. Amendment effective March 21, 2001.

1993 Amendment: Chapter 265 near beginning substituted "member" for "contributor", substituted "service" for "employment", substituted "monthly survivorship benefit" for "retirement allowance", before "beneficiary" inserted "designated", and after "beneficiary" substituted "equal to 50% of the final average salary of the member" for "consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, except as provided in 19-8-816, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In middle of (2) inserted exception clause. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-8-1002. Postretirement death payments.

Compiler's Comments

2015 Amendment: Chapter 248 in (2) inserted "the member's designated beneficiary or, if there is no surviving beneficiary"; and in (3) inserted last sentence concerning reductions in accumulated contributions. Amendment effective January 1, 2016.

2013 Amendment: Chapter 178 inserted (1) concerning death of retired member with option 1 retirement benefit; in (2) substituted "If a retired member who elected an option 2 or 3 retirement benefit under 19-8-801 dies with no surviving contingent annuitant" for "If a member who retires on or after July 1, 1997, dies without designating a contingent annuitant under 19-8-801" and substituted "estate" for "designated beneficiary"; inserted (3) concerning applicability of section; and made minor changes in style. Amendment effective July 1, 2013.

1999 Amendment: Chapter 562 substituted text relating to calculation of postretirement death payments for member who retires without designating contingent annuitant for former text that read: "If a member who retires on or after July 1, 1997, and who has not chosen an option 2, 3, or 4 retirement benefit under 19-8-801 dies before receiving an amount equal to the member's total amount of contributions and interest on account as that amount was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump-sum payment." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 at beginning substituted "If a member who retires on or after July 1, 1997, and who has not chosen an option 2, 3, or 4 retirement benefit" for "If a retired member who has not chosen an optional retirement benefit"; after "equal to" substituted "the member's total amount of contributions and interest on account as that amount was" for "the present value of the member's service retirement benefit under 19-8-603 as it was"; and deleted last sentence that read: "At the option of the designated beneficiary, the lump-sum payment may be annuitized and paid over the beneficiary's lifetime; however, the payment is not a benefit subject to increases." Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 substituted present text regarding postretirement death payments for former section that read: "(1) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604." Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-8-1003. Nonduty-related death of active member.

Compiler's Comments

2017 Amendment: Chapter 195 near beginning inserted "vested" and at end substituted "19-8-603" for "19-8-601". Amendment effective July 1, 2017.

2011 Amendment: Chapter 99 after "reaching" inserted "normal", substituted "service retirement" for "early retirement", and at end substituted "19-8-601" for "19-8-604"; and made minor changes in style. Amendment effective July 1, 2011.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Part 11
Postretirement Benefits and Benefit Increases

19-8-1105. Guaranteed annual benefit adjustment.

Compiler's Comments

2007 Amendment: Chapter 371 in (1) at end, in (2)(a) near middle and near end, in (2)(b) near middle, and in (2)(c) near middle substituted reference to applicable percentage rate for "3%"; inserted (4) specifying applicable percentage of benefit increase for certain benefit recipients hired before or after July 1, 2007; inserted (5) specifying applicable percentage of benefit increase for certain contingent annuitants; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

Administrative Rules

ARM 2.43.2324 Guaranteed annual benefit adjustment coverage.

Part 12
Reemployment of Retired Members

19-8-1201. Reemployment of retired members — contributions required.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

19-8-1202. Refunds and benefits for reemployed retired members.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 9
POLICE RETIREMENT — STATEWIDE PLAN

Chapter Administrative Rules

ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.

Part 1
General Provisions

19-9-101. Short title.

Compiler's Comments

Severability Clause: Section 41, Ch. 456, L. 1977, was a severability clause.

19-9-103. Municipal police officers' retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "There is a retirement plan known as the municipal police officers' retirement system. The plan is governed" for "A municipal police officers' retirement system is established, which is governed". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted reference to chapter 2; and made minor changes in style. Amendment effective July 1, 1993.

19-9-104. Definitions.

Compiler's Comments

2013 Amendment: Chapter 386 in definition of compensation inserted (b)(iii) concerning excluded bonuses; in definition of final average compensation inserted (b) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2003 Amendment: Chapter 429 in definition of compensation after "remuneration paid" substituted language concerning payment for services or leave for former language that read: "for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made" and inserted (c)(ii) excluding maintenance, allowances, and expenses; in definition of final average compensation at end substituted "served at least 36 months, the total compensation earned divided by the number of months of service" for "been a member that long, over the period of membership"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted definition of police officer; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 at end of definition of compensation substituted "paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made" for "that a member receives as an active police officer". Amendment effective July 1, 1999.

1997 Amendment: Chapter 250 in definition of minimum retirement date, near end, substituted "5 years" for "10 years"; and made minor changes in style. Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 inserted definitions of compensation and survivor; deleted definition of administrator that read: ““Administrator” means the public employees’ retirement division of the department of administration”; deleted definition of base salary that read: ““Base salary” means the sum of the monthly compensations for each month in a given calendar year”; deleted definition of Board that read: ““Board” means the retirement board described in 2-15-1009”; deleted definition of credited service that read: ““Credited service” means the aggregate of a member’s prior service and membership service”; deleted definition of death benefit that read: ““Death benefit” means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement”; in definition of employer substituted “this retirement system” for “this plan”; deleted definition of employer annuity that read: ““Employer annuity” means monthly payments for life derived from employer and state contributions”; substituted definition of final average compensation for definition of final average salary and before “service” deleted “active”; deleted definition of fund that read: ““Fund” means the pension trust fund in the treasury system designated for the use of the plan”; deleted definition of member that read: ““Member” means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer”; deleted definition of member contributions that read: ““Member contributions” means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon”; deleted definition of member’s annuity that read: ““Member’s annuity” means monthly payments for life derived from member contributions”; deleted definition of membership service that read: ““Membership service” means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member’s monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year”; in definition of minimum retirement date substituted “membership service” for “qualified service”; deleted definition of monthly compensation that read: ““Monthly compensation” means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer”; deleted definition of normal retirement date that read: ““Normal retirement date” means the first day of the month coinciding with or, if none coincides, the date on which a member completes 20 or more years of qualified service and has terminated employment as a police officer”; deleted definition of plan that read: ““Plan” means the municipal police officers’ retirement system created by this chapter”; deleted definition of police officer that read: ““Police officer” means a law enforcement officer employed by an employer”; in definition of prior plan substituted present text for former text that read: ““Prior plan” means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974”; deleted definition of prior service that read: ““Prior service” means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan”; deleted definition of qualified service that read: ““Qualified service” means credited service plus any service purchased under the provisions of part 4 of this chapter”; deleted definition of retirement allowance that read: ““Retirement allowance” means the employer annuity plus the member’s annuity”; in definition of retirement date substituted “survivorship benefits” for “survivor benefits” and substituted “survivor” for “beneficiary”; deleted definition of totally and permanently disabled that read: ““Totally and permanently disabled” means that the board, upon certification by a licensed and practicing physician, has determined that a member’s disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer”; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 178 inserted definition of qualified service. Amendment effective March 26, 1991.

Chapter 631 in definition of minimum retirement date deleted requirement that member be 50 years of age or older (rendered void by Ch. 822); and made minor changes in style. Amendment effective July 1, 1991.

Section 1, Ch. 822, inserted definition of qualified service. Section 9, Ch. 822, a coordination instruction, in definition of minimum retirement date, near beginning, deleted “or “normal retirement date””, after “age 50” deleted “or older”, and substituted “and completes 10 years of qualified service” for “and completes 20 or more years of credited service”; inserted definition of normal retirement date; and made minor change in style. Amendments effective July 1, 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

1985 Amendments: Chapter 86 deleted former (10) that read: ""Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65."

Chapter 350 inserted definition of death benefit.

1983 Amendments: Chapter 186 inserted definitions of dependent child and surviving spouse.

Chapter 282 changed "agency account" to "pension trust fund" in (9).

Administrative Rules

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

19-9-109. Municipal police officers' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

19-9-112. Termination of participation in retirement system or reduction of employer contributions.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

Part 2
Extension of Coverage by Local Government Employers

19-9-205. Transfer of assets and liabilities from prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 at end of first sentence substituted "pension trust fund" for "account provided for in 19-9-501" and deleted last sentence that read: "The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-206. Effect on members of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 in (1), near beginning, substituted "retirement system" for "plan" and near end substituted "retirement benefit" for "retirement allowance"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-207. Election to join retirement system — transfer of assets.

Compiler's Comments

2009 Amendment: Chapter 216 in (2) near end of fourth sentence substituted "30 years" for "10 years". Amendment effective April 15, 2009.

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in first sentence, substituted "board" for "department of administration" and in third sentence, before first "ordinance", inserted "election", after "deposit" deleted "with the board", and at end, after "retirement fund", inserted "into the municipal police officers' pension trust fund"; in (2), in two places, substituted "plan" for "system", in second sentence, after "respective", deleted "individual accounts of the", and at end of last two sentences substituted "board" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (2), inserted "for a period determined by the administrator" at end of third sentence and changed the basis for payments under the last sentence from "on a basis determined by the procedure described in 19-9-503(2) and (3)" to "for a period of 10 years or less as determined by the administrator".

19-9-209. Taxing authority of employers.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any addition tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Part 3

Eligibility, Membership, and Vesting

19-9-301. Active membership — inactive vested member — inactive nonvested member.

Compiler's Comments

2015 Amendment: Chapter 248 inserted (2) concerning a member's failure to make a membership election; and made minor changes in style. Amendment effective January 1, 2016.

2009 Amendment: Chapter 284 in (1)(c) near end of second sentence before "written" inserted "irrevocable" and after "later than" substituted "90 days" for "30 days"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (4)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (4)(b) relating to what a lump-sum payment consists of; in (5)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (4) near end after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1)(c) inserted second sentence allowing a person who is a member of the public employees' retirement system on the date of the employer's election to remain in the public employees' retirement system or become a member of the municipal police officers' retirement system; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 250 in (4) and (5), near beginning, substituted "5 years" for "10 years". Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with" for "employment by"; in (1)(c) substituted "retirement system" for "plan"; inserted (3) regarding inactive member; inserted (4) regarding inactive vested member; inserted (5) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2309 Service purchases by inactive vested members.

19-9-302. Ineligibility for other retirement plans.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Service Credit

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2109 Receipt of service credit on or after termination of employment.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2302 Documentation of service.
ARM 2.43.2308 Most recent service purchased first.

19-9-403. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; deleted former (3) that read: "(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (2) and (3) that read: "(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(6), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 93, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1) inserted exception clause, after "member with" substituted "at least 15 years of service credit" for "15 years or more of service credit", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify up to a maximum of 5 years", and at end deleted "if the member is not otherwise eligible to receive credit"; at beginning of (2) substituted "To purchase this military service, the member shall pay the actuarial cost of the member's military service" for "To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; in (3) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit"; in (4) at beginning of introductory clause inserted "A member is not eligible to purchase military service under this section"; in (4)(a) after "United States with a" substituted "military retirement benefit based on that military service" for "normal military service retirement benefit, the member may not qualify the member's military service under subsection (1)"; inserted (4)(b) and (4)(c) regarding certain conditions of ineligibility to purchase military service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", substituted "qualify up to a maximum of 5 years of the member's active duty service" for "qualify all or any portion of his active service", and after "calculating retirement benefits" deleted "up to a maximum of 5 years", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", and in third sentence, after "service", inserted "credit"; in (2), in first sentence, substituted "a normal military service retirement benefit" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Deleted former last sentence of (1) that read: "Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service". Amendment effective March 26, 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2316 Reserve military service.

19-9-406. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-9-410. Transfer to public employees' retirement system.

Compiler's Comments

2003 Amendment: Chapter 429 in last sentence after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 239, Ch. 265, L. 1993, provided that this section is effective July 1, 1993.

19-9-411. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) and (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-9-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 in (3) substituted "19-9-403" for "19-13-403". Amendment effective March 12, 1997.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.

ARM 2.43.2318 "1-for-5" additional service.

Part 7
Contributions

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-9-702. State contribution.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at end of first sentence substituted "from the general fund" for "through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies", in second sentence, after "The", substituted "general fund contributions" for "payments" and after "November 1" deleted "from the gross premium tax after deduction for cancellations and returned premiums", in third sentence, before "auditor", inserted "state", and inserted fifth sentence providing that contributions are statutorily appropriated. Amendment effective July 1, 1997.

1997 Amendment Changed and Voided — Coordination: The amendments made by sec. 3, Ch. 250, L. 1997, by sec. 26, Ch. 287, L. 1997, and by sec. 2, Ch. 445, L. 1997, were voided by sec. 8(3)(c), Ch. 445, L. 1997, a coordination section, which established the state's contribution at 29.37%. Amendment effective July 1, 1997.

Section 3, Ch. 250, L. 1997, was also voided by sec. 8(3)(a), Ch. 445, L. 1997, a coordination section.

Section 26, Ch. 287, L. 1997, was also voided by sec. 8(3)(b), Ch. 445, L. 1997, a coordination section.

The amendment made by sec. 2, Ch. 445, L. 1997, was changed by sec. 8(3)(a), Ch. 445, L. 1997, a coordination section, to increase the state's contribution to 29.07%. The sec. 8(3)(a), Ch. 445, L. 1997, change was overridden by sec. 8(3)(c), Ch. 445, L. 1997, a coordination section, to increase the state's contribution to 29.37%.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendment: Chapter 265 in first sentence, after "insurance policies", deleted "which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions"; in second sentence substituted "November 1" for "September 1"; in third sentence substituted "division" for "administrator", substituted "September 1" for "April 1", and in two places, before "year", inserted "fiscal"; in fourth sentence, after "state's contribution is", substituted "15.66% of compensation paid to members" for former text that read: "(1) 14.04% of compensation paid to members before July 1, 1985;

(2) 15.06% of compensation paid to members from July 1, 1985, through June 30, 1991; and

(3) 15.66% of compensation paid to members after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At end substituted (1), (2), and (3) establishing state contribution rates for various periods for "Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985". Amendment effective July 1, 1991.

1985 Amendment: At end of first sentence inserted "which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions".

1983 Amendment: At end, substituted "Before July 1, 1985, the state's contribution shall be 14.04% of such compensation and 15.06% on and after July 1, 1985" for "and the state's contribution shall be 14.04% of such compensation".

1981 Amendments: Chapter 250 inserted "after the end of each fiscal year but no later than September 1" after "annually" in the middle of the section; inserted "by April 1 of each year" after "auditor" near the end of the section.

Chapter 549 changed state's contribution from 14% to 14.04%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-9-703. Employer contribution.

Compiler's Comments

2005 Amendment: Chapter 329 in second sentence at beginning substituted "employer shall pay as employer contributions" for "employer's contribution, which must be paid monthly to the board, is" and at end substituted "of the employer's employees, except those properly excluded from membership" for "active members". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 250 near end substituted "14.41%" for "14.36%". Amendment effective July 1, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1993 Amendments: Chapter 265 in first sentence, after "contribution", deleted "on behalf of members"; substituted second sentence regarding employer's contribution rate for former text that read: "The employer's contribution, which must be paid monthly to the administrator, is:

(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and

(3) 13.92% of the total monthly compensation paid to all active members during the preceding month after July 1, 1991"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, deleted (1) and (2) that read: "(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;

(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991"; increased employer contribution from 13.92% to 14.36% and at end, after "July 1", changed 1991 to 1993; and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: Substituted last sentence of introductory clause, (1), (2), and (3) establishing employer's contribution for various periods for "Before July 1, 1985, the employer's contribution shall be 14.04% of the total monthly compensation paid to all active members during the preceding month, 13.02% on and after July 1, 1985, and shall be payable monthly to the administrator". Amendment effective July 1, 1991.

1983 Amendment: Inserted "Before July 1, 1985" at beginning of second sentence; and near end inserted "13.02% on and after July 1, 1985" after "during the preceding month".

1981 Amendment: Changed employer contribution from 14% to 14.04%.

Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

19-9-705. Other money credited as employer contributions.

Compiler's Comments

1993 Amendment: Chapter 265 in first sentence substituted "retirement system" for "plan", before "compensation" deleted "monthly", and at end substituted "pension trust fund" for "administrator"; deleted second sentence that read: "The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

19-9-706. Contributions based on total compensation when member receives disability compensation.

Compiler's Comments

1999 Amendment: Chapter 562 deleted former last sentence that read: "The service represented by these contributions must be credited in the same manner as provided in 19-9-401." Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 substituted present text regarding contributions based on total compensation when member receives disability compensation for former section that read: "(1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system." Amendment effective July 1, 1993.

1983 Amendment: Changed two references to the retirement account in the agency fund to the pension trust fund.

19-9-710. Member's contribution.

Compiler's Comments

2013 Amendment: Chapter 178 deleted former (1)(a) that read: "(a) on or before June 30, 1975, is 5.8%"; in (1)(a) inserted "but before July 1, 1979"; in (2) after "19-9-1010" inserted "or 19-9-1013"; and made minor changes in style. Amendment effective July 1, 2013.

2005 Amendment: Chapter 329 in (2) substituted "contribute 9% of the member's compensation" for "pay a contribution rate equal to 9% of compensation received". Amendment effective July 1, 2005.

1999 Amendment: Chapter 463 in (1)(a) decreased percentage amount from 7.8% to 5.8%; in (1)(b) decreased percentage amount from 9% to 7%; in (1)(c) decreased percentage amount from 10.5% to 8.5%; in (1)(d) decreased percentage amount from 11% to 9%; and in (2) inserted "or 19-9-1010", substituted "9%" for "11%, and after "received" deleted "on and after July 1, 1997". Amendment effective January 1, 2000.

Saving Clause: Section 4, Ch. 463, L. 1999, was a saving clause.

1997 Amendment: Chapter 287 substituted (1) providing exception clause and outlining various contribution rates for members actively employed as police officers for language that read: "The regular contribution of each active member first employed by an employer on or before June 30, 1975, is 7.8% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is 9% of the member's compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is 10.5% of the member's compensation"; inserted (2) requiring covered member to pay rate of 11% after July 1, 1997; near end of (3) inserted reference to subsection (2); and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 265 in (1), in three places before "compensation", deleted "monthly", near beginning substituted "regular contribution" for "normal contribution", after "active member" inserted "first employed by an employer on or before June 30, 1975", and deleted last sentence that read: "Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer"; in first sentence of (4), before "compensation as defined in 19-9-104", deleted "monthly"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 in (1) increased normal contribution rate from 6% to 7.36%, for member employed after June 30, 1975, from 7.2% to 8.56%, and for member employed after June 30, 1979, from 8.7% to 10.06%; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 pursuant to sec. 5, a coordination instruction, in (1) increased normal contribution rate from 6% to 7.8%, for police officers employed after June 30, 1975, from 7.2% to 9%, and for police officers employed after June 30, 1979, from 8.7% to 10.5%; and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: Inserted second sentence concerning contribution of member first employed after June 30, 1975, and in third sentence increased contribution rate from 7½% to 8.7%; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (1) substituted "The normal contribution of each active member is 6% of his monthly compensation" for "The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6%" and deleted last sentence that read: "The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers"; inserted (2) requiring employer to "pick up" employee's contribution; inserted (3) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (4) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code of 1954 referred to in this section may be found at 26 U.S.C. 414(h)(2).

Part 8
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.

ARM 2.43.2603 Acceptable proof of date of birth.

19-9-801. Eligibility for service retirement — commencement of benefit.

Compiler's Comments

2013 Amendment: Chapter 240 in (1) at beginning substituted "Subject to a member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6, a member" for "A member has attained normal retirement age and", before "service" inserted "nonforfeitable", and after "benefit" inserted "under 19-9-804"; in (1)(b) substituted "is vested and has" for "has completed at least 5 years of membership service and"; inserted (2) concerning nonforfeitable right to service retirement; and made minor changes in style. Amendment effective April 22, 2013.

2001 Amendment: Chapter 99 substituted language outlining eligibility for service retirement and commencement of benefits for former language that read: "(1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 5 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age." Amendment effective March 21, 2001.

1997 Amendments: Chapter 250 in (3) substituted "5 years" for "10 years"; and in (4)(b) substituted "no earlier than" for "no later than" and substituted "50th birthday" for "55th birthday" (voided by Ch. 370 amendment). Amendment effective July 1, 1997.

Chapter 370 deleted (4) that read: "(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 55th birthday." Amendment effective April 23, 1997.

Section Not Codified: Section 6, Ch. 250, L. 1997, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), after "retirement", deleted "and shall retire"; in (2), after "A member", deleted "employed by an employer as a police officer", after "retirement" substituted "benefit" for "allowance", substituted "membership service" for "qualified service", and at end, after "terminated", substituted "service" for "covered employment"; in (3), after "terminates", substituted "service" for "employment as a police officer with an employer", in two places substituted "membership service" for "qualified service", and substituted "retirement benefit" for "retirement allowance"; in (4)(a) substituted reference to subsection (4)(b) for reference to subsection (3)(b), substituted "retirement benefit" for "retirement allowance", and substituted "inactive member" for "terminated member"; in (4)(b) substituted "retirement benefit" for "retirement allowance" and substituted "inactive member" for "terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 178 near end of (1) and (2), after "20 years or more", substituted "of qualified service" for "in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank". Amendment effective March 26, 1991.

Chapter 631 in (1), after "police officer", deleted "on July 1, 1975"; deleted former (2) that read: "(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment"; in (3)(a) changed subsection reference; and made minor change in style. Amendment effective July 1, 1991.

Section 2, Ch. 822, near middle of (1) substituted "20 years or more of qualified service" for "20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank"; and in (3)(a), near middle after "following the member's", substituted "minimum retirement date" for "last day of membership service". Section 9, Ch. 822, a coordination instruction, in (1), after "officer", deleted "on July 1, 1975"; and in (2) substituted "A member who terminates employment as a police officer with an employer after completing at least 10 years of qualified service but prior to completing 20 years of qualified service is eligible to receive a service retirement allowance when he has reached 50 years of age" for "A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, and has terminated covered employment". Amendments effective July 1, 1991.

Composite Section: The Code Commissioner has codified the version of subsection (2) of this section found in sec. 9, Ch. 822, L. 1991, that contains the substance of the changes made to subsection (2) of this section by sec. 3, Ch. 178, L. 1991.

Retroactive Applicability: Section 4, Ch. 178, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to retirements on or after January 1, 1991."

1989 Amendment: At end of (1) and (2) inserted "and has terminated covered employment"; at beginning of (3)(a) inserted exception clause, after "allowance" substituted "may" for "must", and at end, after "service", inserted "or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application"; inserted (3)(b) that read: "(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday"; and made minor changes in punctuation and phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: Deleted former (3) that read: "Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire."

1983 Amendment: Inserted (4) specifying date of commencement of retirement allowance.

Attorney General's Opinions

Clarification of Police Service Retirement: The language of 19-9-802(2) (now repealed) requires a police officer hired after July 1, 1975, to remain an officer each additional year between his 20th year of service and his reaching the age of 50 in order to be eligible for service retirement. (See 1991 amendments.) 43 A.G. Op. 20 (1989).

19-9-804. Amount of service retirement benefit — continuation of benefit after death of member.

Compiler's Comments

2005 Amendment: Chapter 329 in (2)(b) in second sentence near beginning substituted "paid pursuant to 19-2-803" for "made to the child's appointed guardian for the child's use"; and made minor changes in style. Amendment effective July 1, 2005.

1993 Amendments — Composite Section: Chapter 265 substituted (1) that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of:

(a) 2.5% of the member's final average compensation for each year of service credit up to and including 20 years; and

(b) 1% of the member's final average compensation for each year of service credit after 20 years" (not codified — see compiler's comment) for former (1) through (3) that read: "(1) A police officer with 20 years of qualified service who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional qualified service, up to a maximum of 60% of his final average salary.

(3) A member who is eligible for service retirement under 19-9-801 with less than 20 years of qualified service shall receive a retirement allowance equal to 2.5% of his final average salary for each year of qualified service"; inserted (2) regarding limitation on total monthly benefit (not codified — see compiler's comment); inserted (3) regarding amount of retirement benefit for member retiring with less than 20 years of membership service (not codified — see compiler's comment); in (2), throughout subsection, substituted references to member for references to police officer or officer; in (2)(a) substituted "retirement benefit under subsection (1)" for "retirement allowance under subsection (1) or (2)", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and at end substituted "final average compensation" for "final average salary"; in (2)(b) substituted "service retirement benefit" for "service retirement allowance", before "fund" inserted "pension trust", substituted "a benefit equal to" for "a sum equal to", and substituted "benefit" for "allowance"; in (4)(c), near end of first sentence after "dependent", inserted "child" (not codified — see compiler's comment); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 522 deleted former (1) providing for 20-year service retirement (see 1993 Session Law for text); deleted former (2) providing for 20-year service retirement and additional qualified service retirement (see 1993 Session Law for text); in (1), after "under 19-9-801", deleted "with less than 20 years of qualified service"; in (4)(a), after "benefit", inserted "based on at least 20 years of service" and in (2)(b), after "allowance", inserted "based on less than 20 years of service" ((4) amendments rendered meaningless by deletion of sentence by Ch. 265); and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (2)(a), after "(2)", inserted "or (3)" (this amendment was not codified by the codifier due to Ch. 265 amendments) and after "equal to" deleted former language that read: "one-half of the officer's final average salary.

(b) Upon the death of a member receiving a service retirement allowance under subsection (3), his surviving spouse, if there is one, shall receive from the fund a sum equal to"; and made minor changes in style. Amendment effective May 7, 1993.

Compiler's Comment: Chapter 265 contained an introductory phrase that read: "(1) A member with at least 20 years of membership service must receive a retirement benefit equal to the sum of".

Chapter 522 contained an introductory phrase that read: "(1) A member who is eligible for service retirement under 19-9-801 must receive a retirement allowance equal to . . . ."

Because both chapters struck the introductory language of the other, thereby rendering the introductory phrase meaningless, the compiler has combined the language into the current introductory phrase to reflect the apparent intent of both chapters.

The insertion of (1)(a) and (1)(b) by Ch. 265 was parallel to former (2). The provision in (1)(b) concerning 1% for years of service in excess of 20 was not codified because that provision was deleted by Ch. 522. Chapter 265 apparently did not intend to make a substantive change in benefits. The compiler has not codified the inserted benefit language from Ch. 265 because that concept was deleted by Ch. 522.

The compiler has codified the apparent intent of the three chapters.

Style and gender neutral changes throughout the section were slightly different in the three chapters. In each case, the codifier chose the most appropriate of the three.

Retroactive Applicability: Section 6, Ch. 620, L. 1993, provided: "[Section 3] [19-9-804] applies retroactively, within the meaning of 1-2-109, to benefits paid on or after July 1, 1975."

1991 Amendments: Chapter 631 in (1) deleted subsection references to 19-9-801. Amendment effective July 1, 1991.

Section 4, Ch. 822, in (1), near beginning after "police officer", inserted "with 20 years of qualified service"; in (2), near beginning after "retirement", inserted "under subsection (1) or (2) of 19-9-801", substituted "after 20 years of qualified service" for "after 20 years of service", and near end substituted "additional qualified service" for "additional service"; inserted (3) regarding retirement allowance for member with less than 20 years of qualified service; in (4)(a), near beginning after "allowance under", substituted "subsection (1) or (2)" for "this section"; and inserted (4)(b) concerning surviving spouse receiving amount equal to officer's allowance at time of death. Section 9, Ch. 822, a coordination instruction, in (1), (2), and (3) deleted subsection references to 19-9-801. Amendments effective July 1, 1991.

1989 Amendments: Chapter 63 in first sentence of (3), after "shall", deleted "for as long as the spouse remains unmarried" and in second sentence, after "the death", deleted "or remarriage". Amendment effective July 1, 1989.

Chapter 196 near middle of (2), after "1% of", substituted "his final average salary for each year" for "such allowance per year"; and made minor change in phraseology. Amendment effective March 20, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to

1985 Amendments: Chapter 86 near middle of (1), after "police officer", deleted "or who is retired under 19-9-801(3) prior to reaching 20 years of service"; and deleted former (3) that read: "A police officer who is retired under 19-9-801(3) and who was theretofore eligible at his option to be retired under subsection (1) or (2) of 19-9-801 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)."

Chapter 350 deleted former (3) in same manner as Ch. 86 but inserted (3) providing for continuation of allowance after death of retired officer.

Administrative Rules

ARM 2.43.2105 Basic period of service.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

Part 9
Disability Retirement Benefits

19-9-902. Eligibility for disability retirement.

Compiler's Comments

2005 Amendment: Chapter 329 at end substituted "employment" for "service". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 near beginning substituted "member" for "police officer", before "disabled" deleted "totally and permanently", substituted "disability retirement benefit" for "disability retirement allowance", and at end substituted "the member's termination from service" for "the police officer's last day of membership service"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In two places substituted reference to police officer for reference to member. Amendment effective July 1, 1991.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member.

Compiler's Comments

2003 Amendment: Chapter 429 substituted (1) concerning disability benefit before or after 20 years of service for former text that read: "A member who is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation"; deleted former (2) that read: "(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804"; and made minor changes in style. Amendment effective July 1, 2003.

1993 Amendment: Chapter 265 throughout section substituted references to member for references to police officer; in (1) substituted "before earning 20 years of service credit" for "before completing 20 years of qualified service", substituted "disability retirement benefit" for "disability retirement allowance", and at end substituted "one-half the member's final average compensation" for "one-half his average final salary"; in (2) substituted "20 years of service credit" for "20 years of qualified service"; in (3) substituted "disability retirement benefit" for "disability allowance" and deleted reference to subsection (4) of 19-9-804; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 631 in (2) deleted subsection references to 19-9-801. Amendment effective July 1, 1991.

Section 6, Ch. 822, in (1), near middle after "20 years of", inserted "qualified"; in (2), near middle after "elected to serve", substituted "years in excess of 20 years of qualified service" for "additional years"; and at end of (3) changed subsection reference to 19-9-804. Section 9, Ch. 822, a coordination instruction, in (2) deleted subsection references to 19-9-801. Amendments effective July 1, 1991.

1985 Amendment: Inserted (3) providing for benefits after death of officer receiving disability allowance.

19-9-904. Termination of disability benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 283 in second sentence before "physician" inserted "board-approved" and after "surgeon" substituted "at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and" for "at the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

1997 Amendment: Chapter 370 at end of fourth sentence, after "19-9-905", inserted "or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in third sentence substituted "essential elements" for "duties". Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in three places substituted "disability retirement benefit" for "disability retirement allowance" and in fourth sentence, before "disabled", deleted "totally and permanently"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Added the first three sentences of the section referring to medical examination of recipient of disability retirement allowance; inserted "his disability retirement allowance must be canceled when he is offered a position under 19-9-905. If he refuses to submit to a medical examination," after "no longer totally and permanently disabled"; made minor changes in phraseology.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

19-9-905. Reinstatement upon termination of disability benefit.

Compiler's Comments

2005 Amendment: Chapter 329 in (3) in first and second sentences near beginning substituted "inactive" for "retired". Amendment effective July 1, 2005.

1997 Amendment: Chapter 370 in (1)(a), at beginning of first sentence, inserted exception clause and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; inserted (1)(b) regarding applicability of standards necessary for reinstatement; and made minor changes in style. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 in (1), in two places, substituted "disability retirement benefit" for "disability retirement allowance", in two places, before "member", deleted "inactive", and at beginning substituted "A retired member" for "Any inactive member"; in (3), in two places, substituted "retired member" for "inactive member", in two places, after "returning to", substituted "service with" for "active work for", and in second sentence substituted "termination of service" for "termination of employment", substituted "retirement benefit" for "retirement allowance", and near end, after "service retirement", inserted "date"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Inserted "whichever is first open" after "same classification with duties within his capacity" near the middle of (1); added (2) allowing city to request medical or psychological review of officer to be reinstated.

Part 10

Postretirement Benefits and Benefit Increases

19-9-1007. Minimum benefit adjustment.

Compiler's Comments

2013 Amendment: Chapter 178 in (2) substituted "new police officer who has been confirmed pursuant to 7-32-4113" for "newly confirmed police officer". Amendment effective July 1, 2013.

2001 Amendment: Chapter 7 near middle of (2) after "July 1, the" substituted "board" for "division". Amendment effective October 1, 2001.

1999 Amendment: Chapter 562 at end of (2) after "determined" deleted "and shall include these amounts in the next year's report for reimbursement at that time"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 287 in (1), after "survivors", inserted "and that are not covered by 19-9-1009". Amendment effective July 1, 1997.

Chapter 445 at end of (1) substituted "paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired" for "paid in the current fiscal year in the appropriate city or town to newly confirmed police officers"; deleted former (2) that read: "On or before October 1 of each year, the division shall make a report including the following information:

(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;

(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;
(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:
(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);
(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);
(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;
(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;
(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system"; in (2) deleted former first two sentences that read: "The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor who shall pay the difference to the pension trust fund out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3) no later than November 1", in first sentence, after "current fiscal year in time", substituted "to make minimum benefit adjustments effective July 1" for "to be included in the October 1 report to the state auditor" and substituted "individual minimum benefits" for "individual supplemental benefits"; deleted (4) that read: "(4) The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This payment is in addition to the payment to be made by the state auditor under 19-9-702"; in (3), in two places before "benefits", deleted "supplementary"; and made minor changes in style. Amendment effective July 1, 1997.

The amendments to this section made by sec. 24, Ch. 532, L. 1997, were rendered void by sec. 8(1), Ch. 445, L. 1997, a coordination section.

1993 Amendment: Chapter 265 throughout section substituted references to benefits for references to payments; in (1) substituted present text regarding minimum benefits for former subsection that read: "(1) The payment for each fiscal year to the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the current fiscal year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase"; in (2) substituted "October 1" for "August 1" and substituted "division" for "department of administration"; in (2)(a) substituted "retired members" for "police officers", substituted "retirement system" for "plan", and after "report" deleted "and were receiving payments from a prior plan before July 1, 1975"; in (2)(b) substituted "retirement system" for "plan" and substituted "death of an active or retired member of this or a prior plan" for "death of a police officer who was receiving payments from a prior plan before July 1, 1975"; deleted former (2)(c) that read: "(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975"; in (2)(c) substituted "base retirement, disability, or survivorship benefits" for "base figure"; in (2)(c)(i) substituted "retired member" for "police officer"; in (2)(c)(ii), after "dependent child", deleted "(or children)" and after "subsection (2)(b)" deleted "or (2)(c)"; in (2)(c)(iii) substituted present text regarding death after base fiscal year of retired member for former subsection that read: "(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, his surviving spouse or dependent children are entitled to receive payments from the plan, the amount which would have been paid to an eligible surviving spouse of such police officer had that spouse been receiving payments in the base fiscal year"; inserted (2)(d) regarding original amount of benefits; in (2)(e) substituted "compensation that will be paid during" for "base salary for" and substituted "retirement system" for "plan"; in (3), in first sentence, substituted "division" for "department of administration", substituted reference to subsections (2)(c) through (2)(e) for reference to subsections (2)(d)(i) through (2)(d)(iii), and substituted "one-half the compensation to be paid during" for "one-half the base salary for", in second sentence, after "reported to", deleted "and paid by", after "state auditor" inserted "who shall pay the difference to the pension trust fund", and substituted "no later than November 1" for "to the administrator no later than September 1", and in third sentence, near beginning, substituted "compensation" for "base salary", substituted "October 1" for "August 1", substituted "division" for "department", and substituted "current compensation" for "base salary"; in (4), in first sentence after "17-7-502", inserted "for the payment of supplemental retirement benefits to eligible retired members and their survivors" and deleted last sentence that read: "The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met"; deleted former (4) that read: "(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are statutorily appropriated as provided in 17-7-502. These payments are to be made to reimburse the retirement account for funds advanced to implement this section"; in (5), after "common parent", deleted "police officer"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), (2)(e), and (3) substituted "current fiscal year" for "previous calendar year"; in (2) substituted "August 1" for "April 1"; and in (3), near end of second sentence after "administrator", deleted "after the end of each fiscal year, but" and inserted third sentence concerning retroactive adjustments to individual supplemental benefits. Amendment effective April 24, 1991.

1985 Amendment: In (3) inserted third sentence referring to statutory appropriation; and in (4) inserted second sentence referring to statutory appropriation.

1983 Amendment: Throughout section, inserted "surviving" before "spouses" and substituted "dependent children" for "minor children"; in (2)(d)(iii), after "1975," substituted "his surviving" for "and who is survived by a" and inserted "are" after "children".

1981 Amendments — Composite: Chapter 250 deleted "to the state auditor" after "report" in (2); substituted "department of administration" for "state auditor" at the beginning of (3); deleted "upon receipt of the report referred to in subsection (2)" after "shall" at the beginning of (3); inserted "reported to and" after "difference shall be" in (3); substituted "after the end of each fiscal year, but no later than September 1" for "no later than May 31 of each year" near the middle of (3); substituted "after the end of each fiscal year but no later than September 1" for "on or before June 30 of each year" in (4).

Chapter 566 changed the internal reference in (3) to risks enumerated in 19-11-512 (renumbered 19-18-512) from 19-11-512(5) (renumbered 19-18-512(5)) to 19-11-512(3) (renumbered 19-18-512(3)). An amendment to 19-11-512 (renumbered 19-18-512) by Ch. 566, L. 1981, renumbered the subsections of 19-11-512 (renumbered 19-18-512) which required an amendment to this section.

Chapter 575 in (3), substituted "19-11-512(6) [renumbered 19-18-512(6)]" for "19-11-512(5) [renumbered 19-18-512(5)]".

The Code Commissioner has codified the amendment made by Ch. 566, in favor of the amendment made by Ch. 575, inasmuch as both new subsection references are traceable to the same language in 19-11-512 (renumbered 19-18-512) and the Ch. 566 amendment is the most appropriate in light of the renumbering of the subsections of 19-11-512 (renumbered 19-18-512) by Ch. 566.

Administrative Rules

ARM 2.43.4603 Municipal police officers' minimum benefit adjustments.

Attorney General's Opinions

Limitation of Allowance Adjustment to One-Time Adjustment: The allowance adjustment in 19-9-1011 (now repealed) was not intended to provide an annual cost-of-living increase, but rather to provide for an adjustment of the monthly allowance of a police officer who retired on or after July 1, 1975, and before July 1, 1985, in order to bring the allowance up to one-half of a newly hired active police officer's salary as of July 1, 1985, in each city. (See 1989 amendment.) 42 A.G. Op. 79 (1988).

Payment of Pension Supplement: The first supplemental payment to recipients was intended to be made in July 1977, requiring immediate lump-sum payments retroactive to then, followed by monthly payments from the present. The appropriate funding to be implemented may be determined by the administrator of the Public Employees' Retirement Division (now by the Public Employees' Retirement Board) in conformity with this opinion. 37 A.G. Op. 77 (1977).

19-9-1009. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-9-1010. Original election — guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

Saving Clause: Section 4, Ch. 463, L. 1999, was a saving clause.

Effective Dates: Section 5(1), Ch. 463, L. 1999, provided that, except as provided in subsection (2), this section is effective January 1, 2000. Subsection (2) provided that [section 2(3)(b)(ii)(A) and (4)], 19-9-1010(3)(b)(ii)(A) and (4), are effective on passage and approval. Approved April 22, 1999.

19-9-1013. Extended election — guaranteed annual benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 114 in (3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

Part 11

Survivorship Benefits and Death Payments

19-9-1101. Preretirement death benefits.

Compiler's Comments

2009 Amendment: Chapter 283 at end of second sentence substituted "service credit" for "membership service". Amendment effective July 1, 2009.

2001 Amendment: Chapter 99 near beginning of first sentence substituted "death of an active member" for "death of a member before retirement" and at end substituted "payable as provided in 19-9-804(2)" for "as provided in 19-9-804"; deleted former (2) that read: "(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (1) inserted last sentence providing survivorship benefit of 2.5% of final average compensation for each year of membership service for service over 20 years. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 42 in (1) substituted "final average compensation" for "final average salary". Amendment effective March 12, 1997.

1993 Amendments — Composite Section: Chapter 265 in (1) substituted "member" for "police officer" and deleted reference to subsection (4) of 19-9-804; in (2) substituted present text regarding refund upon death of inactive nonvested member for former subsection that read: "Upon the death of a member who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50, his surviving spouse or dependent child is eligible for a refund of the member's contributions and accumulated interest on account with the retirement system on the date that the refund is made to the survivors"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 620 in (1), after "benefits", inserted "equal to one-half of the member's final average salary as" and after "19-9-804(4)" inserted "(b)" (subsection reference deleted by ch. 265); and made minor changes in style. Amendment effective May 7, 1993.

1991 Amendment: In (1), at end, changed subsection reference to 19-9-804; and inserted (2) concerning refund of contributions on death of certain members. Amendment effective July 1, 1991.

1985 Amendment: Substituted language referring to eligibility of surviving spouse or dependent child to receive death benefits for "(1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent child, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive as long as the child or one of the children remains dependent as defined in 19-9-104. The payments shall be made to the child's duly appointed, qualified, and acting guardian for the child's use. If there is more than one such child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children are no longer dependent."

1983 Amendment: Near beginning of (2) substituted "unmarried" for "the surviving spouse"; after "dependent" deleted "minor"; after "surviving dependent" substituted "child" for "minor children"; near middle of (2), after "would receive" substituted language referring to dependency as defined in 19-9-104 for ", until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married".

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

Case Notes

Retirement Under Consolidated Government — Benefits From Last System to Which Contributed: Plaintiff retired as a law enforcement officer from Butte-Silver Bow. Prior to the city-county consolidation, he was a Deputy Sheriff. When he retired and applied for benefits, the State calculated options to be offered him under 19-7-701 (renumbered 19-7-1001), the Sheriffs' Retirement System. Plaintiff contended he was entitled to benefits under 19-9-804 and 19-9-911 (renumbered 19-9-1101) of the Police Officers' Retirement System. All parties agreed that eligibility was determined under 19-7-308(1) (renumbered 19-7-801(1)). The Supreme Court held that the statutory provisions are clear and unambiguous. In such a case, rules of statutory construction have no application, so that the court gave no deference to the agency's interpretation. The dispute centered around 19-7-308(2) (renumbered 19-7-801(2)) and whether it merely determines which laws govern eligibility for death benefits or also which laws govern calculation of death benefits. The court held that under 19-7-308(2) (renumbered 19-7-801(2)) death benefits are calculated according to the provisions of the system to which the officer last made contributions. The codification instruction placing 19-7-308 (renumbered 19-7-801) under the provisions of the Sheriffs' Retirement System was only for ease of reference as between the systems. Death benefits are calculable and payable under the Police Officers' Retirement System. Bay v. St., 212 M 258, 688 P2d 1, 41 St. Rep. 1725 (1984).

19-9-1102. Payments in absence of spouse or child.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-9-804, 19-9-903, or 19-9-1101, then the member's designated beneficiary" for "If a retired member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801, the designated beneficiary" and near end after "any" deleted "retirement" and deleted former second sentence that read: "If the member did not designate a beneficiary or the designated beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 at beginning after "If a" inserted "retired", substituted "the board as provided in 19-2-801" for "the division", after "paid" substituted "the amount, if any, of" for "an amount equal to", and after "accumulated contributions" substituted "minus the total of any retirement benefits already paid from the member's account" for "less any retirement benefits paid to the member before the member's death"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in first sentence substituted "division" for "administrator", substituted "the designated beneficiary must be paid" for "the administrator shall pay to the designated beneficiary", and substituted "member's accumulated contributions" for "member's contributions"; in second sentence, near beginning before "member", deleted "deceased" and before "beneficiary" inserted "designated"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2104 Membership cards.
ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.
ARM 2.43.2903 Payment to an estate.

Part 12
Deferred Retirement Option Plan (DROP)

Part Administrative Rules

Title 2, chapter 43, subchapter 46, ARM Municipal Police Officers' Retirement System.

19-9-1201. Short title.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1202. Definitions.

Compiler's Comments

2007 Amendment: Chapter 128 substituted definition of DROP account for former definition of DROP accrual that read: ""DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated service and retired, multiplied by each month of the DROP period that the participant completes, plus interest." Amendment effective October 1, 2007.

2005 Amendment: Chapter 329 in definition of DROP accrual near middle and in definition of monthly DROP accrual near end substituted "service" for "employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 inserted definitions of DROP accrual and monthly DROP accrual; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

19-9-1203. Deferred retirement option plan established — compliance with federal law — rulemaking.

Compiler's Comments

Effective Date: Section 11(2), Ch. 514, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

Administrative Rules

Title 2, chapter 43, subchapter 46, ARM Municipal Police Officers' Retirement System.

19-9-1204. Eligibility — participation criteria — membership status — service interruptions.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) substituted "19-9-801(1)(a)" for "19-9-801(1)". Amendment effective July 1, 2017.

2003 Amendments — Composite Section: Chapter 114 in (1) substituted "19-9-801(1)" for "19-9-801(2)". Amendment effective October 1, 2003.

Chapter 261 in (1) near middle after "under" substituted "19-9-801(1)" for "19-9-801(2)"; and inserted (6) providing that members eligible for retirement after July 1, 2002, and before July 1, 2003, who elect to participate in the deferred retirement option plan before October 2, 2003, may include in their DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003. Amendment effective April 9, 2003.

Chapter 429 in (5) after "military service or" substituted "other temporary absence from work" for "disability". Amendment effective July 1, 2003.

Retroactive Applicability: Section 3, Ch. 261, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to active members of the municipal police officers' retirement system who were eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003."

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.4609 DROP application process.
ARM 2.43.4610 DROP period.
ARM 2.43.4613 DROP participation limits.

19-9-1205. Retirement system contributions — benefit payments to individual DROP accounts — investment returns.

Compiler's Comments

2007 Amendment: Chapter 128 in (2) near middle after "calculate a" inserted "monthly" and at end inserted "and the contribution to the participant's DROP account". Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 in (2) at end substituted "DROP accrual" for "DROP benefit equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.4606 Definitions.
ARM 2.43.4613 DROP participation limits.
ARM 2.43.4615 Estimated monthly DROP accrual.
ARM 2.43.4623 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.4624 Minimum benefit for DROP participants.

19-9-1206. Survivorship benefits.

Compiler's Comments

2015 Amendment: Chapter 248 in (1) at end after "participant's DROP benefit" substituted current text for "and the member's accumulated contributions minus any benefits paid from the member's DROP account, including monthly DROP accruals"; and in (2) inserted "as of the date of the member's death and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP payments". Amendment effective January 1, 2016.

2009 Amendment: Chapter 284 in (3) at end of introductory clause inserted "credited to the participant's account as follows"; in (3)(a) at beginning inserted "through June 30, 2009, interest must be credited every fiscal yearend at a rate" and at end after "earnings" substituted "for the applicable fiscal year" for "from the date the member's DROP period commenced"; inserted (3)(b) regarding credit of interest after June 30, 2009; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 in (1) near end after "member's" inserted "DROP". Amendment effective October 1, 2007.

2003 Amendment: Chapter 429 at end of (1) inserted "and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP accruals". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.4610 DROP period.
ARM 2.43.4616 Interest paid to participants.
ARM 2.43.4617 Distribution of DROP benefit.

19-9-1207. Employment and benefits after DROP period.

Compiler's Comments

2017 Amendment: Chapter 195 deleted former (1) that read: "(1) Except as otherwise provided in this section, if a member continues employment in a covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended"; and made minor changes in style. Amendment effective July 1, 2017.

2005 Amendment: Chapter 329 in (3)(b) substituted "service" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (3)(b)(ii) after "service" inserted "credit". Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.4620 Employment after DROP period.
ARM 2.43.4623 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.4624 Minimum benefit for DROP participants.

19-9-1208. Distribution of DROP benefit.

Compiler's Comments

2009 Amendment: Chapter 284 in (3) at end of introductory clause inserted "credited to the participant's account as follows"; in (3)(a) at beginning inserted "through June 30, 2009, interest must be credited every fiscal yearend at a rate" and at end after "earnings" substituted "for the applicable fiscal year" for "from the date the member's DROP period commenced"; inserted (3)(b) regarding credit of interest after June 30, 2009; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 329 in (1) substituted "service" for "covered employment". Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (1)(b) substituted "eligible retirement plan" for "qualified plan"; and at end of (2) inserted reference to Internal Revenue Code. Amendment effective July 1, 2003.

Contingent Effective Date — Board to Seek Commissioner's Ruling: Section 11(1), Ch. 514, L. 2001, provided that 19-9-1204 through 19-9-1208 are effective contingent on the notification to the secretary of state that the commissioner of internal revenue has made a favorable determination pursuant to [section 9], not codified.

Section 9, Ch. 514, L. 2001, provided: "The public employees' retirement board shall, as soon as possible, request in writing a ruling from the commissioner of internal revenue as to whether the deferred retirement option plan established pursuant to [sections 1 through 8] [19-9-1201 through 19-9-1208] constitutes a qualified plan pursuant to section 401(a) of the Internal Revenue Code. The board shall notify the secretary of state and code commissioner when the commissioner of internal revenue has issued a favorable determination." Section 11(2), Ch. 514, L. 2001, provided that sec. 9, Ch. 514, L. 2001, is effective on passage and approval. Approved May 1, 2001. The contingency occurred on April 25, 2002, when the Board notified the Code Commissioner and the Secretary of State that the Commissioner of Internal Revenue had issued a favorable determination dated February 25, 2002.

Administrative Rules

ARM 2.43.4616 Interest paid to participants.
ARM 2.43.4617 Distribution of DROP benefit.
ARM 2.43.4618 Distribution of DROP benefit pursuant to family law order.
ARM 2.43.4623 Guaranteed annual benefit adjustment increases for DROP participants.
ARM 2.43.4624 Minimum benefit for DROP participants.

Part 13
Reemployment of Retired Members

19-9-1301. Reemployment of members.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) and (2) in introductory clause near end inserted "before July 1, 2017"; and in (1)(a) and (2)(a) after "benefit" inserted "payments". Amendment effective July 1, 2017.

Effective Date: Section 3, Ch. 217, L. 2015, provided: "[This act] is effective on passage and approval." Approved April 9, 2015.

Retroactive Applicability: Section 4, Ch. 217, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to reemployment of members of the municipal police officers' retirement system on and after December 1, 2014."

19-9-1302. Reemployment of retired members — contributions required.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

19-9-1303. Refunds and benefits for reemployed retired members.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 13
FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.
ARM 2.43.1302 Definitions.
ARM 2.43.1405 Request for release of information.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.

Chapter Case Notes

Judgment Against "State" Binding Against Two Agencies — Retirement Benefits Setoff Barred as Compulsory Counterclaim: During a longstanding dispute by firefighters employed by the Montana Air National Guard and involving several separate lawsuits, the plaintiff was fired and began receiving retirement benefits. The plaintiff sued "the State" for reinstatement of employment, lost wages, employment benefits during the period of termination, liquidated damages, and attorney fees and costs. After other firefighters' suits were decided in the firefighters' favor, the plaintiff settled with the Department of Military Affairs (DMA) for reinstatement, lost wages, lost annual leave and sick leave benefits, retirement contributions that the DMA would have made during the termination period, and attorney fees and costs of suit. After settlement, the Public Employees' Retirement System (PERS) claimed that it was entitled to repayment of the retirement benefits that the plaintiff had been paid before reinstatement. The DMA and PERS agreed to offset the settlement damages by the retirement amount. The Supreme Court held that the state's setoff claim was barred as a compulsory counterclaim, that both agencies were bound by the DMA's settlement agreement because they were the same party collectively known as the "State of Montana", and that the plaintiff was entitled to the full settlement amount without setoff. Peters v. St., 285 M 345, 948 P2d 250, 54 St. Rep. 1185 (1997).

Part 1
General Provisions

19-13-103. Firefighters' unified retirement system established.

Compiler's Comments

1999 Amendment: Chapter 562 substituted "A retirement plan is established and known as the firefighters' unified retirement system. The plan is governed" for "A firefighters' unified retirement system is established and governed". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 inserted reference to chapter 2. Amendment effective July 1, 1993.

19-13-104. Definitions.

Compiler's Comments

2017 Amendment: Chapter 195 in definition of part-paid firefighter after "$300" substituted "in a fiscal year" for "a year". Amendment effective July 1, 2017.

2013 Amendments — Composite Section: Chapter 178 in definition of full-paid firefighter after "appointed" inserted "pursuant to 7-33-4106" and substituted "meeting the standards provided in 7-33-4107" for "under the standards provided in 7-33-4106 and 7-33-4107"; inserted definition of newly confirmed firefighter; in definition of part-paid firefighter after "person" inserted "other than a full-paid firefighter" and substituted "employed by a second-class city" for "employed under 7-33-4109"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 386 in definition of compensation inserted (c)(iii) concerning excluded bonuses; in definition of highest average compensation inserted (c) concerning excess earnings limits; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 in definition of employer inserted (b) to include a city or rural fire district and inserted (d) to include any other statutorily allowed entity that elects to join the system; in definition of full-paid firefighter at end inserted "and 7-33-4107"; in definition of part-paid firefighter at end inserted "and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 305 deleted definition of final average compensation that read: ""Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of final average compensation"; inserted definition of highest average compensation; and made minor changes in style. Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 in definition of compensation in (a) before "remuneration" deleted "regular" and substituted language concerning payment for services for former language that read: "paid for the firefighter's service as a firefighter out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made" and inserted (c)(ii) excluding maintenance, allowances, and expenses; in definition of final average compensation at end of first sentence substituted "in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service" for "if the member has not been a member that long, over the period of the member's service" and in second sentence after "termination of" substituted "employment" for "service" and before "compensation" substituted "regular" for "normal"; in definition of full-paid firefighter after "appointed" inserted "by an employer" and after "under" inserted "the standards provided in"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 290 in definition of employer after "19-13-211" inserted "or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201"; inserted definition of retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendments — Composite Section: Chapter 58 in definition of compensation in (a) after "paid" deleted "by an employer" and after "as a firefighter" inserted "out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made". Amendment effective July 1, 1999.

Chapter 562 in definition of minimum retirement date decreased required years of membership service from 10 to 5. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 457 in definition of final average compensation, in first sentence after "member", deleted "hired on or after July 1, 1981"; deleted definition of last monthly compensation that read: ""Last monthly compensation" means the compensation paid to a member during the member's last full month of service. Lump-sum payments for annual leave paid to the member upon termination of service may not be included in the calculation of last monthly compensation"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 inserted definitions of compensation and last monthly compensation; deleted definition of administrator that read: ""Administrator" means the public employees' retirement division of the department of administration"; deleted definition of Board that read: ""Board" means the retirement board described in 2-15-1009"; deleted definition of credited service that read: ""Credited service" means the aggregate of a member's prior service and membership service"; in definition of city or town, before "city", deleted "municipality"; in definition of employer substituted "retirement system" for "plan"; substituted definition of final average compensation for definition of final average salary and at end of first sentence substituted "service" for "membership" and inserted second sentence regarding lump-sum payments; deleted definition of fund that read: ""Fund" means the pension trust fund in the state treasury system designated for the use of the plan"; deleted definition of member that read: ""Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter"; deleted definition of member contributions that read: ""Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon"; deleted definition of membership service that read: ""Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year"; in definition of minimum retirement date, at end, substituted "membership service" for "credited service"; deleted definition of monthly compensation that read: ""Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class"; deleted definition of plan that read: ""Plan" means the municipal firefighters' retirement system created by this chapter"; in definition of prior plan substituted "retirement system" for "plan"; deleted definition of prior service that read: ""Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan"; deleted definition of retirement allowance that read: ""Retirement allowance" means the monthly benefit payable after service or disability retirement"; in definition of retirement date, before "benefits", deleted "the retirement or disability" and after "benefits" deleted "of a member or a beneficiary"; deleted definition of totally and permanently disabled that read: ""Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendments: Chapter 186 inserted definition of surviving spouse.

Chapter 282, in definition of fund, changed "agency account" to "pension trust fund".

Chapter 585 inserted (14)(b)(i) defining monthly compensation for a part-paid firefighter employed by a city of the second class; and in (14)(b)(ii) inserted "if that city does not employ a full-paid firefighter", after "paid" inserted "on July 1 of each year", after "confirmed" changed "active" to "full-paid", and after "second class" deleted "on July 1 of each year".

Administrative Rules

Title 2, chapter 43, subchapter 13, ARM General rules.

ARM 2.43.2104 Membership cards.

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

ARM 2.43.2110 Calculation of highest average compensation or final average compensation.

ARM 2.43.2201 Treating salary deferrals under a cafeteria plan as compensation — policy and objectives.

ARM 2.43.2202 Treating salary deferrals under a cafeteria plan as compensation — applicability.

ARM 2.43.2205 Treating salary deferrals under a cafeteria plan as compensation — background.

ARM 2.43.2209 Procedures — compensation must be treated consistently.

ARM 2.43.2210 Procedures — plans that offer choice among nontaxable benefits only.

ARM 2.43.2211 Procedures — bona fide cafeteria plans.

ARM 2.43.2214 Implementation and compliance.

Attorney General's Opinions

Retirement Date for Firefighters: Prior to the enactment of sec. 7, Ch. 53, L. 1983, firefighters were able to retire during the month and receive pro rata credit for the portion of that month after retirement. Testimony on the 1983 legislation states that its purpose is to establish uniform retirement dates and to ensure that all retirees would begin accruing their benefits on the first day of the month. Under 19-13-701(2), the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable. 40 A.G. Op. 59 (1984).

19-13-111. Firefighters' unified retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

19-13-115. Firefighter's association to advise board.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 166, L. 2023. Amendment effective October 1, 2023.

1993 Amendment: Chapter 265 at end of second sentence, after "survivorship benefits", substituted remainder of sentence regarding individual member for "for members of the plan". Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 13, ARM General rules.

Part 2
Extension of Coverage by Local Government Employers

19-13-210. Participation in retirement system.

Compiler's Comments

2009 Amendment: Chapter 284 in (3)(b) near beginning after "department" deleted "or a rural fire department", near middle after "adoption of" substituted "an ordinance" for "a resolution", and after "city" deleted "or the fire district"; inserted (3)(c) allowing a similar election by a rural fire district under certain circumstances; in (3)(d) in three places before "resolution" inserted "ordinance or"; in (4) in introductory clause after "election" deleted "by a fire department"; in (4)(a) in first sentence substituted "90 days" for "180 days"; in (4)(c) near middle after "system or" substituted "purchase the prior service and transfer that prior service to" for "qualify the prior service in"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 299 inserted (3) concerning election of coverage by certain cities and rural fire district departments; and inserted (4) concerning terms and conditions of election. Amendment effective July 1, 2007.

2001 Amendment: Chapter 290 inserted (2) requiring firefighters hired by Montana air national guard on or after October 1, 2001, or on or after date of contingency regarding execution of required agreement regarding payment of contributions with federal funds, whichever is later, to participate in retirement system; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1993 Amendment: Chapter 265 in two places substituted "retirement system" for "plan" and near end substituted "survivors" for "beneficiaries"; and made minor changes in style. Amendment effective July 1, 1993.

Case Notes

Firefighter Retirement System Phase-In Not Violative of Equal Protection: The 2001 Legislature passed Senate Bill No. 289, providing that National Guard firefighters who were hired on or after October 1, 2001, would participate in the Firefighters' Unified Retirement System, while those hired prior to October 1, 2001, would continue to participate in the Public Employees' Retirement System, which provided less benefits. The bill had no provision allowing transfer between systems, resulting in denial of better benefits for about 22 firefighters who were hired prior to October 1, 2001. Bean was one of the 22 and challenged the new retirement process, codified in 19-13-210, on grounds that the law created two similarly situated classifications of firefighters who were treated differently, in violation of equal protection. The District Court agreed and held that the new process was unconstitutional. The state appealed, and the Supreme Court reversed, noting that an equal protection challenge fails if the groups at issue do not constitute similarly situated classes. The cutoff date in 19-13-210 created two dissimilar classes of firefighters. The Legislature recognized that the new process created an inequitable situation, but rather than approaching the inequity with an immediate and comprehensive solution, the Legislature chose to correct the imbalance by phasing National Guard firefighters into the Firefighters' Unified Retirement System, providing a prospective retirement solution for newly hired firefighters without affecting the retirement expectation of existing firefighters, and instituting a process that would end the alleged distinction once all National Guard firefighters hired before October 1, 2001, retired. Thus, the statute operated equally upon members of each class of firefighters and did not violate Bean's right to equal protection. Bean v. St., 2008 MT 67, 342 M 85, 179 P3d 524 (2008), following Gulbrandson v. Carey, 272 M 494, 901 P2d 573 (1995).

State Retirement Board Not Required to Calculate Compensation Amounts for Individual Plan Members: Plaintiffs sued the state and the Public Employees' Retirement Board alleging that plaintiffs' compensation was incorrectly calculated by the Board, resulting in inadequate monthly benefits. The District Court dismissed the claim on grounds that plaintiffs failed to file their complaint within the 2-year statute of limitations, and plaintiffs appealed. The Supreme Court noted that although the Board has broad statutory duties to administer the various state retirement plans, it is not the Board's duty to calculate compensation amounts for individual members. Rather, it is an employer's duty to calculate and report the compensation amounts. If those reports were in error, plaintiffs should have sought relief from their employers, but their remedy did not lie with the state or the Board. Thus, the District Court correctly dismissed the complaint, albeit for a different reason, and the Supreme Court affirmed. Hall v. St., 2006 MT 37, 331 M 171, 130 P3d 601 (2006).

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-211. Election to join retirement system — transfer of assets.

Compiler's Comments

1993 Amendment: Chapter 265 throughout section substituted references to retirement system for references to plan or chapter; in (1), in fourth sentence before "ordinance", inserted "election" and after "deposit" substituted "into the pension trust fund" for "with the board"; in (2), in third sentence after "respective", deleted "individual accounts of the"; and made minor changes in style. Amendment effective July 1, 1993.

19-13-212. Termination of participation in retirement system or reduction of employer contributions.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) near beginning substituted "participation in or contributions to the retirement system" for "contributions in the retirement system" and at end substituted "an actuarial valuation of the liabilities of the employer to the retirement system" for "as part of the required actuarial valuation an actuarial investigation of the funding status of the employer"; and in (2) in first sentence near beginning substituted "actuarial valuation" for "actuarial investigation" and near end after "liabilities of the employer" inserted "and to cover the cost of the actuarial valuation to determine those liabilities". Amendment effective July 1, 2017.

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1993 Amendment: Chapter 265 in (1), in two places, substituted "retirement system" for "plan" and near end substituted "required actuarial valuation" for "actuarial valuation required in 19-13-504"; and in (2), in first sentence, substituted "the amount determined to be necessary" for "an amount needed" and before "city" inserted "liabilities of the". Amendment effective July 1, 1993.

19-13-213. Excess unfunded liabilities of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 in (2), in two places, substituted "board" for "administrator", near beginning of first sentence substituted "retirement system" for "plan", and in second sentence, after "for deposit", substituted "in the pension trust fund" for "with the administrator"; and deleted (3) that read: "(3) For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability." Amendment effective July 1, 1993.

1991 Amendment: In (2), in first sentence, substituted "within 6 months after a city is granted membership in the plan" for "on or before October 1, 1986" and at end substituted "the city's previous plan" for "each city participating in the plan created by this chapter" and in second sentence substituted "previous" for "prior", before "is not funded" deleted "as of July 1, 1986", after "administrator" substituted "the city" for "the state auditor", and near end, after "period of time", deleted "from the premium taxes on insurance risks enumerated in 19-11-512"; deleted former (3) that required the administrator to credit accounts for payments in excess of amount necessary to amortize the city's liabilities; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendments — Composite Section: Chapter 286, which substituted "1986" for "1984" in two places in (2), became effective on March 29, 1983.

Chapter 661, twice in (2), substituted "1986" for "1984"; following first sentence of (2) deleted "The determination must be negotiated between each city and the administrator."; inserted "For" at beginning of second sentence of (2); at end of (2) substituted "the administrator, the state auditor shall pay ... city's excess liability" for "the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by agreement between the city and the administrator."; and substituted (3) allowing administrator to credit his accounts for excess payments for "Each city determined by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for the excess payments." Chapter 661 became effective July 1, 1983.

Chapter 661 amended the duties of the administrator and date of evaluation of a plan effective approximately 3 months later than Ch. 286. However, as those duties and date of evaluation are prospective and must be accomplished or determined long after the effective date of both chapters, the differing effective dates appear inconsequential.

19-13-214. Taxing authority of employers.

Compiler's Comments

2001 Amendment: Chapter 574 near middle after "chapter" substituted "the appropriate authority of the city may, subject to 15-10-420, levy a tax that along with other revenue" for "whenever the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue"; deleted former (2) and (3) that read: "(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section"; and made minor changes in style. Amendment effective July 1, 2001.

Part 3
Eligibility, Membership, and Vesting

Part Administrative Rules

ARM 2.43.2101 Membership.

ARM 2.43.2109 Receipt of service credit on or after termination of employment.

19-13-301. Active membership — inactive vested member — inactive nonvested member.

Compiler's Comments

2011 Amendment: Chapter 99 in (1) at beginning deleted "Except as provided in (7)"; deleted former (7) and (8) that read: "(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an irrevocable election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 90 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 284 in (3) near middle after "filing" substituted "an irrevocable written election" for "a membership application" and substituted "90 days" for "6 months"; in (7)(b) near beginning before "election" inserted "irrevocable" and substituted "90 days" for "30 days"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 299 in (3) at end deleted "or March 21, 2001, whichever is later"; and inserted (8) concerning retired member returning to employment. Amendment effective July 1, 2007.

2005 Amendment: Chapter 329 in (5)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and does not take a refund of the member's accumulated contributions"; inserted (5)(b) relating to what a lump-sum payment consists of; in (6)(a) at beginning substituted "An inactive" for "A" and after "membership service" deleted "who terminates service and leaves the member's accumulated contributions in the pension trust fund"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 in (5) near end after "service" inserted "credit". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at end of (3) after "board" inserted "within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later"; in (7)(b) near middle after "within" substituted "30 days" for "1 month"; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendments — Coordination: Chapter 254 in (1), at beginning of introductory clause, inserted "Except as provided in subsection (7)"; inserted (7) allowing certain firefighters to elect to remain in the Public Employees' Retirement System; and made minor changes in style. Amendment effective April 14, 1997.

Pursuant to sec. 2, Ch. 254, L. 1997, a coordination instruction, the Code Commissioner in (7)(a) substituted "45 years" for "40 years".

Chapter 457 in (5) and (6) reduced term of service from 10 years to 5 years; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 265 in (1) substituted "member of the retirement system" for "member under the plan"; in (1)(a) substituted "service with an employer" for "employment by an employer"; in (1)(c) and (3) substituted "retirement system" for "plan"; inserted (4) regarding inactive member; inserted (5) regarding inactive vested member; inserted (6) regarding inactive nonvested member; and made minor changes in style. Amendment effective July 1, 1993.

Statement of Intent: The statement of intent attached to HB 674 (Ch. 566, L. 1981), provided: "A statement of intent is required for this bill in that it delegates rulemaking authority to the Public Employees' Retirement Board for the proper administration of the Montana Firefighters' Unified Retirement System.

It is contemplated that the rules will address the following:

(1) interpretation and enforcement of the provisions of this act;

(2) establishment of uniform rules to administer the provisions of this act;

(3) determination of conditions under which a person may become a member and receive benefits under the retirement system;

(4) determination of retirement disability and survivorship allowances under the provisions of this act;

(5) establishment of policy for the maintenance of records and accounts for administering the retirement system; [and]

(6) selection procedures for contracting with a qualified actuary to conduct actuarial valuation of the system."

Administrative Rules

ARM 2.43.2102 Optional membership.

ARM 2.43.2309 Service purchases by inactive vested members.

Attorney General's Opinions

Eligibility of Firefighter Over Thirty-Four Years of Age for Membership in Firefighters' Unified Retirement System: An individual older than 34 years of age when first hired as a firefighter by a firefighters' unified retirement system employer is in compliance with 7-33-4107 if the first appointment as a firefighter, irrespective of place of employment, occurred when the individual was not over 34 years of age. A firefighter over the age of 34 years at the time of original appointment is not eligible for membership in the firefighters' unified retirement system. 44 A.G. Op. 8 (1991).

19-13-302. Ineligibility for other retirement plans.

Compiler's Comments

2017 Amendment: Chapter 195 at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

1993 Amendment: Chapter 265 at end substituted "retirement system" for "plan"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Deleted "for firefighters" after "any other mandatory retirement plan".

19-13-310. Effect on members of prior plans.

Compiler's Comments

1993 Amendment: Chapter 265 substituted "retirement system" for "plan". Amendment effective July 1, 1993.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Part 4

Service Credit

Part Administrative Rules

ARM 2.43.2101 Membership.
ARM 2.43.2105 Basic period of service.
ARM 2.43.2109 Receipt of service credit on or after termination of employment.
ARM 2.43.2120 Reinstatement — credit for lost time.
ARM 2.43.2302 Documentation of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.4807 Part-paid firefighters' service.

19-13-403. Application to purchase military service.

Compiler's Comments

2021 Amendment: Chapter 172 in (1)(b) after "if the member" substituted "is eligible to receive credit in the system for that service under 19-2-707" for former (1)(b)(i) through (1)(b)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

2003 Amendments — Composite Section: Chapters 26 and 289 in (1)(a) near beginning after "at least" substituted "5 years of membership service" for "15 years of service credit"; deleted former (2) that read: "(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years"; deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 429 in (1)(a) near beginning substituted "subsection (1)(b)" for "this section", after "at least" substituted "5 years of membership service" for "15 years of service credit", after "purchase" inserted "service credit and membership service for", and at end deleted "for the purpose of calculating retirement benefits"; deleted former (1)(b) and (2) that read: "(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years"; in (1)(b) after "purchase" substituted "active military service credit and membership service under subsection (1)(a)" for "military service under

this section"; inserted (2) concerning purchase of service by member with at least 5 years of membership service; inserted (3) providing method for purchase of service credit; deleted former (4) that read: "(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit"; and made minor changes in style. Amendment effective July 1, 2003.

Pursuant to sec. 122(7), Ch. 429, L. 2003, a coordination section, the amendments to this section in sec. 107, Ch. 429, were replaced by the amendments in sec. 122, Ch. 429.

2001 Amendment: Chapter 99 at beginning of (1)(a) inserted exception clause, after "member with" substituted "at least 15 years of service" for "15 years or more service", near middle after "retirement" substituted "file a written application with the board to purchase up to 5 years" for "make a written election with the board to qualify all or any portion", and at end after "benefits" deleted "up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under 19-2-707"; at beginning of (1)(b) substituted "To purchase this military service, the member shall pay the actuarial cost of the service" for "To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board"; near beginning of (2) after "may not" substituted "purchase more military service than the member's years of membership service" for "qualify more of the member's military service than the member has service credit" and deleted former second sentence that read: "Military service purchased under this section may not be used in determining the member's eligibility for a service retirement"; substituted (3) regarding ineligibility to purchase military service for former language that read: "If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1)"; inserted (4) establishing that purchased military service is not membership service; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 at end of first sentence in (1) substituted "19-2-707" for "19-2-705"; and deleted second sentence in (2) that read: "However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time." Amendment effective July 1, 1999.

1993 Amendment: Chapter 265 in (1), in first sentence near beginning after "service", inserted "credit", after "active" inserted "duty", and at end, after "credit", inserted "for this service under 19-2-705", in second sentence substituted "pension trust fund" for "account" and after "based on" substituted "the most recent actuarial valuation of the system" for former text that read: "his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes", in third sentence, after "service", inserted "credit", and at end of fourth sentence, after "service retirement", deleted "requiring a minimum of 10 years of service"; in (2), in first sentence, substituted "military retirement benefits" for "normal service retirement benefits" and in second sentence, after first "active", inserted "duty"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2303 Purchase of other types of service.
ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2310 Purchase of full-time service or one-for-five service by part-time members.
ARM 2.43.2311 Limitations on purchases of service.
ARM 2.43.2316 Reserve military service.

19-13-405. Application to purchase additional service.

Compiler's Comments

2003 Amendment: Chapter 429 in (2) in two places and in (3) after references to service inserted "credit"; and in (3) after "eligible for" deleted "normal". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 at beginning of (1) substituted "Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase" for "At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase" and at end after "service" deleted "that the member has qualified under the retirement system"; at beginning of (2) substituted "To purchase service under this section, a member shall pay the actuarial cost of the service" for "For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service"; deleted former (3) that read: "(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-707, 19-13-403, and this section"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 58 deleted second sentence in (2) that read: "Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board"; and in (3) substituted "19-2-707" for "19-2-705". Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 180, L. 1995, provided: "WHEREAS, allowing public employees to purchase additional service for the purpose of calculating their retirement benefits is a valuable benefit to persons wishing to enhance their retirement benefits; and

WHEREAS, the public employees', teachers', and sheriffs' retirement systems have provisions that allow for the purchase of additional service for the purpose of calculating retirement benefits; and

WHEREAS, the Committee on Public Employee Retirement Systems [now State Administration and Veterans' Affairs Interim Committee] was created by the Legislature to help promote fair and consistent retirement policy for all of Montana's public employees; and

WHEREAS, members of the judges', highway patrol officers', game wardens' [now game wardens' and peace officers'], municipal police officers', and firefighters' unified retirement systems who purchase additional service under the provisions of this bill are required to pay the full cost of the service based on the most recent actuarial valuation of the system; and

WHEREAS, the service purchased may not be counted in the total years required to qualify a member for retirement."

Effective Date: Section 7, Ch. 180, L. 1995, provided that this section is effective on passage and approval. Approved March 21, 1995.

Administrative Rules

ARM 2.43.2308 Most recent service purchased first.
ARM 2.43.2318 "1-for-5" additional service.

19-13-406. Service purchase limitation.

Compiler's Comments

2003 Amendment: Chapter 429 after "service" inserted "credit". Amendment effective July 1, 2003.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 6
Contributions and Refunds

Part Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-13-601. Deduction remitted to firemen's association — member's contribution.

Compiler's Comments

1997 Amendment — Coordination: Section 12(1), Ch. 457, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-13-601, and if [this act] is passed and approved and if it amends 19-13-601, then [section 29 of House Bill No. 170], amending 19-13-601, is void and [section 3 of this act], amending 19-13-601, shall read:

"Section 3. Section 19-13-601, MCA, is amended to read:

"19-13-601. Deduction remitted to firemen's association — member's contribution. (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) ~~The~~ Each member's contribution to the retirement system ~~is 7.8%~~ as a percentage of the member's compensation must be:

(a) 9.5% for a member not covered under [section 3 of House Bill No. 170]; or
(b) 10.7% for a member covered under [section 3 of House Bill No. 170].

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."""

1995 Amendment: Chapter 541 in (2) increased from 6% to 7.8% the amount of the member's contribution. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in five places, before "compensation", deleted "monthly"; in (1), at end, substituted "retirement system" for "plan"; in (2), after "retirement system", deleted "for each active member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (3), near end of second sentence, substituted "workers' compensation" for "the workers' compensation division". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

1987 Amendment: In (1), near beginning, reduced retained sum from 7% to 1% and near middle of first sentence substituted "remit this amount" for "report and remit"; deleted (1)(a) and (1)(b) that required the 6% deleted in the opening clause of (1) to be remitted to the administrator for deposit in the fund; inserted (2) making member's contribution 6% of monthly compensation; inserted (4) requiring employer to "pick up" employee's contribution; inserted (5) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (6) requiring "picked up" contributions to be paid from member's compensation.

Federal Statute: Section 414(h)(2) of the Internal Revenue Code referred to in this section may be found at 26 U.S.C. 414(h)(2).

19-13-604. State contribution.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning of second sentence substituted "The general fund contributions must be made annually" for "Payments must be made annually from the general fund to the pension trust fund" and in third sentence after "auditor" inserted "by September 1 of each fiscal year" and at end substituted "preceding fiscal year" for "preceding year"; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 532 at end of first sentence substituted "from the general fund" for "through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512", in second sentence, after "annually", inserted "from the general fund" and after "November 1" deleted "from the gross premium taxes after deduction for cancellations and returned premiums", near beginning of third sentence, before "auditor", inserted "state", deleted former fifth sentence that read: "As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund", and inserted fifth sentence providing that contributions are statutorily appropriated. Amendment effective July 1, 1997.

1997 Amendment Changed and Voided — Coordination: The amendments made by sec. 30, Ch. 287, L. 1997, by sec. 4, Ch. 445, L. 1997, and by sec. 4, Ch. 457, L. 1997, were voided or changed by sec. 8(4)(b), Ch. 445, L. 1997, a coordination section, which established the state's contribution at 32.61%. Amendment effective July 1, 1997.

The amendment made by sec. 30, Ch. 287, L. 1997, was also voided by sec. 8(4)(a), Ch. 445, L. 1997, a coordination section.

The textual amendment made by sec. 4, Ch. 445, L. 1997, was also voided by sec. 8(2)(a), Ch. 445, L. 1997, a coordination section.

1995 Amendment: Chapter 541 in fourth sentence increased the state's contribution from 23.27% to 24.21% and at end, after "compensation", deleted "effective July 1, 1991". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in second sentence substituted "pension trust fund" for "administrator" and substituted "November 1" for "September 1", deleted former third sentence that read: "The payment is statutorily appropriated as provided in 17-7-502", in third sentence, near beginning, substituted "division" for "administrator", after "preceding year" substituted fourth sentence regarding state's contribution rate for former text that read: "and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, to 22.98% effective July 1, 1985, and to 23.27% effective July 1, 1991", and in last sentence substituted "division" for "administrator" and at end, after "deposit it", substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near end inserted provision that the contribution increases to 23.27% effective July 1, 1991. Amendment effective July 1, 1991.

1985 Amendment: Inserted third sentence referring to statutory appropriation.

1983 Amendment: Near end, inserted "and to 22.98% effective July 1, 1985" after "July 1, 1983".

Case Notes

State Retirement Board Not Required to Calculate Compensation Amounts for Individual Plan Members: Plaintiffs sued the state and the Public Employees' Retirement Board alleging that plaintiffs' compensation was incorrectly calculated by the Board, resulting in inadequate monthly benefits. The District Court dismissed the claim on grounds that plaintiffs failed to file their complaint within the 2-year statute of limitations, and plaintiffs appealed. The Supreme Court noted that although the Board has broad statutory duties to administer the various state retirement plans, it is not the Board's duty to calculate compensation amounts for individual members. Rather, it is an employer's duty to calculate and report the compensation amounts. If those reports were in error, plaintiffs should have sought relief from their employers, but their remedy did not lie with the state or the Board. Thus, the District Court correctly dismissed the complaint, albeit for a different reason, and the Supreme Court affirmed. Hall v. St., 2006 MT 37, 331 M 171, 130 P3d 601 (2006).

19-13-605. Employer contribution.

Compiler's Comments

2005 Amendment: Chapter 329 substituted second sentence providing that the employer pay as contributions 14.36% of the compensation paid to all of its employees, except those properly excluded from membership for "The employer's contribution is 14.36% of the total compensation paid to members." Amendment effective July 1, 2005.

2001 Amendment: Chapter 290 in first sentence after "available" deleted "to the city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 541 in second sentence increased the employer's contribution from 13.02% to 14.36%. Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted second sentence regarding employer's contribution rate for former second and third sentences that read: "Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and shall decrease to 13.02% effective July 1, 1985" and in third sentence substituted "division" for "administrator" and after "deposit them" substituted "in the pension trust fund" for "with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Inserted "and shall decrease to 13.02% effective July 1, 1985" after "July 1, 1983".

Case Notes

State Retirement Board Not Required to Calculate Compensation Amounts for Individual Plan Members: Plaintiffs sued the state and the Public Employees' Retirement Board alleging that plaintiffs' compensation was incorrectly calculated by the Board, resulting in inadequate monthly benefits. The District Court dismissed the claim on grounds that plaintiffs failed to file their complaint within the 2-year statute of limitations, and plaintiffs appealed. The Supreme Court noted that although the Board has broad statutory duties to administer the various state retirement plans, it is not the Board's duty to calculate compensation amounts for individual members. Rather, it is an employer's duty to calculate and report the compensation amounts. If those reports were in error, plaintiffs should have sought relief from their employers, but their remedy did not lie with the state or the Board. Thus, the District Court correctly dismissed the complaint, albeit for a different reason, and the Supreme Court affirmed. Hall v. St., 2006 MT 37, 331 M 171, 130 P3d 601 (2006).

19-13-607. Other money credited as employer contributions.

Compiler's Comments

1999 Amendment: Chapter 562 in two places substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 in two places substituted "division" for "administrator"; in first sentence substituted "retirement system" for "plan"; in second sentence substituted "shall deposit them in the pension trust fund" for "shall credit them to the fund" and after "fund" deleted "and, as soon as practicable after their receipt, deposit them with the state treasurer"; and made minor changes in style. Amendment effective July 1, 1993.

Part 7
Service Retirement Benefits

Part Administrative Rules

ARM 2.43.2601 Application process for service retirement.
ARM 2.43.2603 Acceptable proof of date of birth.

19-13-701. Eligibility for service retirement.

Compiler's Comments

2013 Amendment: Chapter 240 in (1) at beginning inserted introductory clause; in (1)(a) after "service" deleted "has attained normal retirement age and is eligible for service retirement"; in (1)(b) substituted "applies for a service retirement upon reaching age 50" for "keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date"; inserted (2) concerning nonforfeitable right to service retirement; and made minor changes in style. Amendment effective April 22, 2013.

2003 Amendment: Chapter 429 near beginning of (2) substituted "completing 20 years of service" for "the minimum retirement date". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (1) after "membership service" inserted "has attained normal retirement age and"; and in (2) after "deposit" inserted "has attained normal retirement age and". Amendment effective March 21, 2001.

1997 Amendments: Chapter 370 in (1), at end, deleted "commencing on the first day of the month following the member's last day of service"; and deleted (3) that read: "(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th birthday." Amendment effective April 23, 1997.

Chapter 457 at end of (3) substituted "no earlier than the first day of the month following the member's 50th birthday" for "no later than the first day of the month following the member's 55th birthday" (voided by Ch. 370 amendment). Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 541 in (1), near beginning after "who has", deleted "reached age 50 and has" and after "completed" substituted "20" for "10". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 in (1), after "more", substituted "of membership service" for "in the aggregate as a firefighter in any capacity or rank" and at end, before "service", deleted "membership"; in (2), before first "member", inserted "vested", substituted "terminates service before the minimum retirement date" for "terminates active service before age 50", before "contributions" inserted "accumulated", after "deposit" deleted "under 19-13-304", and at end substituted "commencing on the member's minimum retirement date" for "commencing on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50"; in (3), in two places, substituted "retirement benefit" for "retirement allowance", at beginning of first sentence substituted "A vested inactive member" for "A terminated member eligible under subsection (1) or (2)", and in second sentence substituted "inactive vested member" for "eligible terminated member"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (3) relating to a request for commencement of retirement allowance by a terminated member. Amendment effective March 20, 1989.

Retroactive Applicability: Section 19, Ch. 196, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989."

1985 Amendment: In (1) deleted former (b) providing for service retirement eligibility for "a member who has reached mandatory retirement age under 19-13-702 regardless of his number of years of service" and made minor changes in phraseology and arrangement; and inserted (2) referring to service retirement for members terminating active service before age 50.

1983 Amendment: Inserted (2) relating to time of commencement of retirement.

Attorney General's Opinions

Retirement Date for Firefighters: Prior to the enactment of sec. 7, Ch. 53, L. 1983, firefighters were able to retire during the month and receive pro rata credit for the portion of that month after retirement. Testimony on the 1983 legislation states that its purpose is to establish uniform retirement dates and to ensure that all retirees would begin accruing their benefits on the first day of the month. Under 19-13-701(2), the retirement date for a firefighter retiring from active service is the first day of the month following his last day of membership service. On that day, and not before, his service retirement benefits become payable. 40 A.G. Op. 59 (1984).

19-13-704. Amount of service retirement benefit.

Compiler's Comments

2009 Amendment: Chapter 283 in (2)(b)(ii) near end after "service" inserted "credit". Amendment effective July 1, 2009.

2005 Amendment: Chapter 305 in (1) near end substituted "highest average compensation" for "final average compensation"; and in (2)(b)(i) and in (2)(b)(ii) in two places substituted "highest monthly compensation" for "final monthly compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 in (2)(b)(i) and (2)(b)(ii) after "years of" inserted "membership". Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 in (3) substituted "the benefit" for "the allowance". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment — Coordination: Section 12(2), Ch. 457, L. 1997, provided: "If House Bill No. 170 is passed and approved and if it amends 19-13-704, and if [this act] is passed and approved and if it amends 19-13-704, then [section 31 of House Bill No. 170], amending 19-13-704, is void and [section 6 of this act], amending 19-13-704, shall read:

"Section 6. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member

~~(a) A member hired before July 1, 1981, who elects to retire after having reached 20 years of membership service must receive a service retirement benefit equal to the sum of:~~

~~(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and~~

~~(ii) 2% of the member's last monthly compensation for each year of service credit after 20 years.~~

~~(b) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years but less than 20 years of membership service as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.~~

~~(2) A member hired on or after July 1, 1981,~~ who retires with at least ~~10~~ 5 years of membership service must receive a service retirement benefit equal to ~~2%~~ 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under [section 3 of House Bill No. 170] is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.""""

1995 Amendment: Chapter 541 in (1)(a), after "reached", deleted "both" and after "membership service" deleted "and age 50"; in (1)(a)(ii), at beginning, substituted "2%" for "1%"; in (1)(b), in first sentence after "10 years", inserted "but less than 20 years" and after "membership service" deleted "but prior to reaching age 50"; and deleted (3) that read: "(3) The maximum monthly benefit payable to any retiree under subsection (1) may not exceed 60% of the member's last monthly compensation. The maximum monthly benefit payable to any retiree under subsection (2) may not exceed 60% of the member's final average compensation." Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 substituted (1) and (2) regarding amount of service retirement benefit for former text that read: "(1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death. If there is no surviving spouse or if the surviving spouse dies and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service"; and inserted (3) regarding limitation on maximum monthly benefit. Amendment effective July 1, 1993.

1989 Amendment: At end of first sentence of (1)(b)(i) deleted "or remarriage" and in second sentence, after "dies", deleted "or remarries". Amendment effective July 1, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

1985 Amendment: In (1)(a), (1)(b), and (2) changed "19-13-701(1)" to "19-13-701"; and deleted former (2)(b) and (2)(c) that read: "(b) is eligible under 19-13-701(2) shall receive a service retirement allowance equal to one-half his final average salary;

(c) is retired under 19-13-701(2) and who was theretofore eligible at his option to be retired under 19-13-701(1) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2)(a)".

Administrative Rules

ARM 2.43.2105 Basic period of service.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Part 8
Disability Retirement Benefits

19-13-802. Eligibility for disability retirement.

Compiler's Comments

2005 Amendment: Chapter 329 near end substituted "employment" for "service". Amendment effective July 1, 2005.

1993 Amendment: Chapter 265 in two places, before "disabled", deleted "totally and permanently", near middle substituted "disability retirement benefit" for "disability retirement allowance", and at end, after "disabled", inserted "and terminated service because of the disability"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

ARM 2.43.2602 Application process for disability benefits.

19-13-803. Amount of disability retirement benefit.

Compiler's Comments

2013 Amendment: Chapter 178 in (2) substituted "eligible for the benefits provided pursuant to 19-13-704(3)" for "eligible for benefits as provided in 19-13-104". Amendment effective July 1, 2013.

2009 Amendment: Chapter 283 in (1)(b) at end after "credit" inserted "but no less than one-half of the member's highest average compensation"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 305 in (1)(a) and in (1)(b) substituted "highest average compensation" for "final average compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2003 Amendment: Chapter 429 substituted (2) concerning death of member receiving disability benefit for former text that read: "(2) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104." Amendment effective July 1, 2003.

1997 Amendment: Chapter 457 in (1), after "member", deleted "hired before July 1, 1981"; in (1)(a), at end, substituted "final average compensation" for "last monthly compensation"; in (1)(b) substituted "a disability retirement benefit equal to 2.5% of the member's final average compensation" for "the disability retirement benefit provided in subsection (1)(a) increased at a rate of 2% of the member's last monthly compensation" and at end deleted "in excess of 20"; deleted former (2) that read: "A member hired on or after July 1, 1981, who becomes disabled:

(a) before completing 25 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;

(b) after completing 25 years or more of membership service must receive the disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25"; and made minor changes in style. Amendment effective July 1, 1997.

Section 12(3), Ch. 457, L. 1997, voided the amendment made to 19-13-803 by sec. 32, Ch. 287, L. 1997.

1995 Amendment: Chapter 541 in (1)(b), near middle after "rate of", substituted "2%" for "1%" and at end, after "20", deleted "up to a maximum benefit equal to 60% of the member's last monthly compensation"; and in (2)(b), at end after "25", deleted "up to a maximum benefit equal to 60% of the member's last monthly compensation". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted "disability retirement benefit" for "disability retirement allowance"; in (1) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (1)(a), before "service", inserted "membership" and substituted "the member's last monthly compensation" for "the monthly compensation last received by the member for his services as an active firefighter"; in (1)(b), before "service", inserted "membership", substituted "1% of the member's last monthly compensation for each year of service credit" for "1% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 60% of the monthly compensation last received by the member"; in (2) substituted "who becomes disabled" for "who is eligible under 19-13-802"; in (2)(a), before "service", inserted "membership" and substituted "member's last monthly compensation" for "monthly compensation last received by the member for his services as an active firefighter"; in (2)(b), before "service", inserted "membership", substituted "2% of the member's last monthly compensation for each year of service credit" for "2% for each year", and at end substituted "maximum benefit equal to 60% of the member's last monthly compensation" for "maximum of 5 years of additional service"; inserted (3) regarding payment of benefit upon member's death; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (2)(a) substituted "the monthly compensation last received by the member for his services as an active firefighter" for "his final average salary". Amendment effective July 1, 1991.

19-13-804. Medical examination of disability retiree — cancellation of benefit.

Compiler's Comments

2009 Amendment: Chapter 283 in (1) at end of first sentence after "examination" deleted "at the board's expense", in second sentence before "physician" inserted "board-approved", and after "surgeon at" substituted "a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense" for "the recipient's place of residence or at another place mutually agreed on"; and made minor changes in style. Amendment effective July 1, 2009.

1997 Amendment: Chapter 370 in (1), in fourth sentence after "examination", inserted "or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 412 in (1), in third sentence, substituted "essential elements" for "duties" and near end, before "position", inserted "former"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

Retroactive Applicability: Section 29(2), Ch. 412, L. 1995, provided that this section applies retroactively to initial disability determinations and reviews of ongoing disability status on and after January 1, 1994.

1993 Amendment: Chapter 265 in four places substituted references to disability retirement benefit or benefit for references to disability retirement allowance, disability allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 2, chapter 43, subchapter 27, ARM Disability retirement — medical reviews.

19-13-805. Reinstatement upon termination of benefit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 17, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 329 in (3) in second sentence near middle substituted "service" for "employment"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 290 in two places in (2) substituted "employer" for "city". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board.

The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1997 Amendment: Chapter 370 in (1)(a), at beginning of first sentence, substituted exception clause for "An inactive" and near end, after "position in", substituted "a comparable pay and benefit category" for "the same classification"; and inserted (1)(c) regarding applicability of standards necessary for reinstatement. Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1993 Amendment: Chapter 265 throughout section substituted references to disability retirement benefit, disability benefit, retirement benefit, or benefit for references to disability retirement allowance, disability allowance, retirement allowance, or allowance; and made minor changes in style. Amendment effective July 1, 1993.

Part 9
Survivorship Benefits and Death Payments

Part Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-13-902. Survivorship benefit.

Compiler's Comments

2005 Amendment: Chapter 305 in (2)(a) substituted "highest average compensation" for "final average compensation". Amendment effective July 1, 2005.

Applicability: Section 6, Ch. 305, L. 2005, provided: "[This act] applies to benefits calculated on or after [the effective date of this act]." Effective July 1, 2005.

2001 Amendment: Chapter 99 at beginning of first sentence of (1) substituted "A member's" for "Upon the death before retirement of an active member the member's" and at end substituted "amount as provided in this section" for "equal to one-half the final average compensation received by the member", in second sentence after "leaves" deleted "one or more dependent children, then, upon the member's death if the member leaves", near middle after "member's" inserted "surviving", and at end inserted "under this section", and at beginning of third sentence inserted "A child may receive a share of the benefit"; substituted (2) regarding payment of the survivorship benefit upon death of a member who has completed more than or less than 20 years of service for former (2) that read: "(2) If the deceased member completed over 20 years of membership service, the survivorship benefit must be equal to 2.5% of the final average compensation for each year of service"; inserted (3) providing that benefits are subject to benefit adjustments; and made minor changes in style. Amendment effective March 21, 2001.

1997 Amendment: Chapter 457 in (1), in first sentence after "member", deleted "hired before July 1, 1981" and substituted "final average compensation" for "last monthly compensation"; at end of (2) substituted "must be equal to 2.5% of the final average compensation for each year of service" for "provided in subsection (1)(a) must be increased at a rate of 2% of the last monthly compensation for each year in excess of 20"; deleted former (2) that read: "(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104"; and made minor changes in style. Amendment effective July 1, 1997.

Section 12(4), Ch. 457, L. 1997, voided the amendment made to 19-13-902 by sec. 33, Ch. 287, L. 1997.

1995 Amendment: Chapter 541 in (1)(b), near middle after "rate of", substituted "2%" for "1%" and at end, after "20", deleted "up to a maximum of 60% of the last monthly compensation received by the member". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted references to survivorship benefit or benefit for references to survivorship allowance or allowance; in (1), at end of first sentence after "member", deleted "for his service as an active firefighter" and near end of second sentence, after "dependent", inserted "children"; in (1)(b), near beginning before "service", inserted "membership" and after "1%" inserted "of the last monthly compensation"; in (2), in first sentence, substituted "final average compensation" for "final average salary" and near beginning of second sentence substituted "member" for "firefighter" and near end, after "dependent", inserted "children"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (1)(a), after "shall", deleted "as long as such spouse remains unmarried" and in second sentence, after "upon the death", deleted "or remarriage"; and in first sentence of (2), after "shall", deleted "as long as such spouse remains unmarried" and in second sentence, after "upon the death", deleted "or remarriage". Amendment effective July 1, 1989.

Retroactive Applicability: Section 8, Ch. 63, L. 1989, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989."

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.

19-13-903. Payments to designated beneficiary.

Compiler's Comments

2001 Amendment: Chapter 99 at beginning substituted "If, after a member dies, a benefit is not paid pursuant to 19-13-704, 19-13-803, or 19-13-902, then" for "If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the board as provided in 19-2-801", after "pay to the" inserted "member's", and after "total of any" deleted "retirement" and deleted former second sentence that read: "If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, the amount must be paid to the member's estate." Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in first sentence in two places substituted references to the board for references to the division and after "designated beneficiary" substituted "the amount, if any, of the retired member's accumulated contributions minus the total of any retirement benefits already paid from the member's account" for "an amount equal to the member's contributions less any retirement benefits paid to the member before the member's death"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1993 Amendment: Chapter 265 near beginning, before "child", inserted "dependent" and in two places substituted "division" for "administrator"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: Substituted language providing for payment of death benefits in absence of spouse or child for "If a member dies without leaving a surviving spouse or children, the administrator shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the administrator, the administrator shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate."

Administrative Rules

ARM 2.43.2902 Death payments, survivor benefits, and optional retirement benefits.
ARM 2.43.2903 Payment to an estate.

Part 10
Postretirement Benefits and Benefit Increases

Part Attorney General's Opinions

Enactment With Knowledge of Construction of Other Section: In enacting 19-13-1006 (now repealed), the Legislature is presumed to have acted with full knowledge of the construction given to the predecessor section (19-11-606, renumbered 19-18-606, now repealed) from which the wording of 19-13-1006 (now repealed) was adopted, and the Legislature is presumed to have adopted the construction of the predecessor section. 39 A.G. Op. 72 (1982).

Reimbursement of Division for Payments Made in Previous Year: Section 19-13-1006 (now repealed) permitted the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city which last employed him. The funds distributed to the Public Employees' Retirement Division for this purpose in subsection (2) should therefore be used to reimburse the Division for the payments made to the recipients in the previous fiscal year. 39 A.G. Op. 72 (1982).

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-1007. Minimum benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) before "service" inserted "membership". Amendment effective July 1, 2003.

2001 Amendment: Chapter 290 throughout section substituted reference to employer for reference to city; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7, Ch. 290, L. 2001, provided: "[This act] is effective contingent on the execution of an agreement between the department of military affairs and the public employees' retirement board establishing that employer contributions for all firefighters hired by the Montana air national guard pursuant to [section 2] [19-13-210] will be paid with federal funds passed through the department of military affairs and remitted to the firefighters' unified retirement system in a manner prescribed by the public employees' retirement board. The board shall notify the secretary of state and the code commissioner when this contingency is met." The contingency occurred when an agreement was executed on September 28, 2001.

1999 Amendment: Chapter 562 in (1) inserted "with 10 or more years of service". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments Changed and Voided — Coordination: The amendments made by sec. 35, Ch. 287, L. 1997, by sec. 5, Ch. 445, L. 1997, and by sec. 9, Ch. 457, L. 1997, were voided by sec. 8(2)(b) and 8(6), Ch. 445, L. 1997, coordination instructions, and were changed by sec. 8(6), Ch. 445, L. 1997, a coordination section, to: in (1) substituted "The following applies to a member who has not elected to be covered under 19-13-1010" for "For a member retiring on or after July 1, 1973, who was hired before July 1, 1981"; in (1)(a), at beginning, inserted "For the member", substituted "19-13-704" for "19-13-704(1)(a)", substituted "19-13-803" for "19-13-803(1)", and substituted "19-13-902" for "19-13-902(1)(b)"; in (1)(b) substituted "subsection (1)(a)" for "subsections (1) and (2)"; deleted former (2) that read: "(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city"; in (2) inserted "who has not elected to be covered under 19-13-1010" and substituted "19-13-704" for "19-13-704(1)(b)"; in (2)(b) substituted "earned more than 5" for "earned more than 10" and increased minimum survivor's benefit from "2%" to "2.5%"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 541 in (4), near beginning after "discontinued", deleted "before the member reaches age 50". Amendment effective July 1, 1995.

1993 Amendment: Chapter 265 throughout section substituted references to service retirement benefit, disability retirement benefit, survivorship benefit, service retirement benefit, or benefit for references to service retirement allowance, disability retirement allowance, survivorship allowance, service retirement allowance, or allowance and substituted "retirement system" for "plan"; in (3) substituted "survivor's benefit" for "his beneficiary's allowance"; in (4)(a) and (4)(b) substituted "earned" for "completed" and before "service" inserted "membership"; deleted (5) that read: "(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance, beginning upon termination of employment, that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50"; and made minor changes in style. Amendment effective July 1, 1993.

1983 Amendment: In (1), substituted "a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or his surviving spouse" for "a member hired on or after July 1, 1973, but before July 1, 1981, and his surviving spouse"; inserted (3) requiring comparison to salary of firefighters in other cities in certain cases; inserted (4) referring to allowance to be paid in case of vested member hired before July 1, 1981, who is involuntarily discontinued before age 50 in certain cases; and inserted (5) allowing certain members to elect an early retirement allowance.

Administrative Rules

ARM 2.43.4803 Firefighters' minimum benefit adjustments.

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981 (the time periods under the 1981 law, prior to 1983 amendment to 19-13-1007), were entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

19-13-1010. Guaranteed annual benefit adjustment.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 62 deleted former (3)(b) that read: "(b) the benefit recipient is not an active member of a public retirement system covered by this title"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 149 throughout section changed percentage from "1.5%" to "3%". Amendment effective March 29, 2001.

Chapter 309 in (3)(a) near middle decreased commencement date from 36 months to 12 months. Amendment effective April 21, 2001.

1999 Amendment: Chapter 562 in (3)(a) substituted "commencement date" for "initiation date". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 287, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 through 3] [19-2-1101, now repealed, 19-3-1605, 19-5-901, 19-6-710, 19-7-711, 19-8-1105, 19-9-1009, and 19-13-1010] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the

GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' [now game wardens' and peace officers'] retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits."

Effective Date: Section 40, Ch. 287, L. 1997, provided that this section is effective July 1, 1997.

19-13-1011. Election — guaranteed annual benefit adjustment.

Compiler's Comments

2003 Amendment: Chapter 114 in(3)(a) substituted "12 months" for "36 months". Amendment effective October 1, 2003.

Effective Date: Section 22, Ch. 149, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

Part 11
Reemployment of Retired Members

19-13-1101. Reemployment of retired members — contributions required.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) in first sentence at end after "active service" deleted "and without any effect to the retiree's retirement benefit" and inserted last sentence concerning reduction of retirement benefit for earnings in excess of $5,000 a calendar year; and in (2) near beginning substituted "returns to employment covered by the retirement system" for "returns to work in a covered position" and before "must cease" substituted "benefit payments" for "benefits". Amendment effective July 1, 2017.

2013 Amendment: Chapter 239 inserted (2) through (4) concerning retired members who return to work; and made minor changes in style. Amendment effective July 1, 2013.

Effective Date: Section 41, Ch. 99, L. 2011, provided: "[This act] is effective July 1, 2011."

19-13-1102. Refunds and benefits for reemployed retired members.

Compiler's Comments

Effective Date: Section 46, Ch. 195, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 17
VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Chapter Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

Part 1
General Provisions

Part Attorney General's Opinions

Fire on Federally Managed Property — Benefits to Volunteer Rural Fire Crew: When a rural fire crew organized pursuant to 7-33-2201, et seq., responds to a request to suppress fires on property managed by a federal agency within the county or on property within an incorporated city or town within the county or in an adjacent county, the benefits of Title 19, ch. 12 (renumbered Title 19, ch. 17), attach. 38 A.G. Op. 100 (1980).

19-17-102. Definitions.

Compiler's Comments

2011 Amendment: Chapter 64 in definition of active member inserted "as provided in 19-17-108"; inserted definitions of allowance, compensation, inactive member, pension benefit, and reimbursed; deleted definition that read: ""Department" means the department of administration"; in definition of disability after "means" inserted "a duty-related injury resulting in"; in definition of fire company after "means" substituted "an organization of volunteer firefighters created under the authority of a governing board or commission to serve" for "a fire company organized under 7-33-2311 in" and at end after "village" deleted "and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33"; in definition of retiree substituted "pension" for "participation"; deleted definition that read: ""Service" means cumulative periods of active membership that are credited only in full fiscal year increments"; in definition of supplemental insurance after "benefits" deleted "and that is in addition to" and inserted "supplemental insurance does not include"; in definition of volunteer firefighter after "who is" substituted "a member" for "an active member"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 inserted definitions of designated official and training; in definition of fire company near beginning after "organized" inserted "under 7-33-2311" and at end substituted "and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33" for "in accordance with 7-33-2311"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment Void: The amendment to this section made by sec. 1, Ch. 332, L. 2005, was rendered void by sec. 4, Ch. 332, L. 2005, a coordination section, that provided: "If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void." Senate Bill No. 197 was passed and approved as Ch. 391, L. 2005.

2001 Amendment: Chapter 99 in definition of pension trust fund after "pay" inserted "claims and"; in definition of retiree or retired member after "participation benefits" inserted "or disability benefits"; and at end of definition of service substituted "fiscal year increments" for "fiscal years". Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 deleted definition of division that read: ""Division" means the public employees' retirement division of the department"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendment: Chapter 370 in definition of disability or permanent total disability, before "defined", substituted "means permanent total disability as" for "has the meaning". Amendment effective April 23, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 370, L. 1997, provided: "A statement of intent is required for this bill because [sections 1 and 3] [19-2-908 and 19-2-1010] give the public employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member."

1995 Amendment: Chapter 175 inserted definitions of active member, benefit, claim, Department, dependent child, disability, Division, member, retiree, service, supplemental insurance, surviving spouse, survivorship benefit, and volunteer firefighter; redefined fire company and fiscal year; and substituted pension trust fund for fund as defined term. Amendment effective July 1, 1995.

1983 Amendments: Chapter 57 substituted "board provided for in 2-15-1009" for "board of the public employees' retirement system" in definition of Board; deleted former (2), which read: ""Division" means the division of workers' compensation of the department of labor and industry."

Chapter 282 substituted "pension trust fund" for "compensation account in the agency fund" in definition of fund.

19-17-106. Pension trust fund established — restrictions on use.

Compiler's Comments

2011 Amendment: Chapter 64 in (1) at end after "Act" deleted "and the volunteer firefighters' pension plan"; in (3) after "employee of the" substituted "board" for "department"; in (4) after "children" inserted "for supplemental payments for"; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendment: Chapter 99 inserted (2) requiring that the pension trust fund be funded on an actuarially sound basis; inserted (5) regarding vesting and nonforfeiture if the fund terminates or partially terminates or if contributions to the fund are discontinued; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 562 in (2)(c) substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

19-17-107. Employment of actuary — annual investigation.

Compiler's Comments

2009 Amendment: Chapter 283 in (2) near beginning after "make" substituted "an annual" for "a biennial". Amendment effective July 1, 2009.

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

Administrative Rules

ARM 2.43.1306 Actuarial rates and assumptions.

19-17-108. Credit for service as volunteer firefighter — records.

Compiler's Comments

2011 Amendment: Chapter 64 in (1) in third sentence near end inserted "single" and after "company" inserted "that is organized under Title 7, chapter 33, and continues to meet the requirements of 19-17-109"; in (2) after "eligibility for" deleted "full or partial"; in (3)(a) after "training in" substituted "firefighting duties as outlined in 19-17-105" for "matters pertaining to firefighting"; in (3)(b) after "records" deleted "filed and" and inserted "pursuant to 19-17-111"; deleted former (3)(c) that read: "(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more"; deleted former (4) that read: "(4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 in (2) near middle of second sentence after "companies" deleted "in different fire districts"; in (3)(a) near beginning after "hours of" substituted "training" for "instruction" and near end after "chief or" substituted "designated official" for "supervisor"; in (3)(b) near beginning after "in the" inserted "training", near middle after "fire" substituted "company's" for "department", and at end substituted "designated official" for "supervisor"; and inserted (4) concerning training records. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 212 in (3)(c) near middle after "owns" inserted "rents, or uses"; deleted former (3)(d) that read: "(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 329 deleted former (3)(d) that read: "(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 429 inserted (3)(b) concerning documented participation; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 562 near end of (3)(a) substituted "board" for "division" and "supervisor" for "foreman". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 25, Ch. 175, L. 1995, provided that this section is effective July 1, 1995.

19-17-109. Eligible fire company.

Compiler's Comments

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-110. Allowable payments to volunteer firefighters.

Compiler's Comments

2015 Amendment: Chapter 230 in (1)(b) substituted "$3,000" for "$300". Amendment effective October 1, 2015.

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-111. Records information management.

Compiler's Comments

2015 Amendment: Chapter 348 in (2) after "Title 2, chapter 6" inserted "part 11". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-112. Filing required reports — limitations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 400, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 195 in (2)(b) near middle after "full name" deleted "social security number"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (4) substituted "form" for "card". Amendment effective January 1, 2016.

2013 Amendment: Chapter 96 in (2)(c) after "verify" deleted "under oath, before a notary"; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-113. Corrections, audits, and penalties.

Compiler's Comments

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-117. Volunteer Firefighters' Compensation Act benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 2

Administration of Fund

Part Compiler's Comments

1983 Title: The title to Ch. 57, L. 1983, read: "An act consolidating the administration of disability, death, and pension benefits provided in the Volunteer Firefighters' Compensation Act under the Public Employees' Retirement Board; amending sections 19-12-102, 19-12-103, 19-12-201 through 19-12-204, 19-12-402 through 19-12-404, 19-12-407, 19-12-502 through 19-12-504, and 19-12-506, MCA; and providing an effective date." (NOTE: Title 19, chapter 12, renumbered Title 19, chapter 17.)

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-17-201. Administration of chapter.

Compiler's Comments

2011 Amendment: Chapter 64 in (2) substituted "board" for "department"; in (4) after "review the" deleted "sufficiency of", after "may be" substituted "available" for "necessary", and after "beneficiaries" deleted "to maintain a stable standard of living"; inserted (5) pertaining to disputes regarding credited years of service and payment of retroactive benefits; and made minor changes in style. Amendment effective July 1, 2011.

1995 Amendment: Chapter 175 in (1) substituted provision that the Board is the trustee of money collected under this chapter and has exclusive control of fund administration, except as otherwise provided by law, for provision that the Board shall administer this act and the pension plan and payments under this chapter; inserted (2) requiring the Department to deposit amounts received in the state treasury; inserted (3) making the State Treasurer the fund custodian, subject to control of the Board for fund administration and of the Board of Investments for investment of fund money; and in (4) substituted "provided under this chapter" for "paid by the retirement system". Amendment effective July 1, 1995.

1993 Amendment: Chapter 481 inserted second sentence requiring Board to review sufficiency of benefits paid by retirement system and to recommend to Legislature changes that may be necessary for retired members and their beneficiaries to maintain stable standard of living.

1983 Amendment: Consolidated administration of both the Volunteer Firefighters' Compensation Act and their pension plan under the Public Employees' Retirement Board by substituting language providing for Board administration for "(1) Except as provided in subsection (2), the division shall administer the Volunteer Firefighters' Compensation Act, and all payments made under 19-12-103 and 19-12-506 shall be made by warrants drawn by the division.

(2) The board shall administer the volunteer firefighters' pension plan, and all payments made under 19-12-405 and 19-12-407 shall be made by warrants drawn by the public employees' retirement system. Annually, on or before the 15th day after the close of the fiscal year, the division shall notify the board in writing of the balance remaining in the volunteer firefighters' fund as of the end of the fiscal year."

Administrative Rules

Title 2, chapter 43, subchapter 50, ARM Volunteer Firefighters' Compensation Act.

19-17-202. Reports of board.

Compiler's Comments

2001 Amendment: Chapter 99 in (1) substituted "As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year" for "The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan"; in (2) substituted "The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan" for "The report may include suggestions or recommendations that the board considers of value for public information"; and deleted former (2) that read: "(2) Copies of the reports must be made available by the board to the chief or other representative of any volunteer fire company or companies that request them." Amendment effective March 21, 2001.

1993 Amendments: Chapter 10 deleted former (3) that read: "(3) By January 10, 1993, the board shall provide to the 53rd legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404"; and made minor changes in style.

Chapter 283 in first sentence in (3) substituted "1995" for "1993" and "54th legislature" for "53rd legislature". Amendment effective July 1, 1993.

Effective Date: Section 4, Ch. 81, L. 1991, provided: "[This act] [enacting 19-12-202(3), renumbered 19-17-202] is effective July 1, 1991."

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; deleted former (1) which read: "The division shall, at the time specified in 39-71-210 for making the report therein required, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act, with such suggestions or recommendations as it may consider of value for public information."; and in (1), inserted "Volunteer Firefighters' Compensation Act and the" before "volunteer firefighters' pension plan".

19-17-203. Rules to be made by board.

Compiler's Comments

2011 Amendment: Chapter 64 near middle after "Act" deleted "and the volunteer firefighters' pension plan"; and made minor changes in style. Amendment effective July 1, 2011.

1983 Amendment: Substituted "board" for "division and the board"; and after "Volunteer Firefighters' Compensation Act" inserted "and the volunteer firefighters' pension plan".

Administrative Rules

Title 2, chapter 43, subchapter 29, ARM Refunds, distributions, and adjustments.

Title 2, chapter 43, subchapter 50, ARM Volunteer Firefighters' Compensation Act.

19-17-204. Administrative expenses.

Compiler's Comments

2011 Amendment: Chapter 64 near beginning after "Act" deleted "and the volunteer firefighters' pension plan" and near end substituted "Volunteer Firefighters' Compensation Act" for "volunteer firefighters' pension trust". Amendment effective July 1, 2011.

1999 Amendment: Chapter 562 substituted "board" for "division". Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1995 Amendment: Chapter 175 in first sentence substituted "expenses for the administration" for "expenses of the board for office supplies, stationery, and forms in connection with the administration" and near end inserted "pension trust"; deleted sentence requiring the Board to draw from the fund through warrants as necessary to pay expenses; and at end inserted sentences requiring expenses to be paid from investment earnings of the public employees' pension trust fund and requiring the Division, prior to the end of each fiscal year, to compute expenses under this chapter for the past year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund. Amendment effective July 1, 1995.

1983 Amendment: Throughout section, substituted "board" for "division" or "public employees' retirement system"; inserted "and the volunteer firefighters' pension plan"; substituted last sentence allowing Board to pay administration expenses by drawing from fund for "The public employees' retirement system shall draw from the fund through warrants executed by the division upon the request of the public employees' retirement system, at such intervals as the board considers proper."

19-17-205. Payments to fire companies maintaining supplemental insurance.

Compiler's Comments

1995 Amendment: Chapter 175 substituted "not to exceed $150 per fire company" for "not exceeding two units for any one company"; and changed terminology to conform section to the revision of this chapter and the change in definitions and terminology. Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "division".

Administrative Rules

ARM 2.43.5006 Application for group insurance premium payments.

ARM 2.43.5007 Payments to service providers for medical expenses resulting from duty-related injuries and illnesses.

Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

Part 3
Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into pension trust fund.

Compiler's Comments

1997 Amendment — Coordination: Chapter 532, pursuant to sec. 39(2), a coordination section, near beginning of first sentence, after "auditor", deleted "and ex officio commissioner of insurance", after "annually" substituted "pay from the general fund to" for "deposit in", and at end substituted "50-3-109" for "19-18-512". Amendment effective July 1, 1997.

1995 Amendment: Chapter 175 in first sentence substituted "pension trust fund" for "volunteer firefighters' fund"; in third sentence, after "claims", inserted "benefits"; and made minor changes in style. Amendment effective July 1, 1995.

1985 Amendment: Inserted last sentence referring to statutory appropriation.

1981 Amendments: Chapter 313 substituted "computed before the amounts provided for by 19-11-512 [renumbered 19-18-512] are deducted" for "computed after the amounts provided for by 19-11-512 have first been deducted".

Chapter 566 added "and 19-13-604" in the middle of the section.

Collateral References

Whose Slice of Which Pie? Understanding the Insurance Premium Tax as a Funding Source for Police and Fire Pension Plans, A Report to the 58th Legislature by the State Administration and Veterans' Affairs Interim Committee, Mont. Leg. Serv. Div. (2002).

19-17-302. Investment of pension trust fund.

Compiler's Comments

1995 Amendment: Chapter 175 deleted former section, which provided that earnings on money received under 19-17-301 become part of such money; and inserted (1) through (3) providing that the fund be invested by the Board of Investments under the unified investment program, that income earned by fund assets be paid into the fund as received, and that for investment purposes, the fund may be commingled with other pension funds administered by the Board, with a separate account for each system. Amendment effective July 1, 1995.

Part 4
Pension and Survivorship Benefits

Part Attorney General's Opinions

Workers' Compensation — Rural Volunteers Not Covered: A rural volunteer firefighter is not an "employee" as defined in 39-71-118 for the purposes of workers' compensation, but this chapter provides him with similar benefits. 40 A.G. Op. 9 (1983).

19-17-401. Eligibility for pension benefits.

Compiler's Comments

2011 Amendment: Chapter 64 in (1) after "pension" deleted "or disability" and at end substituted "subsections (2) and (3)" for "subsections (2) or (3) and (4)"; in (2)(b) after "who" substituted "does not complete" for "is prevented from completing"; deleted former (3) that read: "(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit"; in (3) near beginning substituted "19-17-412" for "subsection (5)"; in (3)(a) and (3)(b) following "pension" deleted "or disability"; deleted former (5) that read: "(5) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 283 deleted former (5)(a) that read: "(a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service"; in (5) inserted third sentence requiring the fire chief to prescribe the duties of any retired volunteer firefighter returning to service; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 128 in (5)(b) near end of first sentence after "fire" substituted "company" for "department". Amendment effective October 1, 2007.

2005 Amendment: Chapter 391 inserted (5)(b) authorizing member who is receiving full pension benefit to return to service with volunteer fire department without loss of benefits and prohibiting returning member from earning active member service credit; and made minor changes in style. Amendment effective April 25, 2005.

The amendments to this section made by sec. 2, Ch. 332, L. 2005, were rendered void by sec. 4, Ch. 332, L. 2005, a coordination section, that provided: "If Senate Bill No. 197 and [this act] are both passed and approved, then [this act] is void." Senate Bill No. 197 was passed and approved as Ch. 391, L. 2005.

2003 Amendment: Chapter 262 in (1) near beginning before "disability" substituted "a full pension, partial pension, or" for "pension and"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 in (3) near middle after "total disability" inserted "as defined in 39-71-116 and determined pursuant to 19-17-410"; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 164 in (4) at beginning inserted exception clause; inserted (5) allowing a retired firefighter not receiving a disability benefit under this chapter to work for a fire company during a declared emergency without becoming an active member of the volunteer firefighters' pension plan and without loss of previously earned benefits and providing that the fire chief determines who may return to service and prescribes the returnee's duties; and made minor changes in style. Amendment effective March 29, 2001.

1995 Amendment: Chapter 175 substituted current text concerning the requirements for qualifying for benefits for former text (see 1995 Session Law for former text). Amendment effective July 1, 1995.

1993 Amendment: Chapter 283 in (1)(b), in first sentence after "20 years' service", deleted "by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control" and at end inserted reference to attainment of age 60; in (2)(a), after exception clause, inserted reference to receipt of pension benefits; in (5) inserted introductory clause concerning receipt of pension benefits; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (2)(b) deleted subsection reference to 39-71-116.

1981 Amendment: Inserted "Except as provided in subsection (2)(b)" at the beginning of (2)(a); added subsection (2)(b) relating to partial pension for permanent, total disability.

Section Not Codified: Section 11-2023(3), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 4, Ch. 65, L. 1935; amd. sec. 2, Ch. 118, L. 1965; amd. sec. 1, Ch. 161, L. 1967; amd. sec. 1, Ch. 46, L. 1969; amd. sec. 2, Ch. 80, L. 1971; amd. sec. 2, Ch. 199, L. 1973; amd. sec. 1, Ch. 48, L. 1975; amd. sec. 1, Ch. 233, L. 1975; amd. sec. 22, Ch. 157, L. 1977.

Administrative Rules

ARM 2.43.5001 Basic unit of service.

19-17-403. Application for benefits.

Compiler's Comments

2011 Amendment: Chapter 64 in (4) after "under" substituted "19-17-112" for "19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977"; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 429 in (1) after "terminating" deleted "covered". Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 inserted (1) allowing application for benefits before terminating covered service; inserted (3)(c) requiring the date of the member's death, if applicable; in (4) near beginning after "proof of age" inserted "death"; deleted former (4) that read: "(4) If a qualified member properly submits an application, the member is entitled to receive benefits as of the first day of the month following approval of the application"; and made minor changes in style. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 substituted current text concerning application for benefits for former text that read: "(1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the board upon a form to be provided therefor by the board. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The board may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the board to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim." Amendment effective July 1, 1995.

1983 Amendment: Throughout section, substituted "board" for "public employees' retirement system".

19-17-404. Amount of pension benefits.

Compiler's Comments

2015 Amendment: Chapter 355 in (2)(a) increased benefit paid from $150 a month to $175 a month; and made minor changes in style. Amendment effective January 1, 2016.

2011 Amendments — Composite Section: Chapter 64 in (1) substituted "A member is eligible to receive a pension benefit" for "Each eligible member must receive a pension or disability benefit"; in (2)(b) after "benefit" inserted "paid to an eligible member"; deleted former (3) and (4) that read: "(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.

(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner"; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 195 in (2)(c) inserted exception clause; inserted (3) regarding increase in pension benefit; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 391 in (2)(c) near beginning after member deleted "who has completed 20 years of service and is at least 55 years of age and", after second "member" inserted "after completing 20 years of service", and after "service" inserted "the member completed after 20 years of service"; and made minor changes in style. Amendment effective April 25, 2005.

2003 Amendment: Chapter 262 in (2)(a) substituted "Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is $150 a month" for "The base pension benefit is $150 a month for members who are eligible for full pension benefits"; in (2)(b) near middle before "member's" inserted "eligible"; inserted (2)(c) providing for a monthly pension benefit increase for members with 20 years of service and who are at least 55 years of age for each additional year of service up to 30 years; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 99 inserted (3) regarding correction of errors and adjustment of payments upon a fraudulent change or inadvertent mistake in records; and made minor changes in style. Amendment effective March 21, 2001.

Chapter 209 in (1)(b) increased base pension benefit amount from $100 to $150 a month; and in (1)(c) after "benefit" substituted "in subsection (1)(b)" for "of $100". Amendment effective July 1, 2001.

1995 Amendment: Chapter 175 substituted current text concerning amount of benefits for former text that read: "(1) Each person who meets the requirements set forth in 19-17-401 or, in the case of a beneficiary, 19-17-405(1) and who has completed and filed a claim as provided in 19-17-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments must be computed each year in the following manner:

(a) For fiscal years 1994 and 1995, the base benefit level is $120 per month for each retiree qualifying for full participation under the provisions of 19-17-401(1)(a). Partial participation is calculated under the provisions of 19-17-401(1)(b).

(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $6 million, the board shall set aside the amount to be paid to each qualifying claimant.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter must be treated collectively as one claimant.

(3) If the amount of the benefit for a qualified claimant is at least $20 per month throughout the succeeding fiscal year, the pension must be paid monthly on or before the last day of each month. If the amount of the benefit for a qualified claimant is less than $20 per month, the qualified claimant's full pension for that year must be paid in one lump payment on or before December 15 of that year." Amendment effective July 1, 1995.

1993 Amendment: Chapter 283 in 2(a) substituted "fiscal years 1994 and 1995" for "fiscal years 1992 and 1993"; deleted former (2)(c) that read: "(c) The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2)(a) establishing base benefit level for fiscal years 1992 and 1993; in (2)(b) increased amount from $1 million to $6 million, after "set aside" deleted "the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the board of pensions to qualified claimants during the immediately succeeding fiscal year", and after "claimant" deleted "shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year"; near beginning of first sentence of (3), after "amount", substituted "of the benefit for a" for "set aside is sufficient to pay each", near beginning of second sentence, after "amount", substituted "of the benefit for a" for "set aside is not sufficient to pay each", and near middle substituted "is less than" for "at least"; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendments: Chapter 24, in (2)(b), increased the maximum pension from $100 to $200.

Chapter 57, in (2)(a), substituted "board" for "division" and for "public employees' retirement system" and after "board shall set aside" deleted "and pay over to the public employees' retirement system".

19-17-405. Survivorship benefits to surviving spouse or dependent children.

Compiler's Comments

2003 Amendment: Chapter 429 in (1) at beginning inserted reference to subsection (2); at end of (1)(a) inserted exception for spouse causing member's death or disability; inserted (1)(b) concerning dependent children; inserted (2) concerning benefits payable to dependent child; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 99 in (3) inserted second sentence allowing lump-sum payment in lieu of up to 40 months of survivorship benefits. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 substituted current text concerning survivorship benefits for former text that read: "(1) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death on or after July 1, 1985, of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least $4,000; or

(d) the death on or after July 1, 1985, of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of $4,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of $4,000 determined under the formula prescribed in 19-17-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death." Amendment effective July 1, 1995.

1985 Amendment: At beginning of (1)(a) and (1)(c) inserted "on or after July 1, 1985"; in (1)(b) and (1)(d) substituted reference to July 1, 1985, for "February 27, 1971"; and increased payments of $2,000 to $4,000 throughout section.

19-17-406. Termination of pension when no surviving spouse or child.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-17-407. Exemption from legal process.

Compiler's Comments

2021 Amendment: Chapter 503 deleted former (1) that read: "(1) The amount determined pursuant to 15-30-2110(2)(c) of benefits received under this part is exempt from state, county, and municipal taxation"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2017 Amendment: Chapter 195 in (2) inserted exception clause; inserted (3) providing that right to benefit or payment is subject to lien or levy for past-due taxes and certain processes related to collection of federal criminal fines and restitution orders; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 382 in (1) at beginning deleted "The first $3,600 or" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

2005 Amendment: Chapter 329 in (2) at beginning deleted "Except as provided in 19-2-907 and 19-2-909"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 99 inserted (2) providing that with some exceptions, benefits are not subject to execution, garnishment, attachment, or any other process; and made minor changes in style. Amendment effective March 21, 2001.

1995 Amendment: Chapter 175 deleted (1), which required payments under the plan to be approved by the Board and paid by warrants drawn on the fund and payable to the firefighter or beneficiary. Amendment effective July 1, 1995.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1983 Amendments: Chapter 57 substituted "board" for "public employees' retirement system". Chapter 282 substituted "pension trust fund" for "agency fund".

19-17-411. Time benefits commence.

Compiler's Comments

2011 Amendment: Chapter 64 deleted former (2) that read: "(2) The disability retirement benefit payable pursuant to this part must commence on the day following the member's termination from service"; inserted (2) providing that benefit may not commence prior to board decision regarding disputed years of service; in (3) after "commence" substituted "the first day of the month following the day of death" for "on the day following the death"; and made minor changes in style. Amendment effective July 1, 2011.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-17-412. Return to service.

Compiler's Comments

2017 Amendment: Chapter 195 in (2) substituted "member of the fire company and may not earn any additional credit" for ""member earning credit". Amendment effective July 1, 2017.

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

Part 5
Medical and Funeral Expenses

19-17-501. Eligibility for medical and funeral expenses.

Compiler's Comments

2011 Amendment: Chapter 64 in (1) in first sentence near beginning substituted "19-17-502" for "19-17-504", after "must be" substituted "a member of an eligible fire company" for "an active member of a fire company", and after "insurance" inserted "and must be listed on the fire company roster in the year" and inserted second sentence requiring injury or illness to have occurred in line of duty; and in (2) in first sentence near beginning substituted "19-17-503" for "19-17-505" and after "be" substituted "a member of an eligible fire company and must be listed on the fire company roster in the year the death occurs" for "an active member of a fire company" and inserted second sentence requiring death to occur in line of duty. Amendment effective July 1, 2011.

1995 Amendment: Chapter 175 in (1) substituted "medical expenses" for "benefits"; in (1) and (2), before "firefighter", inserted "volunteer"; in (2) substituted "funeral expenses" for "benefits"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1), near beginning after "19-12-504 [renumbered 19-17-504]", deleted "and 19-12-505", near middle, after "incurred", deleted "or, in the case of a claim under 19-12-505, at the time of death", and at end inserted "not covered by workers' compensation insurance"; inserted (2) requiring active enrollment at time of death as a condition for receipt of benefits; and made minor change in style.

19-17-502. Medical expenses.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) in first sentence at end inserted "and a copy of the bill from the medical provider or a receipt for payment of medical expenses". Amendment effective July 1, 2017.

2011 Amendment: Chapter 64 in (1) in first sentence substituted "this section" for "19-17-504", after "submit a" inserted "report of injury and medical", and after "board" inserted "in accordance with the board's rules" and in third sentence substituted "12 months" for "1 year"; in (2)(a) inserted "social security number"; in (2)(g) after "stating that" deleted "the fire company was organized under the laws of Montana in an unincorporated town or village, that" and after "illness" substituted "a member of the fire company" for "an active member of the company"; inserted (3) requiring board to authorize payment of certain medical expenses; inserted (4) providing that claim may not exceed $25,000; inserted (5) and (6) pertaining to injury resulting in amputation, eye injury, or loss of teeth and prosthesis replacement; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 128 in (2)(g) near beginning after "chief or" substituted "designated official" for "secretary"; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 175 in (1), in first sentence, substituted "member who claims medical expenses" for "firefighter claiming benefits" and substituted "shall submit a claim on a form" for "must file his claim with the board on a form", in second sentence substituted "member and by competent medical authority" for "claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined", and in third sentence substituted "submitted" for "filed with the board" and substituted "incurring the injury or disease" for "disability"; in (2)(a) and (2)(g) substituted "member" for "claimant"; in (2)(b) substituted "the injury or illness" for "of disability"; in (2)(d) substituted "of hospitalization, if hospitalized" for "of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse"; in (2)(e) inserted reference to nurse, substituted "injury or illness" for "disability", and substituted "expenses" for "charges"; in (2)(f) substituted "if hospitalized" for "if confined in a hospital", substituted "from competent authority" for "of a person in charge", substituted "injury or illness" for "disability", substituted "hospitalization" for "confinement", and at end deleted "incurred while so confined"; in (2)(g) substituted "time of the injury or illness" for "date of disability" and substituted "injury or illness" for "disability"; deleted (2)(h), which required the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendments: Chapter 49 inserted "as defined in 19-12-105 [renumbered 19-17-105]" at end of (1)(g).

Chapter 57, in (1), substituted "board" for "division" twice and after "form to be provided" substituted "by the board" for "therefor".

19-17-503. Funeral expenses.

Compiler's Comments

2017 Amendment: Chapter 195 in (1) in first sentence before "a copy" inserted "either" and after "director" inserted "or a receipt for payment of the funeral expenses"; in (3) at beginning substituted "When a claim under this section is received and approved by the board" for "The board shall authorize"; at end inserted "must be made directly to the appropriate provider of the funeral services or, if a receipt is provided for the full payment of funeral expenses, to the claimant"; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 64 substituted present language of section for former language that read: "A person claiming the funeral expenses provided for in 19-17-505 shall submit the claim on a form provided by the board, in accordance with the board's rules". Amendment effective July 1, 2011.

1995 Amendment: Chapter 175 after "claiming the" substituted "funeral expenses" for "benefit"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted "board" for "division" three times; and after "provided" deleted "therefor".

Part 6
Disability Benefits

19-17-601. Eligibility for disability benefits.

Compiler's Comments

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-602. Amount of disability benefit.

Compiler's Comments

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

19-17-603. Determination of disability.

Compiler's Comments

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

19-17-604. Medical review of certain disability retirees.

Compiler's Comments

2009 Amendment: Chapter 283 in second sentence before "physician" inserted "board-approved", after "surgeon at" deleted "the member's residence or", after "board" inserted "the physician or surgeon", and at end after "member" inserted "and at the board's expense"; and made minor changes in style. Amendment effective July 1, 2009.

1995 Amendment: Chapter 175 in first sentence substituted "a member who receives a disability benefit" for "the recipient of a partial pension resulting from a permanent, total disability"; in second and third sentences substituted reference to member for reference to recipient; in third sentence, after "examinations", inserted "and the advice of the board's consulting physician"; and made minor changes in style. Amendment effective July 1, 1995.

19-17-605. Cancellation of disability benefits.

Compiler's Comments

2013 Amendment: Chapter 178 deleted former (1)(c) that read: "(c) the member engages in a gainful occupation during the previous year and earns compensation exceeding $5,500"; deleted former (3) that read: "(3) If the member's earnings in any year after the cancellation of disability benefits under subsection (1)(c) are less than $5,500, the disability benefit must be reinstated"; and made minor changes in style. Amendment effective July 1, 2013.

1995 Amendment: Chapter 175 substituted current text concerning cancellation and reinstatement of disability benefits for former text that read: "(1) The board may cancel a recipient's partial pension resulting from a permanent, total disability if:

(a) the board determines that the recipient is no longer permanently and totally disabled as provided in 19-17-408;

(b) the recipient refuses to submit to a medical examination under 19-17-408; or

(c) the recipient engages in a gainful occupation during the previous year and the compensation earned by him in that year exceeds $5,500.

(2) The cancellation of a pension under this section does not prejudice any right of a firefighter to other pension benefits payable under the Volunteer Firefighters' Compensation Act.

(3) If a former recipient's earnings in any year after the cancellation of his pension under subsection (1)(c) are less than $5,500, his pension must be reinstated." Amendment effective July 1, 1995.

19-17-606. Time disability benefits commence.

Compiler's Comments

Effective Date: Section 31, Ch. 64, L. 2011, provided that this section is effective July 1, 2011.

CHAPTER 18
FIREFIGHTERS' RETIREMENT

Part 1
General Provisions

19-18-102. Formation of fire department relief association — membership.

Case Notes

Membership in Fire Department Relief Association — Legal Right: Plaintiff was temporarily employed as a fireman in the Missoula Fire Department beginning on Sept. 1, 1918. His employment was discontinued about April 30, 1919. On April 20, 1920, when he was past 45 years of age he was appointed to the position of auto mechanic. He was reappointed on a yearly basis until June 15, 1941, when the position was abolished. During his period of service he occasionally performed as a fireman but was never confirmed as such. Plaintiff never took any action seeking confirmation or followed the statutory procedure to gain membership. The fire department relief association was a creature of statute and supported by a statutory levy. The State may enforce such statutory requirements for membership as it chooses. Plaintiff did not meet these qualifications so could not be granted membership for purposes of receiving a pension. State ex rel. Russ v. Fire Dept. Relief Ass'n, 114 M 430, 136 P2d 989 (1943).

Attorney General's Opinions

Fire Chief or Assistant Chief as Member of Relief Association: Under 7-33-4106 and 7-33-4122, a chief or assistant chief of a municipal fire department is a confirmed member of the fire department. Section 19-11-102 (renumbered 19-18-102) authorizes the formation of a fire department relief association by the confirmed members of a fire department. Because a chief or an assistant chief is a confirmed member of his fire department, he could be a member of the fire department relief association. 39 A.G. Op. 22 (1981).

Qualifications for Membership in Firemen's Relief Association: A city or firemen's relief association had no authority to deduct firemen's relief association dues from the wages of a probationary fireman, nor could a probationary fireman willingly contribute to a firemen's relief association and thereby receive benefits from that association. 36 A.G. Op. 30 (1975).

19-18-105. Establishment of disability and pension fund.

Case Notes

Association Benefits for Members of Organized Fire Departments Only: To entitle a fireman to the benefits of the disability and pension fund of the firemen's relief association, he had to be a member of an organized fire department, whether it be a paid or voluntary one, and confirmed as such by the City or Town Council (19-11-103, renumbered 19-18-103, and 19-11-205, renumbered 19-18-205). Where a volunteer department was abolished, a member thereof could no longer qualify as an eligible member of the relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939).

19-18-106. Transfer of money into fund by city treasurer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 2

Management and Protection of Fund

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-18-202. Treasurer's bond.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Effect of Abolishment on Membership of Association: A volunteer fire department was abolished upon the creation of a paid department. The volunteer members were no longer members of the relief association, and an election of a treasurer by such members was illegal. A treasurer elected by the members of the paid department was entitled to the possession of the property and funds of the association. Courts may take judicial notice of the articles of incorporation in passing upon qualifications of members. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939).

19-18-203. Use of disability and pension fund.

Compiler's Comments

1987 Amendment: In introductory clause deleted reference to part 3.

Attorney General's Opinions

Fire Department Relief Association — Retired Firefighters — Benefits: A fire department relief association may decide whether retired firefighters should remain members of the association and what rights and duties they should have in it. Retired firefighters are ineligible for the blanket policy of insurance that the firefighters relief association is authorized to purchase under this section. Funeral expense money provided under this section is payable to a deceased firefighter's estate. 36 A.G. Op. 62 (1976).

Volunteer Firefighters: Volunteer firefighters in second-class cities are entitled to all relief association benefits other than the service pension. 35 A.G. Op. 67 (1974).

Blanket Insurance Policy: After the 1967 amendment to this section, a fire department relief association may purchase a blanket insurance policy that will compensate for death or injuries of members not incurred in the line of duty. 32 A.G. Op. 3 (1967).

Funeral Benefits — Right: Unless otherwise provided in its charter or bylaws, it is discretionary with a fire department relief association as to whether funeral benefits will be paid to either its active or retired members. 30 A.G. Op. 1 (1963).

Right of Widow to Pension: A firefighter's widow who remarries and whose remarriage is annulled ab initio has remained unmarried and is entitled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off. 28 A.G. Op. 41 (1959).

19-18-204. Review and report by board of trustees.

Compiler's Comments

1991 Amendment: Near beginning substituted "review" for "audit". Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

19-18-205. Annual report of secretary and treasurer to association and state auditor.

Compiler's Comments

2001 Amendment: Chapter 483 in second sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In first sentence, before "report", deleted "detailed" and after "year" inserted "in accordance with 2-7-503" and in second sentence, after "association", inserted "the department of commerce"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

19-18-206. Authority of department of administration — mishandling of funds.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) and (2) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted references to department of commerce for references to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1) and (2).

19-18-207. Theft from funds.

Compiler's Comments

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Part 4
Management of Association — Investment of Fund

19-18-401. Management of association.

Compiler's Comments

1981 Amendments: Chapter 270 added "and of fire department relief associations of pure volunteer fire departments in first- and second-class cities".

Chapter 566 deleted "in municipalities other than first- and second-class cities" after "The management of fire department relief associations".

19-18-402. Investment of fund by trustees.

Compiler's Comments

2013 Amendment: Chapter 226 substituted "of the surplus money" for "thereof"; substituted (2) concerning a majority vote for a change in investment type for former (2) that read: "(2) At the time of purchase the investments must be stamped in boldface type substantially as follows: "property of the .... fire department relief association and negotiable only upon the order of the board of trustees of such association""; and made minor changes in style. Amendment effective April 18, 2013.

1985 Amendment: In (1)(a) after "savings and loan association", inserted "or credit union" and made minor change in phraseology.

19-18-403. Investment of fund by board of investments.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near beginning of second sentence substituted "board of investments" for "department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "department of community affairs".

Chapter 566 inserted "Whenever" in place of "When" at the beginning of (1); inserted "under the direction of" in place of "by" following "state treasurer for investment"; substituted "17-6-204" for "19-11-302 for associations in first- and second-class cities"; and added (2) defining surplus money.

Part 5
Contributions to Fund

19-18-501. Contributions to fund.

Compiler's Comments

2005 Amendment: Chapter 193 in (2) at beginning after "monthly" substituted "contribution to" for "fee which shall be paid into"; in (3) after "provided for in" deleted "19-18-503 and"; in (4) after "those" inserted "payments"; and made minor changes in style. Amendment effective April 7, 2005.

19-18-502. Refund of firefighter's contribution.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Refunds: Firefighters separated from service after July 1, 1967, for reasons other than retirement, death, or disability are entitled to a return of all contributions made by them to the disability and pension fund of the fire department relief association. 32 A.G. Op. 9 (1967).

19-18-503. Fund to be soundly funded.

Compiler's Comments

2017 Amendment: Chapter 64 in (1) at end of first sentence inserted "at fiscal yearend"; in (1)(a) substituted "three times but no more than five times the benefits paid by the fund in the previous or current fiscal year, whichever is greater" for "0.21% but no more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111, within the limits of the city or town"; and in (2) deleted last sentence that read: "Once an actuarial valuation has been conducted, funding must continue to be based on actuarial determinations rather than on the total assessed value of taxable property pursuant to subsection (1)(a)." Amendment effective March 1, 2017.

2005 Amendment: Chapter 193 in (1) at beginning deleted "The purpose of this section is to provide a means by which" and after "fund" substituted "must be soundly funded. The fund is soundly funded if, subject to subsection (2)" for "may be"; in (1)(a) at beginning inserted "assets in the fund are"; inserted (1)(b) requiring that funding be maintained at an actuarially sound level; inserted (2) regarding request and conduct of an actuarial valuation; deleted former (2) that read: "(2) Subject to 15-10-420, if the fund contains less than 0.21% of the total assessed value of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a tax as provided in 19-18-504. The tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund"; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendments — Composite Section: Chapter 29 in (1) after "at least" substituted "0.21% but not more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% but no more than 10% of the taxable valuation of all taxable property"; and near beginning of (2) after "less than" substituted "0.21% of the total assessed value" for "4% of the taxable valuation". Amendment effective July 1, 2001.

Chapter 574 in (2) at beginning inserted "Subject to 15-10-420" and in two places before "tax" deleted "special"; deleted former (3) that read: "(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1999 Amendment: Chapter 553 in (1) near middle substituted "at least 4% but no more than 10%" for "4%". Amendment effective January 1, 2000.

1989 Amendment: In (1) and (2) increased "3%" to "4%"; and made minor changes in grammar.

1983 Amendment: Inserted (3) requiring special tax levy to be in addition to all-purpose mill levy.

1981 Amendment: Increased 2% to 3% wherever it appears.

Attorney General's Opinions

No Authority of City to Levy Additional Special Tax to Fund Firefighters' Disability and Pension Fund When Maximum Mill Levy Already Imposed: This section authorizes a special tax levy as a means of maintaining a firefighters' disability and pension fund at a level equal to at least 4% but not more than 10% of the taxable valuation of all taxable property within the limits of a city or town. Whenever the fund contains less than 4% of the taxable valuation of all taxable property within the city limits, the governing body is required to levy a special tax as provided in 19-18-504. However, if the city has already imposed the maximum mill levy to fund the firefighters' disability and pension fund, it may not levy an additional special tax or seek voter approval for an additional special tax even if the fund's value is less that 4% of the taxable valuation of all taxable property within the city. (See 2001 and 2005 amendments.) 48 A.G. Op. 15 (2000).

All-Purpose Mill Levy — Forfeiture Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) (before 2005 amendment) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

19-18-504. Special tax levy for fund required.

Compiler's Comments

2017 Amendment: Chapter 64 inserted (1) requiring annual review of fund; in (2) inserted introductory clause concerning annual review; in (2)(b) substituted "the maximum but more than the minimum required to keep the fund soundly funded pursuant to 19-18-503(1)(a)" for "0.52%

but more than 0.21% of the total assessed value of all taxable property within the city or town"; and made minor changes in style. Amendment effective March 1, 2017.

2005 Amendment: Chapter 193 in (1) near beginning after "less than" substituted "the minimum amount required to keep the fund soundly funded pursuant to 19-18-503" for "0.21% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town"; inserted (3) requiring that all revenue from the tax be deposited in the fund; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendments — Composite Section: Chapter 29 in first sentence after "less than" substituted "0.21% of the total assessed value of taxable property, determined as provided in 15-8-111" for "4% of the taxable valuation of all taxable property" and after "shall" inserted "subject to 15-10-420" and in second sentence after "less than" substituted "0.52% but more than 0.21% of the total assessed value" for "10% but more than 4% of the taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 495 in first sentence substituted "annual tax" for "annual special tax" and in second sentence inserted "as provided in 15-10-425" and substituted "annual tax" for "annual special tax"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in first sentence after "council shall" substituted "subject to 15-10-420, levy an annual tax on the taxable value of all taxable property" for "levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property" and at end of second sentence substituted "voters as provided in 15-10-425, levy an annual tax" for "voters, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation"; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 33, Ch. 29, L. 2001, was a saving clause.

Applicability: Section 35, Ch. 29, L. 2001, provided: "(1) [This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001.

(2) Debt limits established under [this act] do not apply to bonds authorized before July 1, 2001, regardless of when the bonds are issued."

1999 Amendment: Chapter 553 in first sentence near middle inserted "or town" and inserted second sentence regarding levy of annual special tax; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendment: Increased "3%" to "4%".

1981 Amendments — Composite Section: Chapter 566 deleted former subsections (1) and (2) that provided for a special tax levy of not more than 4 mills for first- and second-class cities; deleted "In cities of the third class" at the beginning of the section; and substituted "Whenever" for "when" at the beginning of the section.

Chapter 614 increased 2% to 3% in (1), (2)(a), (2)(b), and (3); and increased 1% to 1.5% in (2)(a).

Because the deletion of former subsections (1) and (2) by Ch. 566, L. 1981, is an amendment in the nature of a repeal, the Code Commissioner has not codified the amendments to these subsections contained in Ch. 614, L. 1981. See 1-2-204.

Attorney General's Opinions

No Authority of City to Levy Additional Special Tax to Fund Firefighters' Disability and Pension Fund When Maximum Mill Levy Already Imposed: Section 19-18-503 authorizes a special tax levy as a means of maintaining a firefighters' disability and pension fund at a level equal to at least 4% but not more than 10% of the taxable valuation of all taxable property within the limits of a city or town. Whenever the fund contains less than 4% of the taxable valuation of all taxable property within the city limits, the governing body is required to levy a special tax as provided in this section. However, if the city has already imposed the maximum mill levy to fund the firefighters' disability and pension fund, it may not levy an additional special tax or seek voter approval for an additional special tax even if the fund's value is less that 4% of the taxable valuation of all taxable property within the city. (See 2001 and 2005 amendments.) 48 A.G. Op. 15 (2000).

19-18-511. Annual report of clerks of cities having fire departments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-18-512. State auditor — payment to association.

Compiler's Comments

1997 Amendment: Chapter 532 in (1), at end of third sentence, substituted "general fund" for "premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor"; in (2), at beginning, deleted "If" and after "subsection (1)" substituted "must be for at least" for "is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is"; deleted (3) that read: "(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (1) inserted last sentence referring to statutory appropriation.

1981 Amendments: Chapter 250 substituted "After" for "At" at the beginning of (1).

Chapter 566 deleted former subsections (1), (2), and (3) (see Ch. 296, L. 1979, for text), which are no longer necessary because cities of the first and second class can no longer participate in the retirement plan provided for in Title 19, chapter 11 (renumbered Title 19, chapter 18); deleted "except cities and towns of the first and second class" after "the treasurer of every city or town" in the first sentence of (1); changed internal references to conform to 1981 deletions.

19-18-514. State treasurer to pay warrants.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted provisions applicable only to first- and second-class cities which are no longer eligible to participate in the retirement plan provided for in Title 19, chapter 11 (renumbered Title 19, chapter 18).

Part 6
Benefits

Part Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981, are entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Practical Effect of Section on Use of Funds: Although the provisions of 19-18-606 (now repealed) are in conflict on the issue of whether the funds to be paid to the various fire relief associations are to be used by the associations to supplement retirees' pensions or reimburse the associations' treasuries for pension adjustments already paid out, the practical effect of the law, at least for the first few years of its operation, is to provide the associations with funds at the beginning of the fiscal year from which they can supplement the pensions of the retirees for that fiscal year. 36 A.G. Op. 41 (1975).

Pension Adjustments: Section 19-18-606 (now repealed) required the treasurer of a fire department relief association to request and the State Auditor to issue from the earmarked revenue fund (changed to special revenue fund in 1983) an amount equal to the sum total of the annual dollar difference between what the retirees or their surviving spouses and children received from the fund of the relief association for the fiscal year just preceding and one-half of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding. 36 A.G. Op. 41 (1975).

Computation of Benefits: Insurance premiums paid on behalf of firefighters are not part of their "regular monthly salary" for purposes of computing pension benefits under 19-18-606 (now repealed). 36 A.G. Op. 40 (1975).

19-18-601. Benefits the association may provide.

Case Notes

Pensioner Without Vested Right in Pension: A pension granted by the public authorities was not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner had no vested right, the pension being terminable at the will of the grantor. A City Council could abolish its volunteer fire department when in its judgment a paid department should be established and could also destroy the membership of a volunteer member in the firemen's relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939), explained in Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Incapacity Due to Illness: Under this section, a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such case the provisions of 19-11-602 (renumbered 19-18-602) and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Attorney General's Opinions

Right of Widow to Pension: A firefighter's widow who remarries and whose remarriage is annulled ab initio has remained unmarried and is entitled to the widow's pension under the fire department association pension plan retroactive to the day her pension was cut off. 28 A.G. Op. 41 (1959).

19-18-602. Service pension.

Compiler's Comments

2013 Amendment: Chapter 252 in (1) in first sentence substituted "pension to a member" for "pension to each of its members"; in (3)(b) at end inserted exception clause; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendment: Chapter 51 in (3)(b) after "pension may" substituted "be set by the board of trustees of the association, but may not exceed $225 a month" for "not exceed $150 a month"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: Near end of (3), increased monthly pension payment to volunteer firefighters from $100 to $150 a month.

Interpretation: Section 4, Ch. 484, L. 1977, read: "This act is not intended to increase or decrease benefits earned by present members under prior acts. The amendments in section 3 of this act are intended to clarify that section but are not intended to imply that prior to the effective date of this act a member could have retired prior to age 50 with full benefits to be paid at age 50."

Case Notes

Two-Year Statute of Limitations Applicable to Filing Suit for Volunteer Fire Department Partial Pension: Marx served as a volunteer firefighter from 1979 to 1995, when he was terminated for failure to complete training requirements. About 6 months after termination, Marx requested the firefighters relief association board to grant him a partial pension. In 2004 Marx was notified by the board that his request was denied pursuant to 19-18-602(5) because there was no other factor beyond Marx's control that would qualify him for a partial or reduced pension. Marx then filed suit against the association for damages and declaratory relief. The association moved for summary judgment on grounds that Marx had failed to file suit within 2 years of termination as required in 27-2-211. The District Court granted summary judgment for the association and Marx appealed, but the Supreme Court affirmed. Despite Marx's assertion that under 27-2-301 the time for running the statute of limitations did not begin until his request was formally denied, the District Court did not incorrectly determine the accrual date of Marx's cause of action. Marx cited no authority for the proposition that a demand was necessary to entitle him to maintain an action for a partial pension, and the Supreme Court declined to insert into 27-2-301 a requirement for formal repudiation or denial of a claim. Rather, the statute of limitation began to run from the time Marx knew the facts that would have justified a demand for the pension. The right to a service pension is a liability created by statute as contemplated in 27-2-211, and the association met its initial burden of establishing both the absence of genuine issues of material fact and its entitlement to judgment as a matter of law, while Marx failed to establish the existence of a genuine issue of material fact. Marx v. Belgrade Volunteer Firefighters Relief Ass'n, 2008 MT 410, 347 M 256, 198 P3d 247 (2008), distinguishing Kosty v. Lewis, 319 F2d 744 (D.C. Cir. 1963), Martin v. Constr. Laborer's Pension Trust, 947 F2d 1381 (9th Cir. 1991), and Wetzel v. Lou Ehlers Cadillac Group, 222 F3d 643 (9th Cir. 2000).

Incapacity Due to Illness: Under 19-11-611 (renumbered 19-18-611), a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such a case the provisions of this section and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

Attorney General's Opinions

Unified Retirement — Firefighters Entitled to Prior Benefits: In converting to the Unified Retirement System, all eligible firefighters are entitled to all pension benefits accrued to them under the old retirement system. A firefighter's pension constitutes an element of compensation, and a vested contractual right to pension benefits, which are stated in the retirement plan during the firefighter's employment, accrues when he begins paying into the retirement fund. Vested pension rights include the provisions that were used to compute the adjusted benefits under the old system. Firefighters hired before July 1, 1973, and who retired during the period from July 1, 1973, and July 1, 1981, are entitled to all pension benefits accrued to them under the old retirement system. 39 A.G. Op. 51 (1982).

Determination of Length of Service: Eligibility for a service pension from a fire department relief association under this section is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation. 38 A.G. Op. 4 (1979).

Volunteer Firefighters: Volunteer firefighters in second-class cities are entitled to all relief association benefits other than the service pension. 35 A.G. Op. 67 (1974).

Computation of Time: A fully paid firefighter who is not working in the department during the time of a disability is not on active duty and does not accrue time toward the necessary 20 years of active duty for a service pension. 33 A.G. Op. 11 (1969).

19-18-603. Partial service pension.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Determination of Length of Service: Eligibility for a service pension from a fire department relief association under this section is calculated on the basis of years of active duty as a fully paid firefighter and is not dependent upon the date of appointment or confirmation. 38 A.G. Op. 4 (1979).

19-18-604. Disability pension.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Near end of (3), increased monthly disability pension for volunteer firefighters from $75 to $125.

Case Notes

Workmen's Compensation Proviso Unconstitutional: The provisions of a repealed section clearly impaired an obligation of contract and had to be declared unconstitutional insofar as they prohibited a fireman or his widow or orphan from receiving payments from the disability and pension fund if they were also receiving payments under the Workmen's Compensation Act (section 92-101, et seq., R.C.M. 1947, now repealed; see Title 39, ch. 71). State ex rel. Evans v. Fire Dept. Relief Ass'n, 138 M 172, 355 P2d 670 (1960).

Incapacity Due to Illness: Under 19-11-611 (renumbered 19-18-611), a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such a case the provisions of 19-11-602 (renumbered 19-18-602) and this section, providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

19-18-605. Pensions to surviving spouses and children.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (3), in last sentence after "the pension", inserted "paid to a surviving spouse or children", after "exceed" substituted final clause, relating to service pension, for "$75 per month", and made minor changes in phraseology.

19-18-607. Payment of death benefits in absence of spouse or child.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-18-611. Procedure — applying for and collecting benefits.

Case Notes

Pensioner Without Vested Right in Pension: A pension granted by the public authorities was not a contractual obligation but a gratuitous allowance in the continuance of which the pensioner had no vested right, the pension being terminable at the will of the grantor. A City Council could abolish its volunteer fire department when in its judgment a paid department should be established and could also destroy the membership of a volunteer member in the firemen's relief association. State ex rel. Casey v. Brewer, 107 M 550, 88 P2d 49 (1939), explained in Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Incapacity Due to Illness: Under this section, a city fireman could properly be awarded benefits from the firemen's disability fund for incapacity from duty caused by illness in an amount equal to his monthly salary during the time of such incapacity. In such case the provisions of 19-11-602 (renumbered 19-18-602) and 19-11-604 (renumbered 19-18-604), providing for a service pension and limiting it to one-half the monthly salary last received by such member, had no application. State ex rel. Barry v. O'Leary, 83 M 445, 272 P 677 (1928).

19-18-612. Protection of benefits from legal process — nonassignability.

Compiler's Comments

2021 Amendment: Chapter 503 deleted former (2) that read: "(1) The amount determined pursuant to 15-30-2110(2)(c) of benefits received under this part is exempt from state, county, and municipal taxation"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2009 Amendment: Chapter 382 in (2) at beginning deleted "The first $3,600 or" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1997 Amendment: Chapter 552 at beginning of (1) inserted exception clause. Amendment effective July 1, 1997.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

CHAPTER 19
POLICE RETIREMENT — LOCAL FUNDS

Chapter Compiler's Comments

Section Not Codified: Section 11-1849, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 19, Ch. 335, L. 1974, as amended by sec. 1, Ch. 406, L. 1977.

Chapter Administrative Rules

ARM 2.43.1301 Retirement systems covered.

Chapter Attorney General's Opinions

Prior Out-of-State Service Not Applicable to Local Retirement Fund: A police officer participating in a local police retirement fund may not buy an additional number of years toward retirement based on prior out-of-state police service. 43 A.G. Op. 17 (1989).

Part 2
Management of Police Retirement Funds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-19-201. Local boards of trustees of funds.

Compiler's Comments

1999 Amendment: Chapter 562 near end of (3) substituted "presiding officer of the board" for "chairman"; near end of (4) substituted "the public employees' retirement board" for "the department of administration and the board"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

19-19-202. Limit on use of fund.

Compiler's Comments

1987 Amendment: In (2), in four places after "city's" or "city", inserted "or town's" or "or town".

1985 Amendment: In (1) at beginning, inserted exception clause; and inserted (2) providing for dissolution of the fund and refund of state contributions in certain cases.

19-19-203. Investment of fund.

Compiler's Comments

1981 Amendment: Deleted "except that the fund may not be invested in common stocks" from subsection (3) after "investments in 17-6-211".

19-19-205. Actuarial valuation of police retirement fund.

Compiler's Comments

2005 Amendment: Chapter 329 in (1) in first sentence near beginning changed "October" to "September". Amendment effective July 1, 2005.

1999 Amendment: Chapter 562 throughout section substituted "the public employees' retirement board" for references to the department of administration. Amendment effective July 1, 1999.

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

1997 Amendments: Chapter 422 in (3), in two places, substituted "state treasurer" for "state auditor" and at end deleted "The payment is statutorily appropriated as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 532 in (3), at end of third sentence, substituted "from the general fund" for "designated in the request"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (3) inserted last sentence referring to statutory appropriation.

Part 3
Contributions to Funds

19-19-301. City's contribution to fund.

Compiler's Comments

2001 Amendment: Chapter 574 at end substituted "met, the city, subject to 15-10-420, may impose an additional levy in an amount that is sufficient to meet the demand" for "met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand"; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

All-Purpose Mill Levy — Forfeiture of Powers: Municipalities that adopt the all-purpose mill levy authorized in 7-6-4452 (now repealed) forfeit the power to impose levies for any particular purpose not clearly excepted by statute. Thus, the all-purpose mill levy supplants the taxing authority granted in 7-33-4111, 19-10-301 (renumbered 19-19-301), and 19-11-503 (renumbered 19-18-503) but does not supplant the taxing authority granted in 7-32-4117, 7-33-4130, 19-3-204, 19-9-704 (renumbered 19-9-209), sec. 2, Ch. 324, L. 1975 (not codified), sec. 2, Ch. 359, L. 1975 (not codified), and sec. 3, Ch. 438, L. 1975 (not codified). 38 A.G. Op. 112 (1980).

Unauthorized Levies Not to Be Used as Basis for Temporary Increase: The special levies authorized by 7-32-4117, 7-33-4130, and 19-10-301 (renumbered 19-19-301) must be included in the 65-mill levy authorized by 7-6-4451. Any such special levies improperly levied in addition to the 65-mill all-purpose levy may not be used in computing the basis for a 5% increase under 15-7-122 (now repealed). 38 A.G. Op. 44 (1979).

19-19-302. Officer's contribution deducted from salary.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Withholding Retirement Contributions From Temporary Officer's Compensation Not Proper: The City Treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

19-19-303. Refund of officer's contribution.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

No Retroactive Effect: Right to a refund of contributions of a retired police officer of the Montana Statewide Police Reserve Fund is confined to police officers whose service with the city is discontinued after July 1, 1975, as there not only was no provision for refund of contributions but a prohibition against repayments as a pension or refund. 36 A.G. Op. 57 (1976).

Prior Decision: In an opinion written before the adoption of this section, it was held that a police officer who resigns from a city police force is not entitled to withdraw his contribution from the police pension fund. 29 A.G. Op. 11 (1961).

19-19-305. Annual state payments to municipality with police department.

Compiler's Comments

1997 Amendment: Chapter 532 in (1), in second sentence after "payment", inserted "from the general fund"; deleted former (2) that read: "The payments provided for by 19-19-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (1) inserted last sentence referring to statutory appropriation.

1981 Amendment: Substituted "After" for "At" at the beginning of (1).

Case Notes

Conditions Attached to Appropriation: Where title of appropriation bill indicated that its purpose was to provide for annual payment to cities and towns for police reserve fund, section of statute which contained restrictions on such payments, contrary to provisions of metropolitan police law (Title 7, ch. 32, part 41), was repugnant to Art. V, sec. 23, 1889 Mont. Const. (similar to Art. V, sec. 11(4), 1972 Mont. Const.), and therefore void. Helena v. Omholt, 155 M 212, 468 P2d 764 (1970).

Attorney General's Opinions

Pension Trust for PERS Members Prohibits Use of State Funds: Subsection (8) of 19-3-403 prohibits use of annual state payments received by a city pursuant to this section for a pension trust plan for police officers who are also members of the Public Employees' Retirement System. 42 A.G. Op. 92 (1988).

Consolidated Law Enforcement Funding: Third-class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under 19-10-305 (renumbered 19-19-305) to pay the county for their share of the consolidated law enforcement expense unless those funds are used exclusively for pensions and/or training. 37 A.G. Op. 117 (1978).

Expenditure of State Funds for Police Officers: A town may expend funds received pursuant to 19-10-305 (renumbered 19-19-305) to purchase an annuity for former members of its police department even though the town now has a consolidated department. 37 A.G. Op. 103 (1977).

Interlocal Agreement — Qualifies for State Payment: A contracting city or town under an interlocal agreement providing for cooperative law enforcement services would not forfeit the right to receive state payments as each municipality would still be provided law enforcement services through a local police department. A city or town not governed by the provisions of the police retirement system may thus properly expend the state payment received under this section for police training or to purchase pensions for members of the police department supplying police services pursuant to the interlocal agreement. 35 A.G. Op. 72 (1974).

Part 4
Eligibility for Retirement Benefits

19-19-401. Eligibility for service retirement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Deleted former (3) that read: "Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall pass from the active list to the retired list."

Attorney General's Opinions

Retirement Credit for Temporary Police Duty — Contributions: Time served for temporary duty as a special officer counts toward a police officer's time requirements for the retired list under this section. The City Treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

19-19-402. Eligibility for disability retirement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Employer May Decide Date of Impairment and Date of Retirement: This section makes it clear that the appropriate entity has discretion in making the determination as to whether and when an injury or disability permanently impairs ability to perform and makes it clear that a transfer to the retired list is mandatory only upon the making of an impairment determination. The section does not mandate transfer and the commencement of retirement benefits as of the date of the injury or disability. Silva v. Columbia Falls, 258 M 329, 852 P2d 671, 50 St. Rep. 556 (1993).

Grant of Retirement as of Date of Evidence of Permanent Disability Rather Than Date of Injury: A police officer was injured in January 1989 and applied for disability retirement in March 1989. Medical evidence in March and August 1989 indicated that he would be able to return to work. The first medical statement that he would not be able to return to work was received by the city on June 21, 1990, from a doctor who stated that plaintiff's disability had existed since the date of the injury. This statement conflicted with the prior medical evidence. The city's decision to grant retirement benefits as of June 21, 1990, had a reasonable basis, was not arbitrary and capricious, and was affirmed. Silva v. Columbia Falls, 258 M 329, 852 P2d 671, 50 St. Rep. 556 (1993).

Stress-Related Problems Not Compensable: A police officer was involved in two automobile accidents while on active duty, but neither injury resulted in wage loss nor did the officer mention any problems related to the injuries. The officer quit the department some years later due to stress and anxiety problems. The District Court properly affirmed the City Council decision to deny benefits because the officer's problems did not result from the active discharge of his duties but rather from stress and anxiety generally associated with his employment, neither of which is compensable as a workers' compensation injury or occupational disease. Norman v. Whitefish, 258 M 26, 852 P2d 533, 50 St. Rep. 441 (1993).

19-19-403. Option of officer to remain on active list.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: At end of (1) deleted "except that he may not elect to serve past his 65th birthday".

19-19-404. Reinstatement to retired list.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-19-405. Credit for military service.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-19-406. Election to qualify previous military service.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Benefits

Part Compiler's Comments

Section Not Codified: Section 11-1846, R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 16, Ch. 335, L. 1974.

19-19-501. Service retirement allowance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Near middle of (1), after "police officer", deleted "or who is placed on the retired list under 19-10-401(3) prior to reaching 20 years of service"; and deleted former (3) that read: "A police officer who is placed on the retired list under 19-10-401(3) and who was theretofore eligible at his option to be placed on the retired list under 19-10-401(1) or (2) but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2) of this section."

Attorney General's Opinions

Withholding Retirement Contributions From Temporary Officer's Compensation Not Proper: The City Treasurer may not withhold contributions for the retirement fund from a temporary officer's compensation, as the purpose of the retirement fund is to benefit active officers who have completed 20 years or more of service. 41 A.G. Op. 29 (1985).

19-19-502. Disability retirement allowance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Authority to Place Incapacitated Police Officer on Reserve List: The Board of Police Commissioners for the city of Great Falls found that appellant's ability to act as a police officer was impaired. They recommended that the City Council place him on the reserve list. The City Council refused the recommendation. Section 5108.4, R.C.M. 1935 (now repealed), gave disjunctive authority to the Police Commissioners and the City Council to act in this matter. The finding of disability on the part of appellant made by the Board of Police Commissioners was binding on the City Council, and appellant was entitled to be placed on the reserve list and receive a disability pension. State ex rel. Goings v. Great Falls, 112 M 51, 112 P2d 1071 (1941).

19-19-503. Death benefits.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Annulment of Surviving Spouse's Remarriage: A police officer's surviving spouse who remarries and whose remarriage is annulled ab initio is entitled to reinstatement of pension benefits. 37 A.G. Op. 48 (1977).

19-19-504. Protection of benefits from legal process.

Compiler's Comments

2021 Amendment: Chapter 503 deleted former (2) that read: "(1) The amount determined pursuant to 15-30-2110(2)(c) of benefits received under this part is exempt from state, county, and municipal taxation"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2009 Amendment: Chapter 382 in (2) at beginning deleted "The first $3,600 or" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1997 Amendment: Chapter 552 at beginning of (1) inserted exception clause. Amendment effective July 1, 1997.

1991 Amendment: Inserted (2) concerning exempting first $3,600 of retirement allowance from taxation by state, county, or municipality. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-19-505. Withholding of group insurance premium from retirement benefit.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-19-506. Supplement to certain pensions.

Compiler's Comments

1997 Amendment: Chapter 532 in (2)(d)(iii), near middle after "minor", substituted "child" for "children"; in (4), in second sentence after "out of the", substituted "general fund" for "premium tax collected on insurance, as provided in 19-19-305(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: In (4) inserted last sentence referring to statutory appropriation.

Attorney General's Opinions

Payment of Pension Supplement: The first supplemental payment to recipients was intended to be made in July 1977, requiring immediate lump-sum payments retroactive to then, followed by monthly payments from the present. The appropriate funding to be implemented may be determined by the administrator of the Public Employees' Retirement Division in conformity with this opinion. 37 A.G. Op. 77 (1977).

CHAPTER 20
TEACHERS' RETIREMENT

Chapter Compiler's Comments

Section Not Codified: Section 75-6218, R.C.M. 1947, discontinuing the former retirement system was not codified in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 113, Ch. 5, L. 1971.

Chapter Administrative Rules

Title 2, chapter 44, ARM Teachers' Retirement Board.

Chapter Case Notes

Compulsory Retirement: Motion and rules adopted by school trustees requiring the retirement of all teachers upon arriving at the age of 65 years were void. Abshire v. School District, 124 M 244, 220 P2d 1058 (1950).

Part 1
General Provisions

19-20-101. Definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 173 in definition of earned compensation (c)(ii) providing that cash paid in lieu of a benefit is not considered earned compensation; and made minor changes in style. Amendment effective July 1, 2021.

Chapter 339 in definition of employer in (h) before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 276 inserted definitions for alternate beneficiary, beneficiary designation, beneficiary designation record, contingent beneficiary, designated beneficiary, individual, and primary beneficiary; in definition of accumulated contributions near beginning inserted "or "account balance"", at end inserted "minus any amount deducted for correction of errors and the aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on behalf of the member", and deleted former last sentence that read: "Regular interest must be computed and allowed to provide a benefit at the time of retirement"; deleted former definition of beneficiary that read: ""Beneficiary" means one or more persons formally designated by a member, retiree, or alternate payee to receive a retirement allowance or payment upon the death of the member, retiree, or alternate payee except for a joint annuitant"; in definition of member deleted former last sentence that read: "An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303"; in definition of normal form or normal form benefit substituted "payable only for" for "payable during"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendments — Composite Section: Chapter 39 inserted definition of extra duty service; in definition of beneficiary inserted references to alternate payee; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 150 in definition of earned compensation inserted (b)(ix) regarding professional stipends; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 4, Ch. 150, L. 2017, provided: "[This act] applies to teachers who obtain certification or recertification from the national board for professional teaching standards on or after July 1, 2017."

2013 Amendments — Composite Section: Chapter 366 inserted definitions of date of termination and position reportable to the retirement system; in definition of average final compensation after "earned compensation" deleted "in 3 consecutive years" and after "which" inserted "all required"; in definition of employer in (k) substituted "agency, political subdivision, or instrumentality" for "agency or subdivision"; in definition of normal retirement age substituted "60" for "55" and at end deleted "with the right to receive immediate retirement benefits without an actuarial reduction in the benefits"; in definition of retired substituted "is considered in retired member status under the provisions of 19-20-810" for "has terminated employment that qualifies the person for membership and who has received at least one monthly retirement benefit paid pursuant to this chapter"; in definition of termination substituted "the employment relationship between the member and the member's employer has been terminated as required in 19-20-810" for "the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 389 in definition of average final compensation after "earned compensation" deleted "in 3 consecutive years"; in definition of member inserted second sentence concerning member tiers; inserted definitions of tier one member and tier two member; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendment: Chapter 59 in definition of average final compensation after "means" substituted current language for "the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b)"; in definition of beneficiary in two places after "retiree" deleted "or benefit recipient" and at end inserted "except for a joint annuitant"; inserted definitions of benefit recipient and joint annuitant; in definition of earned compensation in (a) inserted reference to subsections (b) and (c), after "remuneration" substituted "paid for the service of a member" for "exclusive of maintenance, allowance, and expenses, paid for services by a member", at end of sentence after "deducted" deleted "from the member's compensation", in (b) after "does not" substituted "mean" for "include", in (b)(i) after "on behalf of members for" deleted "health or dependent care expense accounts or any employer contribution for health", in (b)(ii)(F) after "any similar" deleted "payment for any", in (b)(iv) after "on behalf of" substituted "a member" for "an employee", in (b)(v) at beginning inserted "termination pay" and after "pursuant to 19-20-716" deleted "earned compensation does not include termination pay", deleted former (d) and introductory language of (e) that read: "(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include", in (b)(vii) after "types of leave" substituted "paid to a member prior to termination from employment or accrued" for "that is allowed to a member and that is accrued", inserted (b)(ix) providing for similar payment, and inserted (c) concerning fringe benefits; in definition of full-time service in (b) before "9 months" inserted "at least" and in (c) at beginning substituted "at least 1,080 hours in a fiscal year" for "full-time" and after "school board" substituted language regarding reporting and standard for full-time service for "that is less than 180 days but meets minimum accreditation requirements of 1,080 hours"; in definition of part-time service after "means service that is" substituted "not full-time service" for "less than 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year"; in definition of retired member inserted reference to retired and retiree, and after "membership" deleted "under 19-20-302"; in definition of retirement allowance inserted "or "retirement benefit"", after "payment due to a" substituted "retired member" for "person", and near end substituted "joint annuitant or beneficiary" for "beneficiary as provided in 19-20-1001"; in definition of service after "performance of" deleted "instructional" and after "duties" deleted "or related activities"; in definition of termination pay in (a) at end after "terminating employment" deleted "and on which employee and employer contributions have been paid as required by 19-20-716"; in definition of vested after "contributions have been made" deleted "as required by 19-20-602, 19-20-605, and 19-20-607"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 in definition of employer in (b) substituted "a public school district, as provided in 20-6-101 and 20-6-701" for "the trustees of a district", inserted (c) through (j) including additional educational and correctional entities, and in (k) at end after "system" inserted "pursuant to 19-20-302"; in definition of full-time service inserted (c) to include full-time service under an adopted alternative school calendar in certain circumstances; inserted definition of normal form; in definition of normal retirement age after "earlier than" substituted "55 years of age" for "the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability"; in definition of part-time service in first sentence after "less than" substituted "180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year" for "full-time"; deleted former definition of prior service that read: ""Prior service" means employment of the same nature as service but rendered before September 1, 1937"; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 23(1), Ch. 282, L, 2009, provided: "The amendment to the definition of full-time service in 19-20-101 applies retroactively, within the meaning of 1-2-109, to full-time service on or after January 1, 2005."

2007 Amendments — Composite Section: Chapter 90 in definition of accumulated contributions in first sentence near end and in definition of member at end of first sentence substituted "savings account" for "savings fund". Amendment effective March 30, 2007.

Chapter 305 in definition of full-time service after "that is" substituted "at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year" for "full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year"; in definition of part-time service in first sentence at end deleted "or that totals less than 180 days in a normal academic year"; in definition of vested inserted reference to 19-20-607; and made minor changes in style. Amendment effective April 27, 2007.

2003 Amendments — Composite Section: Chapter 174 in definition of normal retirement age in (c) substituted "without an actuarial reduction" for "without actuarial or similar reduction" and at end after "benefits" deleted "because of retirement before a specified age". Amendment effective March 31, 2003.

Chapter 114 in definition of earned compensation in (e)(i) inserted "26 U.S.C. 457(f)"; in definition of Internal Revenue Code substituted "has the meaning provided in 15-30-101" for "means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999"; and in definition of termination pay in (b)(ii) inserted "26 U.S.C. 457(f)". Amendment effective October 1, 2003.

2001 Amendment: Chapter 45 in definition of actuarial equivalent after "computed" substituted "upon" for "with regular interest, on" and at end substituted "mortality table and interest rate assumption set by the retirement board" for "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually"; in definition of beneficiary near beginning substituted "one or more persons" for "a person"; in definition of earned compensation inserted (e)(ii) excluding sick, annual, or other types of leave and inserted (e)(iii) excluding incentive or bonus payments; inserted definition of normal retirement age; in definition of part-time service substituted "180 days" for "9 months"; in definition of regular interest after "means interest" deleted "at 4% a year compounded annually or"; in definition of retired member substituted "qualified the person" for "is eligible"; in definition of retirement allowance substituted "monthly payment due" for "payment due monthly"; in definition of termination pay at end inserted "and on which employee and employer contributions have been paid as required by 19-20-716"; in definition of written application near beginning inserted "or "written election"" and substituted "required by statute or the rules of the board" for "specified by the board"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in definition of average final compensation at end of first sentence after "19-20-602" deleted "or 19-20-413" and at end of third sentence substituted "19-20-716(1)(b)" for "19-20-716(2)"; in definition of earned compensation at beginning of (c) inserted "Unless included pursuant to 19-20-716" and after "include" substituted "termination pay" for "lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment" and inserted (e) providing that earned compensation does not include compensation paid to a member from a plan for the deferral of compensation under the federal tax code; inserted definitions of internal revenue code, retired member, and written application; in definition of retirement system after ""system"" inserted "or "plan""; in definition of termination inserted "or "terminate""; in definition of termination pay after "form of" substituted "bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other" for "termination pay made at the time of retirement or death", after "employment" deleted "any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence", and inserted (b) outlining what is excluded from termination pay; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 deleted definition of annuity that read: ""Annuity" means the payments made to a beneficiary for life that are derived from a member's accumulated contributions"; deleted definition of annuity reserve that read: ""Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board"; in definition of average final compensation, near middle of first sentence, inserted reference to 19-20-805 and at end inserted reference to 19-20-413, inserted second and third sentences regarding inclusion in calculation of average final compensation of amounts not included in earned compensation, and deleted (b) through (e) that read: "(b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).

(d) If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be refunded.

(e) For purposes of this subsection (5), termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence"; in definition of beneficiary substituted "person formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient" for "person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system"; in definition of earned compensation, in first sentence after "remuneration", inserted "exclusive of maintenance, allowance, and expenses" and at end substituted "employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation" for "employer, as defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code, exclusive of maintenance, allowances, and expenses", deleted second, third, and fourth sentences that read: "The earned compensation is remuneration that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence, provided that the retirement system receives the contribution required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary that the member would have earned had the member's part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received had the member completed the full year, except that any termination pay, as defined in subsection (5)(e), received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year", inserted (b) and (b)(i) through (b)(iv) excluding from earned compensation employer-paid insurance premiums, employer-paid professional dues and maintenance expenses, imputed value of insurance, and employer-provided noncash benefits, inserted (c) excluding from earned compensation lump-sum payments and bonuses, and inserted (d) providing that fringe benefits are earned compensation; in definition of part-time service, at end of first sentence, substituted "in a normal academic year" for "in any year"; deleted definition of pension that read: ""Pension" means the payments made to a beneficiary for life that are paid out of the pension accumulation fund"; deleted definition of pension reserve that read: ""Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board"; in definition of retirement allowance, after "means", substituted reference to monthly payment for service or disability retirement or for death of member for "the annuity plus the pension"; in definition of Retirement Board inserted "or "board""; in definition of retirement system inserted "or "system""; inserted definitions of termination, termination pay, and vested; and made minor changes in style. Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 in definition of average final compensation, in (b) after "19-20-804", substituted "the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less" for "the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%"; near beginning of definition of earned compensation, after "means", substituted "except as limited by 19-20-715, remuneration paid for services by a member out of funds controlled by an employer, as defined under this chapter, before any tax-deferred deductions allowed under the Internal Revenue Code, exclusive of maintenance, allowances, and expenses" for "the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, a cafeteria plan, a tax sheltered annuity, a deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member" and in second sentence, after "compensation is", substituted "remuneration" for "the full compensation, pay, or salary"; and made minor changes in style. Amendment effective March 10, 1995.

1991 Amendment: In definition of earned compensation inserted fourth sentence regarding compensation that was not paid to a member due to a temporary absence.

1989 Amendments: Chapter 56 in first sentence of definition of earned compensation inserted reference to a cafeteria plan; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

Chapter 331 in definition of average final compensation inserted (b) and (c) relating to calculation based on earned compensation and in (d)(iii) inserted "and contributions made under 19-4-602 [renumbered 19-20-602] and 19-4-605 [renumbered 19-20-605] must be refunded"; corrected internal reference; and made minor change in punctuation. Amendment effective March 27, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 331, L. 1989, provided: "It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their last years of employment.

The bill provides that the amount of each year's earned compensation that may be used in calculating a member's average final compensation may not exceed the member's earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

(1) result from collective bargaining agreements;
(2) have been granted by the employer to all other similarly situated employees; or
(3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap."

1987 Amendment: At end of (2) substituted "1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually" for "mortality tables adopted by the retirement board".

1985 Amendments: Chapter 224 in (5)(a)(ii) after "compensation", inserted "if the member has 4 or more years of service with the employer from which the termination pay was received", after "creditable service", deleted "with the employer from whom this type of compensation was received", and in last sentence substituted "contributions on the termination pay according to the rates provided for in 19-4-602(1) [renumbered 19-20-602(1)] and 19-4-605(1) [renumbered 19-20-605(1)]" for "the regular contribution on the termination pay".

Chapter 464 in (5)(a) at end of first sentence, substituted "19-4-602 [renumbered 19-20-602]" for "19-4-602(1)".

1983 Amendment: In definition of earned compensation substituted language of first two sentences defining earned compensation and providing that the employer shall fix the value of any housing provided for ""Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind." and inserted third sentence excluding other amounts paid in kind and fringe benefits and exception at end.

1981 Amendment: Added the three options in definition of average final compensation, one of which must be selected if earned compensation includes termination pay; and added (5)(b) defining termination pay.

Section Not Codified: Section 75-6201(19), R.C.M. 1947, was not codified as temporary in the MCA. This section has not been repealed and is still valid law. Citation may be made to sec. 96, Ch. 5, L. 1971.

Administrative Rules

ARM 2.44.517 Formula for determining contributions due on termination pay.
ARM 2.44.517A Reporting of termination pay.
ARM 2.44.518 Limit on earned compensation.
ARM 2.44.525 Calculation of age.
ARM 2.44.526 Value of housing.

ARM 2.44.530 Determination of incentives and bonuses as part of a series of annual payments and included in earned compensation.

Case Notes

Constitutionality: Provisions of 1945 amendment to former subsection defining accumulated contributions were unconstitutional as impairing teacher's contractual rights where they deprived withdrawing member of interest to which she would have been entitled under law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Attorney General's Opinions

Earned Compensation — Inclusion of Unearned Sick and Vacation Leave of Disabled Teacher: If a teacher retires on a disability allowance prior to the completion of a full year and is statutorily entitled to earned compensation in the Teachers' Retirement System in an amount equal to the "compensation, pay or salary which he would have received had he completed the full year", the Teachers' Retirement Board must include in the calculation of his earned compensation the value of the sick leave and vacation leave the member would have earned had he completed the contract year. (See 2001 amendment to this section's definition of "earned compensation".) 40 A.G. Op. 10 (1983).

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

19-20-102. Retirement system — policy.

Compiler's Comments

2011 Amendment: Chapter 59 in (2)(a) after "normal service" deleted "retirement"; and inserted (3) regarding memoranda of understanding. Amendment effective July 1, 2011.

2007 Amendment: Chapter 305 inserted (2) concerning policy of state; and made minor changes in style. Amendment effective April 27, 2007.

Former System: The former retirement system, prior to 1937 (sections 1113 to 1132, R.C.M. 1935), was discontinued by sec. 12, Ch. 87, L. 1937; sec. 6, Ch. 28, L. 1949; and sec. 2, Ch. 270, L. 1959.

Although recognized as the state teachers' retirement system by 19-4-102 (renumbered 19-20-102), the 1937 chapter and amendments thereto were repealed by sec. 496, Ch. 5, L. 1971.

Administrative Rules

ARM 2.44.530 Determination of incentives and bonuses as part of a series of annual payments and included in earned compensation.

Case Notes

Contractual Nature of Rights: The Teachers' Retirement Act of 1937 was one providing for payments of annuity rather than a pension and created a contractual annuity. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

19-20-103. Implied consent of employee.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

19-20-104. Guarantee by state.

Compiler's Comments

2007 Amendment: Chapter 90 in two places substituted "account" for "fund". Amendment effective March 30, 2007.

1997 Amendment: Chapter 442 near middle substituted "maintenance of accumulated contributions in the annuity savings fund" for "maintenance of annuity reserves in the annuity reserve fund" and near end substituted "payment of all retirement allowances" for "payment of all annuities, pensions". Amendment effective April 30, 1997.

19-20-106. Retaining qualified plan status — board rulemaking authority.

Compiler's Comments

1999 Amendment: Chapter 111 in (1) inserted first sentence requiring board to administer plan to satisfy requirements for qualified governmental plan under federal tax code and in second sentence after "systems" inserted language referring to plan's status as a qualified governmental plan under 414(d) of federal tax code; inserted (2) providing composition of the plan document for retirement plan; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 442, L. 1997, provided: "A statement of intent is required for this bill because [section 3] [19-20-106] gives the teachers' retirement board authority to adopt administrative rules.

The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory provisions governing the teachers' retirement system be subject to federal tax law applicable to public retirement plans. The legislature intends that the board make rules useful and necessary to ensure compliance with federal law and necessary to maintain a federal tax qualified plan status."

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

Administrative Rules

ARM 2.44.417 Limitations on after-tax purchase of permissive service credit.
ARM 2.44.529 Limitation on annual benefit.
ARM 2.44.701 Vesting in member contributions.
ARM 2.44.702 Good faith compliance with Internal Revenue Code.
ARM 2.44.703 Timing of distribution.
ARM 2.44.704 Limitation of amount of annuity distribution to beneficiary.
ARM 2.44.705 Death and disability benefits limited by incidental benefit rule.
ARM 2.44.706 Good faith continuation of distribution options.
ARM 2.44.707 Distribution by direct rollover.

19-20-111. Teachers' retirement system benefit policy statement.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 2
Administration of System

19-20-201. Administration by retirement board — jurisdiction and venue for judicial review.

Compiler's Comments

2021 Amendment: Chapter 535 in (5) before "the first judicial district" inserted "the judicial district in which the appealing party resides or, if the person resides outside the state" and at end deleted "unless otherwise stipulated by the parties"; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendments — Composite Section: Chapter 155 inserted (1)(g) concerning actuarial investigations and reports; in (4) inserted reference to the state administration and veterans' affairs interim committee, substituted "reports" for "report", and inserted reference to (1)(g); and made minor changes in style. Amendment effective October 1, 2013.

Chapter 366 inserted (5) regarding jurisdiction and venue for judicial review. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 155, L. 2013, provided: "WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the State Administration and Veterans' Affairs Interim Committee voted to make the recommendations contained in this bill."

2007 Amendment: Chapter 285 in (1)(f) after "system" inserted "that includes an analysis of how market performance is affecting the actuarial funding of the retirement system"; and inserted (4) requiring board to make available to legislature copies of annual actuarial valuation and required transactions and market performance reports. Amendment effective June 1, 2007.

2003 Amendment: Chapter 174 in (1)(d) after "planning" deleted "as a part of the information required by 17-7-111"; inserted (2) authorizing board or representative to conduct hearings, administer oaths, take depositions, and issue subpoenas in discharge of duties; and made minor changes in style. Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 inserted (2) authorizing board to send certain material for delivery to employees and requiring employers to provide board with point of contact; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1993 Amendment: Chapter 349 at beginning of (4) substituted "submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing" for "publish a biennial report by January 1 of each year the legislature meets which reports in detail" and at end, after "system", deleted "and submit the biennial report to the governor and, as provided in 5-11-210, to the legislature"; and made minor changes in style.

1991 Amendment: Near end of (4) substituted "as provided in 5-11-210" for "furnish copies". Amendment effective March 20, 1991.

Administrative Rules

ARM 2.44.202 Applicability of rules.
Title 2, chapter 44, subchapter 3, ARM Membership.
Title 2, chapter 44, subchapter 4, ARM Creditable service.
Title 2, chapter 44, subchapter 5, ARM Benefits.
ARM 2.44.522 Family law order — contents and duration.
ARM 2.44.523 Family law orders — approval and implementation.
ARM 2.44.524 Adjustment of disability allowance for outside earnings.

19-20-202. Per diem and expenses of board members.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 603, L. 2023. Amendment effective July 1, 2023.

2007 Amendment: Chapter 90 in last sentence substituted "expense account" for "expense fund"; and made minor changes in style. Amendment effective March 30, 2007.

1983 Amendment: Increased per diem from $25 to $50.

19-20-203. Officers and employees of retirement board.

Compiler's Comments

2011 Amendment: Chapter 59 deleted former (1)(b) that read: "(b) appoint a secretary, who may be one of its members"; in (1)(b) at beginning after "employ" inserted "an executive director and other"; and made minor changes in style. Amendment effective July 1, 2011.

1997 Amendment: Chapter 532 in (1)(c), after "system", inserted "and establish their compensation pursuant to Title 2, chapter 18"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 111 inserted (2) providing that a quorum is three members; and made minor changes in style. Amendment effective March 10, 1995.

1987 Amendments: Chapter 24 deleted former (4) that read: "(4) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system".

Chapter 490 in (4), after "actuary", inserted "who meets the qualifications established by the retirement board".

Administrative Rules

ARM 2.44.304 Qualification of the actuary.

19-20-205. Board to determine membership.

Administrative Rules

Title 2, chapter 44, subchapter 3, ARM Membership.

19-20-206. Board to grant benefits.

Compiler's Comments

2001 Amendment: Chapter 45 inserted second and third sentences regarding granting of benefits by board. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Administrative Rules

ARM 2.44.306 Actuarial assumptions, rates, and tables.

19-20-208. Duties and liability of employer.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 173 inserted (1)(a)(i) regarding reporting requirements and timelines; deleted former (1)(h) and (1)(i) (see 2021 Session Law for former text); in (3) near beginning substituted "shall" for "must"; and made minor changes in style. Amendment effective July 1, 2021.

2019 Amendment: Chapter 276 inserted (3) concerning an employer submitting a wage and contribution report to the retirement system. Amendment effective July 1, 2019.

2013 Amendments — Composite Section: Chapter 282 in (1)(f) substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

Chapter 389 in (1)(a) substituted "prescribed pursuant to 19-20-602 and 19-20-608" for "prescribed by 19-20-602"; in (1)(b) inserted "and 19-20-609"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of

New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendments — Composite Section: Chapter 59 in (1)(e) after "social security number" inserted "time worked" and substituted "position that is reportable to the retirement system pursuant to 19-20-731" for "part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731". Amendment effective July 1, 2011.

Chapter 151 inserted (2) establishing joint and several liability for an employer that fails to timely or accurately report employment information; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 320 in (5) at end substituted "19-20-731" for "19-20-804". Amendment effective April 21, 2005.

2003 Amendment: Chapter 174 inserted (5) requiring employer to report monthly to board name, social security number, and gross earnings of each retired member employed part-time; and made minor changes in style. Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 near end of (1) substituted "executive director" for "secretary"; in (2), at beginning, substituted "transmit to the executive director" for "pay to the secretary" and at end, after "transmitted", deleted "to the secretary"; inserted (8) requiring employers to report to Board amounts converted to earned compensation; and made minor changes in style. Amendment effective April 30, 1997.

1987 Amendment: Inserted (5) referring to optional retirement program.

1985 Amendment: In (1) at beginning substituted "pick up" for "deduct", and in middle after "19-4-602 [renumbered 19-20-602]", deleted "from each salary payment for each payroll period".

Administrative Rules

ARM 2.44.515 Correction of errors on contributions and overpayments.

19-20-212. General internal revenue service qualification rules.

Compiler's Comments

2005 Amendment: Chapter 320 in (5)(a) at beginning substituted "If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code, the board may establish" for "The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. If the board elects to establish", near middle after "arrangement" substituted "and" for "the board shall", and at end inserted "and this section"; inserted (5)(b) introductory clause relating to excess benefit arrangement requirements; and made minor changes in style. Amendment effective April 21, 2005.

Removal of Contingent Effective Date: Section 17, Ch. 320, L. 2005, amended sec. 29(2), Ch. 111, L. 1999, by removing language related to a contingent effective date and replacing it with an effective date of July 1, 2005.

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

2003 Amendment: Chapter 174 at beginning of second sentence in (5) inserted "If the board elects to establish a qualified governmental excess benefit arrangement"; and made minor changes in style. Amendment effective March 31, 2003.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

19-20-215. Presentation to board of investments.

Compiler's Comments

Effective Date: Section 11, Ch. 285, L. 2007, provided that this section is effective June 1, 2007.

19-20-216. Board to make special report.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 45, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

Effective Date: Section 26, Ch. 389, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 3
Membership

Part Administrative Rules

Title 2, chapter 44, subchapter 3, ARM Membership.

19-20-301. Membership application.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

19-20-302. Active membership.

Compiler's Comments

2017 Amendment: Chapter 165 inserted (9) relating to bona fide volunteer positions. Amendment effective July 1, 2017.

2015 Amendment: Chapter 248 in (2) inserted "or 19-3-413". Amendment effective January 1, 2016.

2013 Amendment: Chapter 282 in (1)(b), (8)(a), and (8)(b) substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2009 Amendment: Chapter 282 in (1) in introductory clause after "persons" inserted "employed by an employer"; in (1)(c) after "nurse" inserted "professionally qualified person as defined in 20-7-901" and after "support" inserted "dean of students"; in (1)(d) substituted "a person employed in a teaching or an educational services capacity by" for "in a teaching capacity by the office of superintendent of public instruction", and before "education" deleted "special"; in (1)(f) after "employed" inserted "as a teacher" and before "services" substituted "educational" for "instructional"; in (1)(g) at beginning inserted exception clause; inserted (1)(h) regarding staff of a community college; inserted (1)(i) regarding employment in a nonclerical position; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 90 in (1)(c) inserted "paraprofessional who provides instructional support"; in (2) in first sentence near middle after "19-3-412 and" substituted "shall" for "may" and substituted "file an irrevocable written election" for "elect"; deleted former (4)(c) and (4)(d) that read: "(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001"; inserted (8)(a) and (8)(b) regarding participation in optional retirement program; and made minor changes in style. Amendment effective March 30, 2007.

2005 Amendment: Chapter 320 in (5) at end substituted "19-20-731" for "19-20-804". Amendment effective April 21, 2005.

2003 Amendment: Chapter 402 inserted (1)(f) requiring person elected as county superintendent of schools to be active member of retirement system; at beginning of (2) substituted "A retired member" for "A person", after "schools" inserted "or appointed to complete the term of an elected county superintendent of schools", and after "become" inserted "or to not become"; and made minor changes in style. Amendment effective April 17, 2003.

2001 Amendment: Chapter 45 in (1) after "the retirement system" deleted former exception that read: "with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members"; in (1)(c) near beginning substituted "a teaching capacity" for "an instructional services capacity"; deleted former (1)(e) and (1)(f) that read: "(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system"; inserted (1)(e) regarding superintendent of public instruction or another person; in (4)(a) inserted reference to part-time teacher's aide; in (4)(a)(i) substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; in (4)(a)(ii) near middle substituted "after completing 210 hours" for "on the 31st day" and after "substitute teacher" inserted "or part-time teacher's aide"; inserted (4)(b) regarding membership by part-time teacher's aid and substitute teacher; in (4)(c) near middle substituted "shall file" for "shall make" and after "irrevocable" inserted "written"; inserted (4)(d) concerning irrevocable election by part-time teacher's aide; in (4)(e) near middle inserted reference to part-time teacher's aide; in (4)(f) in two places inserted reference to part-time teacher's aide and after "a written statement" inserted "with the employer"; inserted (5) concerning membership of school district clerk or business official in teachers' retirement system; in (7) inserted definition of part-time teacher's aide; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of (4)(a)(i) and in (4)(c) after "employment" deleted "in any fiscal year"; at beginning of (4)(a)(i) substituted "shall make an irrevocable election whether to become" for "may elect to become"; inserted (4)(b) requiring person employed as substitute teacher on July 1, 1999, who has not elected to be a member to make an irrevocable election on first day of employment as substitute; inserted (4)(d) requiring substitute teacher who declines membership during election period to execute written membership waiver; deleted former (5) that read: "(5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded credible service for substitute teaching service if the substitute teacher contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 42 in (1)(c) substituted "speech-language pathologist" for "speech therapist". Amendment effective March 12, 1997.

1995 Amendments: Chapter 111 inserted (2) concerning a person elected to the office of County Superintendent of Schools after July 1, 1995; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 308 deleted (1)(b)(i) that read: "(i) a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 178 in (1)(b)(ii), before "to participate", inserted "or is not required"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Inserted (4) relating to the award of creditable service to a substitute teacher; and made minor change in form. Amendment effective July 1, 1989.

1987 Amendments — Composite Section: Chapter 22 inserted (3) referring to substitute teachers.

Chapter 296 near beginning of (1)(c), after "employed", inserted "as a speech therapist, school nurse, or school psychologist or"; inserted (1)(d) referring to administrative officers and certain instructional staff; and in (1)(e) and (1)(f) inserted reference to (1)(d).

Chapter 494 in (1)(b)(ii), after "university system", inserted reference to optional retirement program.

Chapter 658 inserted (1)(b)(i) referring to vocational-technical center.

In preparation of the composite of the Ch. 494 and Ch. 658 amendments to this section, the Code Commissioner outlined subsection (1)(b) to reflect that the optional retirement program does not apply to employees of vocational-technical centers.

1983 Amendment: At end of (1)(b), after "university system" deleted "except as provided in 19-4-305".

1981 Amendment: Inserted "a special education cooperative" following "the office of a county superintendent" in (1)(c).

Administrative Rules

ARM 2.44.305 Optional retirement program for certain members of the Montana University System.

ARM 2.44.307 Membership of teacher's aides and part-time employees.

ARM 2.44.308 Independent contractor.

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

Retirement Systems — Teachers: A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance. 37 A.G. Op. 80 (1977).

19-20-303. Inactive membership — dormant membership status.

Compiler's Comments

2021 Amendment: Chapter 173 in (3) at end of introductory clause inserted "if the member was born before July 1, 1949, or the age of 72 if the member was born on or after July 1, 1949". Amendment effective July 1, 2021.

2019 Amendment: Chapter 276 in (1) at beginning substituted "A nonvested or vested member's" for "Any person's" and at end substituted "and the member becomes an inactive member when the member ceases to be employed in a position reportable to the retirement system" for "but the person is an inactive member, when the person:

(1) ceases to be employed in a capacity that allows membership and the person has 5 or more years of creditable service in the retirement system"; deleted former (2) and (3) that read: "(2) ceases to be employed in a capacity that allows membership and the person has less than 5 years of creditable service in the retirement system, but the loss of capacity to be a member was caused

by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) has 5 or more years of creditable service and"; in (2) in first sentence at beginning substituted "A vested member becomes an inactive member of the teachers' retirement system if the member becomes an active member of another retirement or pension system" for "becomes a member of another retirement system" and at end substituted "both retirement systems" for "two retirement systems" and in second sentence near beginning substituted "the member" for "a person" and near middle inserted "in the teachers' retirement system"; inserted (3) concerning what actions a vested inactive member must take in order to not be transferred to dormant membership status; inserted (4) concerning what actions a nonvested inactive member must take in order to not be transferred to dormant membership status; inserted (5) concerning a member in dormant membership status; inserted (6) concerning the restoration of a member's account balance when a vested inactive member in dormant membership status takes a specific action described in subsection (3); inserted (7) concerning a nonvested inactive member taking an action described in subsection (4); inserted (8) concerning the limitation of the section if a member dies in a dormant membership status; and made minor changes in style. Amendment effective July **1, 2019.**

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-20-305. Alternate payees — family law orders.

Compiler's Comments

2017 Amendment: Chapter 39 in (2)(c) after "copy of" deleted "a judgment, decree, or" and after "jurisdiction" inserted "on a form prescribed and provided by the retirement system"; in (3) in first sentence after "birth" inserted "current phone number" and in last sentence after "interest" inserted "or by a full renunciation of the alternate payee's rights by the alternate payee"; inserted (5)(b)(iii) requiring submission of a copy of the alternate payee's birth certificate; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 59 in (3) near beginning after "current address" inserted "date of birth"; in (4)(a) at end after "retirement system" inserted "or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general"; in (5)(b)(i) substituted first sentence regarding family law order for "The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant"; in (6) at end after "is entitled to a" substituted "lump-sum payment up to the total fixed amount or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order" for "percentage of the amount payable as determined by the formula in subsection (5)(b)(i)"; in (7) after "apportioned" inserted "between the participant and the alternate payee receiving an actuarially equivalent amount"; in (8)(b) at end after "a certified family law order" inserted "and approval of the family law order by the retirement system"; inserted (12) concerning the termination of an actuarially equivalent amount paid to an alternate payee; inserted (13) providing that the retirement system shall give effect to a family law order in a manner that conforms with all other laws pertaining to the administration of the retirement system; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 inserted (2)(a) defining actuarially equivalent amount; in (2)(b) after "equivalent" substituted "amount" for "portion"; in (5)(a)(i) at end inserted "for the life of the alternate payee"; in (5)(a)(ii) near beginning after "amount" inserted "to be deducted from the participant's benefit" and at end of second sentence inserted "or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702"; in (5)(b)(i) inserted second sentence requiring a reduction in the participant's benefit; in (5)(b)(ii) after "payable" inserted "to the alternate payee, calculated under subsection (5)(b)(i)"; deleted former (5)(c) that read: "(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i)"; deleted former (6) that read: "(6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 90 inserted definition of alternate payee; substituted definition of participant for former definition of participant that read: ""participant" means a member, retiree, or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter"; in definition of family law order after "jurisdiction concerning" deleted "child support, parental support"; in (4)(a) near end after "participant under the" deleted "appropriate"; in (4)(b) near beginning after "an amount" deleted "or duration" and at end deleted "under the appropriate retirement system"; in (5) deleted former introductory phrase that read: "A family law order may only provide for payment to an alternate payee as follows"; in (5)(a) at beginning inserted "disability, or survivor" and near end inserted "to an alternate payee"; in (5)(a)(i) substituted "an actuarially equivalent" for "a percentage of the"; in (5)(a)(ii) at beginning deleted "payment of" and inserted second sentence regarding payment of fixed amount; substituted (5)(b) and (5)(c) regarding calculation of retirement benefit and reduction of participant's benefit for former (5)(b) through (5)(e) that read: "(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option"; inserted (6) through (9) regarding payment of benefits to alternate payees; inserted (12) regarding cancellation of payments to alternate payee; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 442 in definition of participant, after "member", inserted "retiree"; in definition of family law order, after "means", substituted "a certified copy of a judgment" for "a judgment" and after "court" substituted "with competent jurisdiction" for "of competent jurisdiction under Title 40"; inserted (7) requiring family law order to contain statement that order is subject to Board review; and made minor changes in style. Amendment effective April 30, 1997.

Effective Date: Section 13(1) provided that this section is effective on passage and approval. Approved March 10, 1995.

Administrative Rules

ARM 2.44.522 Family law order — contents and duration.
ARM 2.44.523 Family law orders — approval and implementation.

19-20-306. Execution or withholding for support obligation.

Compiler's Comments

Effective Date: Section 103(1), Ch. 552, L. 1997, provided that this section is effective July 1, 1997.

19-20-307. Establishing independent contractor status.

Compiler's Comments

Effective Date: Section 14, Ch. 245, L. 2023, provided that this section is effective July 1, 2024.

Part 4
Creditable Service

Part Administrative Rules

Title 2, chapter 44, subchapter 4, ARM Creditable service.
ARM 2.44.407 Creditable service for teaching in private educational institutions.
ARM 2.44.413 Creditable service — actuarial cost.
ARM 2.44.414 Installment purchase.

19-20-401. Creditable service.

Compiler's Comments

2017 Amendment: Chapter 39 in (1) after "19-20-302" deleted "and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service"; in (2)(a) substituted "each period of active membership service in a position reportable to the retirement system as described in 19-20-302 and credited as provided in this section" for "each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced"; inserted (4) concerning when creditable service may be awarded; inserted (5) concerning forfeiture and reinstatement of accrued creditable service; inserted (6) requiring that creditable service be awarded based on the fiscal year beginning July 1; inserted (7) concerning the method by which creditable service must be credited; inserted (8) concerning awarding creditable service and earned compensation credit for extra duty service; inserted (9) prohibiting the award of creditable service in excess of full-time service; in (10) after "during the" substituted "fiscal year of membership service on which a service purchase cost will be calculated, the member's compensation must be annualized to calculate the service purchase cost" for "qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 210 in (2) inserted "Subject to 19-20-405"; in (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), and (2)(i) before "service awarded" inserted "creditable"; in (2)(c) inserted "by the retirement board"; in (2)(d) after "19-20-404" inserted "for service"; in (2)(e) after "any" deleted "employment" and substituted "under 19-20-408 for employment in private schools" for "under the provisions of 19-20-408"; in (2)(f) after "creditable service" inserted "awarded by the retirement board" and inserted "for service"; in (2)(h) inserted "by the retirement board"; in (2)(i) substituted "by the retirement board" for "for service purchased" and at end inserted reference to university system retirement program; inserted (5) regarding prohibition on purchase of creditable service; and made minor changes in style. Amendment effective July 1, 2015.

2009 Amendment: Chapter 282 deleted former (2)(b) that read: "(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 320 inserted (2)(j) relating to service awarded for service purchased; and made minor changes in style. Amendment effective April 21, 2005.

1989 Amendments: Chapter 56 inserted (4) relating to calculation of cost to purchase creditable service by a member completing only part-time service during the qualifying period. Amendment effective July 1, 1989.

Chapter 690 inserted (2)(g) relating to service transferred from the public employees' retirement system.

1987 Amendments: Chapter 38 inserted (2)(h) referring to service for absence due to employment-related injury.

Chapter 79 inserted (2)(g) referring to service for extension service employment.

1981 Amendment: Inserted (2)(f) referring to employment service.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.414 Installment purchase.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Attorney General's Opinions

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 amendment of 19-4-602 (renumbered 19-20-602) and the 1981 and 1983 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

Creditable Service for Teachers on Sabbatical Leave With Pay: The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay. 38 A.G. Op. 53 (1979).

Teachers to Receive Creditable Service Time for Sabbatical Leave Without Pay: The Teachers' Retirement Board may award a public school teacher up to 1 month's creditable service for 1 or more months of sabbatical leave without pay, if the Board adopts such a policy. 38 A.G. Op. 53 (1979).

19-20-402. Creditable service for employment in out-of-state public and federal schools.

Compiler's Comments

2015 Amendment: Chapter 210 in (1)(a) at beginning substituted "Subject to 19-20-405, a vested member" for "A member who has 5 years of active membership service" and after "membership in" substituted "the retirement system" for "Montana"; in (2)(a) substituted "salary earned in a position reportable to the retirement system" for "teaching salary earned in Montana"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 151 in (3)(a) inserted "if a written application to purchase service was signed prior to July 1, 2012"; inserted (3)(b) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

2003 Amendment: Chapter 174 in (2)(b) near end of first sentence before "July" inserted "the salary was reported to the system for the fiscal year beginning". Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) after "system for out-of-state" deleted "employment"; and in (1)(c) after "out-of-state" substituted "service" for "employment". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1)(a), after "A member who", substituted "has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive" for "became a member before July 1, 1989, may apply for"; in (1)(b), in first sentence, inserted "the member shall roll the member's contributions over into the retirement system" and before "service" deleted "out-of-state" and deleted second sentence that read: "The member must be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system as provided in subsection (2)"; inserted (1)(c)(i) relating to federal or other public school or institution; in (1)(c)(ii), after "institution", deleted "if the service would have been acceptable under this chapter if performed in the state of Montana"; in (2)(a), at beginning, deleted "Except as provided in subsection (2)(b)", substituted "service described in subsection (1)(c)(i)" for "service under this section", after "member" inserted "who became a member before July 1, 1989", after "contribute" inserted "for each year of service to be qualified", after "out-of-state service" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana"; in (2)(b) substituted "service described in (1)(c)(ii)" for "service performed outside the United States in a federal or other public or private school or institution", after "member" inserted "who became a member before July 1, 1989", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account from the date he was eligible to qualify the service"; inserted (2)(c) relating to actuarial cost; inserted (3) relating to rate of interest; in (4), after "contributions", inserted "and interest"; inserted (5) referring to 19-20-405; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 113 near beginning of first sentence inserted "before July 1, 1989"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 357 in (1)(a), at beginning, substituted "A member who became a member before July 1, 1989, may apply" for "A person applying for membership may also apply", inserted second sentence requiring applicant to receive refund of out-of-state contributions before qualifying service under this section, at beginning of third sentence substituted "The member must" for "The person shall", and at end of third sentence inserted reference to subsection (2); inserted (1)(b) providing that out-of-state service includes service outside the United States; in (2)(a), at beginning, inserted "Except as provided in subsection (2)(b), to qualify service under this section, the member must contribute"; inserted (2)(b) stating method for qualifying service performed outside United States; in (3), near beginning, inserted "required under subsection (2)" and near end substituted "member" for "person"; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Coordination Instruction: Section 5, Ch. 357, L. 1989, a coordination instruction, provided for insertion near beginning of (1) of language "who became a member before July 1, 1989" if Senate Bill No. 125 was enacted. Senate Bill No. 125 was passed and approved March 16, 1989, and became Ch. 113, L. 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.411 Creditable service for employment in a federal, public, or private school outside the United States or its possessions.

ARM 2.44.414 Installment purchase.

Case Notes

Credit for Out-of-State Service: Section 75-2705(9), R.C.M. 1947 (now repealed), as in effect in 1954, allowed any teacher in the Montana State Teachers' Retirement System to receive credit for "out-of-state teaching employment" without distinction between service in public or in private schools. State ex rel. Sullivan v. St., 174 M 482, 571 P2d 793 (1977).

Attorney General's Opinions

Out-of-State: Applicants entering the teachers' retirement system prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States and whether in a public, private, or federal institution; but applicants entering after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States or its territories or possessions in state or locally financed public schools and institutions. 37 A.G. Op. 157 (1978).

19-20-403. Creditable service for employment while on leave.

Compiler's Comments

2017 Amendment: Chapter 39 in (1)(a) after "leave" inserted "following a break in service"; in (1)(b) after "service" deleted "under this section"; in (1)(b)(ii) substituted "an active member" for "a member"; in (1)(b)(iii) substituted "earned at least 1 full year of creditable service in active membership" for "completed 1 year of active membership"; in (2)(a) after "For each" substituted "period" for "year" and after "contribute" deleted "for each year of service to be purchased"; in (2)(b) after "For each" substituted "period" for "year"; inserted (3) concerning receipt of up to 2 years of creditable service for unpaid inservice leave; inserted (4) concerning eligibility for purchase as inservice leave; inserted (5) concerning a member's eligibility to purchase inservice leave; inserted (6) concerning how inservice leave may be purchased; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 210 in (1)(a) inserted "Subject to 19-20-405"; in (1)(b) substituted "be vested" for "have at least 5 years of membership service", after "membership in" substituted "the retirement system" for "Montana", and at end substituted "leave" for "return"; in (2)(a) after "full year's" substituted "salary earned in a position reportable to the retirement system" for "teaching salary earned in Montana"; deleted former (5) that read: "(5) The provisions of 19-20-405 apply to creditable service purchased under this section"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 151 in (3)(a) inserted "if a written application to purchase service was signed prior to July 1, 2012"; inserted (3)(b) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendment: Chapter 45 in (1)(b), (2)(a), and (3) substituted references to purchase of service for references to qualifying service. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 at beginning of (1)(a), after "member", substituted current language regarding qualifications for "with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989", substituted "may receive up to 2 years of creditable service" for "may apply for creditable service", and after first sentence deleted "If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having"; at beginning of (1)(b) inserted "To be eligible to qualify service under this section, a member must have at least 5 years of membership service in the retirement system, must have"; in (2)(a), at beginning, substituted "For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be qualified" for "To qualify service under this section, the member must contribute", after "leave" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account. The contribution rate must be the rate in effect at the time he is eligible for the service"; inserted (2)(b) requiring contribution of actuarial cost of service; inserted (3) relating to interest rate on contributions; in (4) substituted "contributions and interest" for "contribution"; inserted (5) referring to 19-20-405; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendments: Chapter 113 near beginning of first sentence inserted "before July 1, 1989"; and made minor change in phraseology. Amendment effective July 1, 1989.

Chapter 357 in (1) substituted "A member with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989, may apply for creditable service for employment while on leave. If he contributes to the retirement system as provided in subsection (2), the member must be awarded creditable service in an amount not exceeding 2 years as determined by the board, conditional upon his having been a member prior to his leave and upon his completing 1 year of active membership in Montana subsequent to his return" for "A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system"; in (2), in first sentence at beginning, inserted "To qualify service under this section, the member must contribute" and at end deleted "upon the completion of 5 years of membership service in Montana" and near end of third sentence substituted "member" for "person"; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Coordination Instruction: Section 5, Ch. 357, L. 1989, a coordination instruction, provided for insertion near beginning of (1) of language "who became a member before July 1, 1989" if Senate Bill No. 125 was enacted. Senate Bill No. 125 was passed and approved March 16, 1989, and became Ch. 113, L. 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

Attorney General's Opinions

Creditable Service for Teachers on Sabbatical Leave With Pay: The Teachers' Retirement Board must award a public school teacher creditable service for sabbatical leave with pay. 38 A.G. Op. 53 (1979).

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 amendment of 19-4-602 (renumbered 19-20-602) and the 1981 and 1983 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

Retirement Systems — Teachers: A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance. 37 A.G. Op. 80 (1977).

19-20-404. Creditable service for active service in military, red cross, or merchant marine.

Compiler's Comments

2015 Amendment: Chapter 210 in (1) substituted "Subject to 19-20-405, a vested member" for "A member" and after "dates inclusive" deleted "if the member has 5 years or more of creditable service in the retirement system"; in (2)(a) in three places and in (2)(a)(i), (2)(b), and (3) substituted references to member for references to person; in (2)(a) near beginning inserted "vested", after "awarded creditable service" deleted "conditional upon the person's completing 5 years of active membership in Montana", and substituted "salary earned in a position reportable to the retirement system" for "teaching salary earned in Montana"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 151 in (2)(a)(i) inserted "if a written application to purchase service is signed prior to July 1, 2012"; inserted (2)(a)(ii) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

2001 Amendments — Composite Section: Chapter 7 in (1) near middle of first sentence after "Korean" substituted "war" for "conflict". Amendment effective October 1, 2001.

Chapter 45 in (1) near middle of first sentence substituted "Korean war" for "Korean conflict" and near beginning of second sentence substituted "receive credit for" for "qualify"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in middle of second sentence in (1) after "board" substituted "a written application" for "a completed application"; in middle of first sentence of (2) deleted "except as provided in subsection (2)(b)"; deleted former (2)(b) that read: "(b) If a member elects to purchase additional service under 19-20-412, service purchased under this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1993 Amendment: Chapter 185 in (1), before "Vietnam conflict", inserted provision concerning the Korean conflict; and made minor changes in style. Amendment effective March 25, 1993.

1989 Amendments: Chapter 113 near middle of first sentence of (2)(a) inserted exception clause; inserted (2)(b) stating purpose for which purchased service may be used; near beginning of (3) inserted reference to subsection (2); and made minor changes in phraseology and form. Amendment effective July 1, 1989.

Chapter 204 in (1) substituted December 22, 1961, for August 5, 1964. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 204, L. 1989, provided: "[Sections 1 and 2] apply to all members of the teachers' retirement system who are active members on or after July 1, 1989."

1981 Amendment: Added (1) allowing member creditable service for active service in U.S. armed forces; substituted "If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection" for "A person applying for membership may also apply" at the beginning of (2).

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.402 Credit for military service.
ARM 2.44.414 Installment purchase.

19-20-405. Limit on creditable service that may be awarded.

Compiler's Comments

2015 Amendment: Chapter 210 substituted "aggregate years of service that may be credited" for "total creditable service for service purchased". Amendment effective July 1, 2015.

2011 Amendment: Chapter 59 after "19-20-410(1)" inserted "and 19-20-426"; and made minor changes in style. Amendment effective July 1, 2011.

1999 Amendment: Chapter 111 near end after "19-20-410(1)" deleted "and 19-20-412"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 408 after "19-20-410" inserted "(1)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 136 after "total creditable service for" substituted current language referring to service purchased under certain MCA sections for "out-of-state teaching, employment while on leave, employment with the Montana cooperative extension service, and active service in the armed forces of the United States or the American red cross or merchant marine". Amendment effective July 1, 1995.

1987 Amendment: Near middle inserted "employment with the Montana cooperative extension service".

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-407. No duplication of credit for same period of service.

Compiler's Comments

2005 Amendment: Chapter 320 inserted second sentence relating to granting creditable service for time a retirement benefit was received. Amendment effective April 21, 2005.

1997 Amendment: Chapter 408 substituted current text prohibiting duplicate credit for service for "There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member." Amendment effective July 1, 1997.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-408. Creditable service for employment in private schools.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 55 in (3)(b) substituted "on or after July 1" for "[on or] after July 1". Amendment effective October 1, 2015.

Chapter 210 in (1)(a) substituted "Subject to 19-20-405, a vested member" for "A member who has at least 5 years of membership service" and after "active membership" inserted "in the retirement system"; in (2)(a) substituted "salary earned in a position reportable to the retirement system" for "teaching salary earned"; in (3)(b) deleted brackets around "on or"; deleted former (5) that read: "(5) The provisions of 19-20-405 apply to creditable service purchased under this section"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 151 in (3)(a) inserted "if a written application to purchase service was signed prior to July 1, 2012"; inserted (3)(b) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

Code Commissioner Correction: The Code Commissioner inserted the bracketed language in (3)(b) to correct an obvious omission.

2001 Amendment: Chapter 45 in (3) near end substituted "purchase" for "qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1)(a) substituted "A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service" for "A person applying for membership before July 1, 1989, may also apply for creditable service" and near end substituted "employment within the United States" for "employment service"; in (1)(b), at beginning of first sentence, substituted "Employment to be credited" for "Employment service" and after "nature" deleted "or be employment" and inserted second sentence related to employment in teaching kindergarten through grade 12 and after insertion deleted "Employment service does not include students"; in (1)(c), at beginning, inserted "Members may not receive credit for service as a student" and after first sentence deleted "The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes"; in (2)(a), at beginning, inserted "For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute", after "retirement system" substituted "or after returning" for "or returning", after "later" deleted "for each year of creditable service", and after "interest" deleted "at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service"; inserted (2)(b) requiring contribution of actuarial cost of service; inserted (3) relating to interest rate on contributions; in (4), after "contributions", inserted "and interest"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: Near beginning of first sentence inserted "before July 1, 1989"; and made minor change in punctuation. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.407 Creditable service for teaching in private educational institutions.
ARM 2.44.414 Installment purchase.

19-20-409. Transfer of service credits and contributions from public employees' retirement system.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 245, L. 2023. Amendment effective July 1, 2024.

2015 Amendment: Chapter 210 in (4) at end substituted "be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-410, or 19-20-426" for "receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment"; and in (8)(a) substituted "is vested in the teachers' retirement system" for "has 5 years of membership service" and after "full year" inserted "of active membership". Amendment effective July 1, 2015.

2013 Amendments — Composite Section: Chapter 366 in (1) and (6) substituted "service credit" for "creditable service". Amendment effective July 1, 2013.

Chapter 389 in (7)(c) inserted "19-20-608, and 19-20-609"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2009 Amendment: Chapter 282 in (8) at beginning after "A" deleted "vested" and near middle after "part 21" deleted "prior to becoming a member of the teachers' retirement system"; and in (8)(a) at beginning after "member" inserted "has 5 years of membership service and". Amendment effective July 1, 2009.

2001 Amendment: Chapter 45 in (1), (4), and (6) substituted references to purchasing service for references to qualifying service; in (1) in first sentence near beginning substituted "file" for "make", substituted "written application" for "written election", and substituted "purchase" for "qualify in the teachers' retirement system"; in (3) in second sentence near middle substituted "a transfer" for "payment"; in (4) near middle substituted "receive credit" for "qualify"; in (7)(a) near middle inserted "public employees' retirement board shall transfer to the teachers' retirement system the" and at end after "contributions plus interest" deleted "must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, respectively, are the liability of the employee and the employing entity where the error occurred"; inserted (7)(c) regarding liability for employee and employer contributions; inserted (8) providing conditions under which member of teachers' retirement system may purchase creditable service for time previously spent in public employees' retirement system defined contribution plan; inserted (9) concerning determination of creditable serviced purchased under subsection (8); and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 442 at beginning of (2) deleted introductory clause referring to subsection (3); in (6), near beginning of first sentence after "public employees' retirement system", inserted "teachers' retirement system"; in (7), in first sentence after "contributions and service", inserted "together with employer contributions plus interest", after "19-20-605" inserted "respectively", and after "error occurred" deleted "respectively" and inserted second sentence requiring interest on employer contributions to be calculated at short-term investment pool rate; and made minor changes in style. Amendment effective April 30, 1997.

Retroactive Applicability: Section 32, Ch. 442, L. 1997, provided: "[Section 9] [19-20-409] applies retroactively, within the meaning of 1-2-109, to all occurrences on or after January 1, 1995."

1995 Amendment: Chapter 412 in first sentence of (1) substituted "An active member" for "A member"; in (2) inserted "In addition to the amounts directly paid or transferred by the member under subsection (3)" and at end substituted "payable by the member" for "determined in accordance with subsection (3)"; in (3) substituted "The member" for "The employee", after "pay" inserted "either directly or by transferring contributions on account with the public employees' retirement system", and after "time" substituted "that active membership was terminated" for "he terminated active membership under 19-2-601"; in (6), at beginning, substituted "an active member" for "a member"; in (7), near beginning after "classified", inserted "and reported to the public employees' retirement system"; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 28, Ch. 412, L. 1995, was a severability clause.

1991 Amendment: Near beginning of (2), after "equal to", substituted "72% of the amount determined in accordance with subsection (3)" for "5% of the final compensation, as defined in 19-3-104, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system. If the member had less than 3 full years of membership service, the final compensation must be based on the compensation reported to the public employees' retirement board by the employer.

(b) If the sum of the rates provided in 19-4-602 and 19-4-605 exceeded the sum of the rates provided in 19-3-701 and 19-3-801 at the time the employee terminated active membership under 19-3-406, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:

(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided in 19-4-602 and 19-4-605 and the sum of the rates provided in 19-3-701 and 19-3-801; plus

(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(c) If the member chooses not to make the contribution as provided in this section, he shall receive credit for the service transferred, based on the ratio between the retirement systems' employee and employer contribution rates provided for under 19-3-701, 19-3-801, 19-4-602, and 19-4-605". Amendment effective February 27, 1991.

Retroactive Applicability: Section 3, Ch. 64, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to service credits transferred between the public employees' retirement system and the teachers' retirement system on and after October 1, 1989."

1989 Amendment: Deleted former (1) that read: "(1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) compensation for all membership service as defined in 19-3-104; and

(b) the salary base used by the public employees' retirement system when granting military service under 19-3-502 and 19-3-503 and service credits for time when a member is absent from service because of injury or illness under 19-3-504"; at end of (1) substituted "to qualify this service under this section is the sum of subsections (2) and (3)" for "to qualify this service under subsection (2) is the sum of the following"; in (2) substituted language relating to transfer of amounts from the public employees' retirement system to the teachers' retirement system for "(a) from the public employees' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-4-602 and 19-4-605, based on the assumed salary, less the amount paid by the employee in subsection (3)(b)"; in (3)(a), at beginning, substituted "the employee shall pay an amount equal to his accumulated contributions" for "from the employee, the amount of his accumulated contributions" and at end, before "retirement system", inserted "public employees'"; inserted (3)(b) relating to calculation of additional required payments; inserted (3)(c) relating to credit for transferred service when member does not make contributions; in (6), before "contributions", deleted "employee and employer" and substituted "subsections (2) and (3)" for "subsection (3)(a)"; in (7) substituted "19-4-602 [renumbered 19-20-602] and 19-4-605 [renumbered 19-20-605]" for "subsection (3)(a)", before "employing entity" inserted "employee and the", and at end inserted "respectively"; and made minor changes in form.

Administrative Rules

ARM 2.44.401 Calculating service credits.

ARM 2.44.409 Transfer of service credit from Public Employees' Retirement System.

ARM 2.44.414 Installment purchase.

19-20-410. Creditable service for extension service employment.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 55 in (1)(b)(ii) substituted "on or after July 1" for "[on or] after July 1". Amendment effective October 1, 2015.

Chapter 210 in (1)(a) inserted "Subject to 19-20-405", substituted "a vested member" for "a member with 5 years or more of creditable service in the retirement system", and after "extension service" deleted "subject to the limitation contained in 19-20-405"; in (1)(b) near end substituted "salary earned in a position reportable to the retirement system subsequent to the member's extension service employment" for "teaching salary earned after becoming a member of the retirement system"; in (1)(b)(i) substituted "member becoming vested" for "completion of 5 years of membership service"; in (1)(b)(ii) deleted brackets around "on or"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 151 in (1)(b)(i) inserted "if a written application to purchase service was signed prior to July 1, 2012"; inserted (1)(b)(ii) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

Code Commissioner Correction: The Code Commissioner inserted the bracketed language in (1)(b)(ii) to correct an obvious omission.

2001 Amendment: Chapter 45 throughout section substituted references to purchase of service for references to qualifying service; in (1)(a) near middle substituted "may file" for "may make" and substituted "written application" for "written election"; in (1)(b) at beginning substituted "For each year of service to be purchased" for "To qualify service", near middle inserted "rate in effect at the time that the member is eligible to purchase the service multiplied by", after "a member of the retirement system" deleted "for each year of creditable service", and deleted former last sentence that read: "The contribution rate must be that rate in effect at the time that the member is eligible for the service"; in (2) near middle substituted "a member who has purchased" for "a member with", substituted "creditable service" for "qualified service", and substituted "may purchase additional years of" for "may qualify any"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 408 inserted (2) allowing member with 5 years or more of qualified service to qualify service in cooperative extension service; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: Inserted (1)(a) requiring membership before July 1, 1989; and made minor changes in phraseology and form. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-411. Absence because of employment-related injury.

Compiler's Comments

2001 Amendment: Chapter 45 in (1) in first and second sentences substituted "purchase" for "qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1995 Amendment: Chapter 136 in (1), near beginning of first sentence after "subsection", substituted reference to subsection (6) and to member absent because of employment-related injury for "(5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system if the member was a member of the retirement system before July 1, 1989" and in second sentence, after "system", inserted reference to subsection (2); in (2)(a), at beginning, inserted "A member who became a member before July 1, 1989, shall contribute"; at end of (2)(a)(iii) substituted "subsection (3)" for "subsection (1)(b)"; inserted (2)(b) requiring contribution of actuarial cost of service; in (3), in two places, substituted "subsection (2)(a)" for "subsection (1)(a)"; in (4) substituted "subsection (2)" for "subsection (1)(a)"; in (5), after "contributions", deleted "due because of the period of absence" and at end inserted "as agreed between the board and the member"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: At end of first sentence (1)(a) inserted language requiring membership before July 1, 1989. Amendment effective July 1, 1989.

Administrative Rules

ARM 2.44.401 Calculating service credits.
ARM 2.44.414 Installment purchase.

19-20-414. Payment methods for purchase of service credit.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) at beginning substituted "An active or vested member" for "A member". Amendment effective March 30, 2007.

2003 Amendment: Chapter 174 at end of (1) substituted "purchase the service credit by making payment as provided in this section" for "roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan"; inserted (2) outlining method or combination of methods by which service credit may be purchased; in (3)(a) after "transferred" inserted "or rolled over" and after "system" inserted "pursuant to subsection (2)"; in (4) substituted "this section" for "subsection (1)"; inserted (5) allowing member's surviving spouse to complete member's service purchase and requiring spouse to apply to complete payments and pay balance due system prior to benefits distribution; and made minor changes in style. Amendment effective March 31, 2003.

2001 Amendment: Chapter 45 in (1) near beginning of first sentence substituted "to purchase" for "to qualify". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of first sentence in (1) substituted "eligible retirement plan" for "qualified retirement plan"; at beginning of (2) after "If" substituted "in the case of a transfer, the transferred account" for "the account", after first "taxed" substituted "amounts" for "contributions", and after second "taxed" substituted "amounts" for "contribution and interest balances"; inserted (3) requiring board to accept direct rollover of eligible distributions from another retirement plan to the extent allowed by federal tax law; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 13(1) provided that this section is effective on passage and approval. Approved March 10, 1995.

19-20-415. Procedure for purchase of service credit and pick up.

Compiler's Comments

2005 Amendment: Chapter 320 in (1) near middle substituted "19-20-427" for "19-20-602(3)". Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 throughout section substituted references to written application for references to payroll deduction authorization; in (1)(c) in first sentence near end substituted "complete the irrevocable written application to purchase service" for "elect the irrevocable payroll deduction authorization"; in (3)(a)(ii) substituted text regarding date written application is signed by member and member's employer for "the execution of the irrevocable payroll deduction authorization form"; in (3)(b) at beginning of second sentence substituted "A written application to purchase additional service that is" for "An irrevocable payroll deduction authorization"; in (4) at beginning of first sentence substituted "The irrevocable written application to purchase service" for "If the irrevocable payroll deduction authorization is elected by the member, it" and at end inserted "and filed with the board"; in (5) near beginning of first sentence substituted "installments required by subsection (4)(b)" for "irrevocable payroll deduction authorization", deleted former second sentence that read: "The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase", and near beginning of second sentence inserted "number of years that may be purchased"; in (6) deleted former second sentence that read: "A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and this section became effective July 1, 1999.

Administrative Rules

ARM 2.44.412 National guard, reservists, and veterans called to active duty.
ARM 2.44.414 Installment purchase.
ARM 2.44.416 Service purchase resolutions.

19-20-416. Credit for legislative service required.

Compiler's Comments

2011 Amendment: Chapter 151 in (1)(a) inserted "if a written application to purchase service was signed prior to July 1, 2012"; inserted (1)(b) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2001 Amendment: Chapter 45 in (1) near beginning inserted reference to part-time teacher's aide and after "creditable service for" substituted language concerning service not reported if member makes contributions that would otherwise have been made for former text of introduction and former (1) and (2) that read: "substitute teaching service if the substitute teacher contributes:

(1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and

(2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system"; inserted (2) regarding purchase of service by member who would have been eligible for membership; inserted (3) requiring employer and employee to make contributions in certain instance; inserted (4) allowing contributions to be made in lump-sum payments or in installments; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

19-20-426. Creditable service for employment under university system retirement program.

Compiler's Comments

2015 Amendment: Chapter 210 in (1)(a) substituted "Subject to 19-20-405, a vested member" for "A member who has at least 5 years of membership service" and after "active membership" inserted "in the retirement system"; deleted former (4) that read: "(4) The provisions of 19-20-405 apply to creditable service purchased under this section"; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendment: Chapter 282 in (1)(a) in two places substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

19-20-427. Redeposit of contributions previously withdrawn.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 245, L. 2023. Amendment effective July 1, 2024.

2015 Amendment: Chapter 210 in (1) at beginning inserted exception clause; inserted (3) prohibiting redeposit of previously withdrawn contributions; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendment: Chapter 389 in (1) in introductory clause before "contributions" deleted "normal" and inserted "and 19-20-608". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendment: Chapter 151 in (1)(a) inserted "if a written applications to purchase service is signed prior to July 1, 2012"; inserted (1)(b) regarding applications signed on or after July 1, 2012; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 90 in first sentence near middle substituted "account" for "fund". Amendment effective March 30, 2007.

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

Part 5
Management of Funds

Part Law Review Articles

Rule against perpetuities not applicable to trust which is part of pension and profit-sharing plan, 20 Mont. L. Rev. 157 (1959).

19-20-501. Financial administration of money.

Compiler's Comments

2009 Amendment: Chapter 298 in (3) in first sentence near beginning substituted "19-20-605(8)" for "19-20-605(7)". Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 90 in (3) deleted former first sentence that read: "The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest." Amendment effective March 30, 2007.

Chapter 305 in (2) deleted former second sentence that read: "The rate established by the board may not be less than 4%"; in (3) near middle of second sentence substituted reference to 19-20-605(7) for reference to 19-20-605(5); and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 45 in (2) inserted second sentence establishing minimum rate of interest; in (3) in last sentence inserted "less amortization of intangible assets"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 532 in introductory clause, near end after "money", inserted "as provided in Article VIII, section 15, of the Montana constitution"; in (3), at end of second sentence after "allocated to", substituted "administrative expenses" for "the expense fund under the provisions of 19-20-606" and inserted third sentence limiting the amount that may be used for administrative expenses; at beginning of (5) inserted "For purposes of Article VIII, section 12, of the Montana constitution"; and inserted (6) regarding payment of benefits and refunds payable pursuant to contract. Amendment effective July 1, 1997.

1991 Amendment: Near end of (3) substituted "fund" for "account"; deleted second and third sentences of (4) that read: "All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims"; and made minor changes in style. Amendment effective February 1, 1991.

1983 Amendment: In (3) and (5), substituted three references to retirement system reserves for references to retirement system funds; near end of (3), substituted "expense account" for "expense fund"; and in (5), after "chapter" deleted ", except the expense fund,", substituted "pension trust fund type" for "agency fund", and deleted last sentence, which read: "The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure."

Case Notes

Investments in Emergency Relief Warrants: Under Ch. 87, L. 1937 (now repealed), the retirement board had supervision over the investment of funds mentioned therein and might in its discretion invest such funds in emergency relief warrants issued under sec. 2, Ch. 85, L. 1937 (not codified). Kraus v. Riley, 107 M 116, 80 P2d 864 (1938).

19-20-502. Restrictions on use of money.

Compiler's Comments

2001 Amendment: Chapter 45 inserted (4) requiring assets to remain in trust until warrant is paid or transfer made; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 inserted (3) prohibiting board from engaging in transaction prohibited by section 503(b) of the federal tax code; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

19-20-503. Forfeiture of unclaimed account balances or benefits.

Compiler's Comments

2019 Amendment: Chapter 276 deleted former (1) that read: "(1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation account if the annuity savings account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, including the interest the amount would have earned had the amount remained in the annuity savings account, must be transferred back to the member's annuity savings account upon the member's request"; in (1) substituted "A benefit or refund of the member's account balance" for "Retirement benefits" and substituted "5 years after" for "5 years of"; in (2) at beginning substituted "If the benefit or refund is not claimed within the time provided in subsection (1)" for "If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits" and near end inserted "is forfeited and"; and made minor changes in style. Amendment effective July 1, 2019.

2007 Amendment: Chapter 90 in (1) in first sentence substituted "accumulation account if the annuity savings account" for "accumulation fund if the account" and in second sentence inserted phrase regarding inclusion of interest amount would have earned had amount remained in annuity savings account. Amendment effective March 30, 2007.

1997 Amendment: Chapter 442 inserted (2) requiring claim for retirement benefits to be made within 5 years of member's death and providing for reversion of funds; and made minor changes in style. Amendment effective April 30, 1997.

19-20-510. Probate and nonprobate transfer statutes superseded.

Compiler's Comments

Saving Clause: Section 100, Ch. 562, L. 1999, was a saving clause.

Effective Date: Section 101, Ch. 562, L. 1999, provided that this section is effective July 1, 1999.

Retroactive Applicability: Section 102, Ch. 562, L. 1999, provided: "[Section 19] [19-2-1015 and 19-20-510] applies retroactively, within the meaning of 1-2-109, to July 1, 1997."

Part 6
Funds — Contributions

19-20-601. Method of financing.

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

19-20-602. Annuity savings account — member's contribution.

Compiler's Comments

2013 Amendment: Chapter 389 in (2)(a) substituted "The normal contribution rate of each tier one member" for "The normal contribution of each member"; inserted (2)(b) concerning tier two member normal contribution rates; in (3) substituted "Contributions under 19-20-608 and this section to" for "Contributions to and payments from"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2007 Amendment: Chapter 90 in (1) in two places, in (2), and in (3) in three places substituted references to account for references to fund; and made minor changes in style. Amendment effective March 30, 2007.

2005 Amendment: Chapter 320 deleted former (3) that read: "(3) In addition to the normal contributions, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415"; and made minor changes in style. Amendment effective April 21, 2005.

1999 Amendments — Composite Section: Chapter 111 in (1)(a) substituted "Internal Revenue Code" for "federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985"; in (1)(a)(i) substituted "this subsection (2)" for "this section"; inserted (1)(a)(ii) requiring employer to pick up and pay contributions as provided in 19-20-716; inserted (1)(a)(iii) authorizing employer to pick up and pay contributions payable by member pursuant to 19-20-415; in (3) in first sentence after "board" inserted "and to the extent permitted by section 415(k)(3) of the Internal Revenue Code" and inserted second sentence requiring redeposit in accordance with 19-20-415; and made minor changes in style. Amendment effective on later of occurrence of contingency or July 1, 1999.

Chapter 360 in (1) near middle of second sentence after "member is" substituted "7.15%" for "7.044%"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and the amendments to this section became effective July 1, 1999.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

1997 Amendment: Chapter 442 in introductory clause, in middle of first sentence, substituted "for their retirement allowance or benefits" for "for their annuities". Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 near middle of first sentence in (1)(c), after "member's", substituted "earned compensation as defined" for "wages as defined in 19-1-102 and his earned compensation as used to define his average final compensation"; and made minor changes in style. Amendment effective March 10, 1995.

1985 Amendment: In lead-in, in first sentence, after "contributions", substituted "for" for "from" and inserted second sentence referring to percentage of earned compensation as normal contribution; in (1)(a) substituted language requiring employer to "pick up" employee's contribution for "Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 7.044% of the member's earned compensation"; inserted (1)(b) designating "picked up" contributions as member's contributions and requiring separate accounting; and inserted (1)(c) requiring "picked up" contributions to be paid from member's compensation; and in (2) near beginning, substituted "normal contributions" for "contributions deducted from compensation".

1983 Amendments: Chapter 198 substituted "pension accumulation fund" for "annuity reserve fund" at end of (4).

Chapter 527 increased employee's contribution from 6.187% to 7.044% in (1).

Federal Statute: Section 414(h)(2) of the Internal Revenue Code referred to in this section may be found at 26 U.S.C. 414(h)(2).

Administrative Rules

ARM 2.44.403 Redeposit of amounts withdrawn.

ARM 2.44.528 Extra duty compensation.

Attorney General's Opinions

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 and 1985 amendments of 19-4-602 (renumbered 19-20-602) and the 1981, 1983, and 1985 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

19-20-603. Withdrawal from membership — refund of accumulated contributions — options.

Compiler's Comments

2019 Amendment: Chapter 276 in (1)(a) substituted current text for former text that read: "An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership"; inserted (1)(b) and (1)(c) concerning an active member's application to withdraw from membership prior to termination of employment; inserted (2), (3), (4), and (5) concerning a withdrawing member's refund and subsequent reportable employment; deleted former (3) and (4) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendment: Chapter 282 in (3) near end of first sentence after "another" substituted "eligible retirement plan or a Roth IRA, provided for under 26 U.S.C. 408A" for "qualified plan"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 90 in introduction substituted "savings account" for "savings fund". Amendment effective March 30, 2007.

2001 Amendment: Chapter 45 in (3) in third sentence substituted "forms for filing" for "forms for making". Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 deleted former (3) that read: "(3) A person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated contributions"; in (3) in first sentence substituted "written application to the board" for "written request", at end of third sentence substituted "written application" for "written request", and inserted fifth sentence requiring board to allow members and qualified beneficiaries to elect direct rollover to another retirement plan to extent allowed by federal tax code; inserted (4) requiring board to pay accumulated contributions in lump sum without written application if nonvested member terminates with less than $200 and providing that upon payment of contributions, member is considered withdrawn from system; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 in introductory clause, near middle after "terminates", inserted "without a prospect or anticipation that the member will return to work for an employer within 60 days of termination", after "member's" deleted "or person's", and near end substituted "annuity savings fund" for "annuity account"; in (4), in first sentence, substituted "payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member" for "payment of the accumulated contributions split. The tax-deferred portion of the contributions may be paid directly to an individual retirement account or other qualified plan designated by the member", at beginning of second sentence substituted "The portion not rolled over or transferred must be paid" for "and the other portion must be paid", and near end of fourth sentence, before "status", inserted "tax-deferred"; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 226 inserted (4) relating to a terminated member's request for the splitting of paid accumulated contributions; and made minor changes in style. Amendment effective March 30, 1993.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Annuity or Pension — Voluntariness Determines: Plaintiff was a teacher in the Montana public school system at the time the teacher's retirement act was enacted. She did not file the notification required to become a member of the retirement system. She continued to teach until she resigned. For the 8-year period prior to her resignation, 5% of her earnable compensation was deducted from her salary, which was the contribution required from members of the retirement system. When plaintiff resigned, she was not eligible for retirement or disability benefits. She applied for withdrawal of amounts standing to her credit in the annuity savings fund (now annuity savings account) along with three-fourths of the regular rate of interest. Defendants refused to pay her the interest. The origin of the sum determines the rights of the employee. She was entitled to interest from an annuity fund but not a pension fund. If contributions are voluntary, the fund is an annuity. The test is whether the contributor had the power to elect whether the deduction would be taken from her salary. Plaintiff voluntarily consented to the deductions, so that the fund was an annuity. Her rights in the fund were contractual rights, the terms of which were ascertained by statute and could not be impaired. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

Constitutionality: The provisions of a 1945 amendment to a former subsection providing that a withdrawing member should be paid only the amount contributed were unconstitutional as impairing teachers' contractual rights. The amendment deprived a withdrawing member of interest to which she would have been entitled under the law prior to amendment. Clarke v. Ireland, 122 M 191, 199 P2d 965 (1948).

19-20-604. State contributions — termination.

Compiler's Comments

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Effective Date: Section 9, Ch. 360, L. 1999, provided: "[This act] is effective July 1, 1999."

19-20-605. Pension accumulation account — employer's contribution.

Compiler's Comments

2021 Amendment: Chapter 351 in (5)(a) substituted "school district or a community college district created prior to January 1, 2021" for "district or community college district"; inserted (5)(b) concerning community college districts created on or after January 1, 2021; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2013 Amendment: Chapter 389 in (1) in second sentence substituted "Employer contributions to" for "Contributions to and payments from" and after "as provided in" inserted "19-20-609 and"; and in (2), (3), and (4) inserted "plus the supplemental contribution required under 19-20-609". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2009 Amendments — Composite Section: Chapter 282 deleted former (2)(a) that read: "(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation"; in (2)(b) at beginning deleted "beginning July 1, 2009"; in (3) near beginning after "district" inserted "an education cooperative, a county"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 298 in (2) near end after "equal to" deleted "(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and

(b) beginning July 1, 2009"; inserted (4) providing payment amount into pension accumulation account for retired member returning to covered employment beginning July 1, 2013; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendments — Composite Section — Code Commissioner Correction: Chapter 90 throughout section substituted references to accumulation account for references to accumulation fund; in (7) after "annuity savings" substituted "account" for "fund" and after "transferred to that" substituted "account" for "fund"; and in (8) after "expense" substituted "account" for "fund". Amendment effective March 30, 2007.

Chapter 305 in (1) at end substituted "provided in this section" for "follows"; in (2) at beginning inserted exception clause and language concerning each member employed in preceding payroll period and at end deleted "7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period"; inserted (2)(a) and (2)(b) concerning employer payment for designated time periods; inserted (3) concerning employer payment for members employed by school district or community college; in (8) near beginning before "board" deleted "retirement"; and made minor changes in style. Amendment effective July 1, 2007.

In (3) the code commissioner substituted "account" for "fund" to reflect Ch. 90 amendments.

1997 Amendments: Chapter 442 in introductory clause, at end of first sentence, substituted "for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries" for "payment of pensions and annuities must be accumulated and from which pensions, annuities, and benefits must be paid to or on account of beneficiaries credited with prior service"; deleted former (6) that read: "All pensions, annuities, and benefits must be paid from the pension accumulation fund"; and made minor changes in style. Amendment effective April 30, 1997.

Chapter 532 in (6), after "board may", deleted "in its discretion" and after "accumulation fund" inserted "to the expense fund"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 530 in (1) increased the employer's contribution from 7.459% to 7.47%; and made minor changes in style. Amendment effective January 1, 1994.

1989 Amendment: In (1) increased percentage to 7.459% from 7.428%. Amendment effective July 1, 1989.

Applicability: Section 5, Ch. 204, L. 1989, provided: "[Sections 1 and 2] apply to all members of the teachers' retirement system who are active members on or after July 1, 1989."

1985 Amendment: In (1) near middle increased "7.320%" to "7.428%".

1983 Amendment: In (1), increased employer's contribution from 6.463% to 7.320%.

1981 Amendments: Chapter 193 increased percentage in subsection (1) from 6.312% to 6.463%.

Chapter 251 inserted "annuities" twice in the first sentence; deleted "and the annuity reserve fund" after "savings fund" in (5); inserted "annuities" in (6); deleted "the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also" after "accumulation fund" in (7); inserted "necessary" after "amount" at the end of (7); and made other minor changes to reflect amendments.

Chapter 549 increased percentage in (1) from 6.312% to 6.432%.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Coordination — Composite Section — Sum of Increases: Section 3, Ch. 193, L. 1981, provided: "If both this act and HB 45, introduced in the 47th Legislature, are passed and approved, the percentage amount contained in 19-4-605 [renumbered 19-20-605] shall reflect the sum of the increases in the employer contribution provided in HB 45 and this act." House Bill 45 was passed and approved, becoming Ch. 549, L. 1981. In preparing the composite of this section, the Code Commissioner has therefore inserted "6.463" in (1) as the sum of the increases. See 1981 Amendments compiler's comments, this section.

Administrative Rules

ARM 2.44.528 Extra duty compensation.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Payments to Teachers' Retirement Board for Teacher on Sabbatical Leave With Pay: Prior to the 1983 and 1985 amendments of 19-4-602 (renumbered 19-20-602) and the 1981, 1983, and 1985 amendments of 19-4-605 (renumbered 19-20-605), when a school district granted a public school teacher sabbatical leave with pay, the district must have: (a) deducted from the teacher's compensation 6.187% of the full compensation actually paid the teacher for the employee's contribution; and (b) contributed 6.312% of the full compensation actually paid the teacher for the employer's contribution. 38 A.G. Op. 53 (1979).

19-20-607. Supplemental state contribution — appropriation.

Compiler's Comments

2019 Amendment: Chapter 276 in (1)(a) near end substituted "active members of the employers listed in 19-20-605(3)" for "school district and community college active members". Amendment effective May 3, 2019.

Retroactive Applicability: Section 25, Ch. 276, L. 2019, provided: "[Section 6] [19-20-607] applies retroactively, within the meaning of 1-2-109, to contributions made on and after July 1, 2007."

2013 Amendment: Chapter 389 deleted former (1)(a) that read: "(a) beginning July 1, 2007, through June 30, 2009, 2% of the total earned compensation of school district and community college active members participating in the system"; before "2.38%" deleted "beginning July 1, 2009"; inserted (1)(b) concerning supplemental contributions and insufficient reports; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

Effective Date: Section 13(1), Ch. 305, L. 2007, provided that this section is effective July 1, 2007.

19-20-608. Member supplemental contribution — actuarially determined adjustments — effective dates.

Compiler's Comments

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

Effective Date: Section 26, Ch. 389, L. 2013, provided: "[This act] is effective July 1, 2013."

19-20-609. Employer's supplemental contribution — actuarially determined adjustments.

Compiler's Comments

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

Effective Date: Section 26, Ch. 389, L. 2013 provided: "[This act] is effective July 1, 2013."

19-20-621. Montana university system retirement program supplemental contributions.

Compiler's Comments

2013 Amendment: Chapter 282 in (1) and (2) substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2007 Amendment: Chapter 305 in (2) at end substituted "is" for "must increase to"; deleted former (2)(a) through (2)(d) that read: "(a) 2.81% beginning July 1, 1997;
(b) 3.12% beginning July 1, 1998;
(c) 3.42% beginning July 1, 1999;
(d) 3.73% beginning July 1, 2000"; in (2)(a) at end inserted "through June 30, 2007"; inserted (2)(b) concerning rate beginning July 1, 2007; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 5, Ch. 419, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 7
Benefits in General

Part Administrative Rules

Title 2, chapter 44, subchapter 5, ARM Benefits.

19-20-701. Benefits.

Compiler's Comments

2011 Amendment: Chapter 59 inserted (2) concerning the circumstances under which benefits must be paid to a joint annuitant or beneficiary if a member applies for a retirement benefit but dies before receiving the first monthly payment; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 inserted second sentence requiring that member's written application for benefits must include a statement certifying that there has been a bona fide separation from service; and made minor changes in style. Amendment effective July 1, 2009.

19-20-702. Optional allowances — joint and survivor annuity — period certain.

Compiler's Comments

2019 Amendment: Chapter 276 in (1)(a) at end deleted "which is provided for in 19-20-902 and part 8 of this chapter"; inserted (1)(b) concerning the revocability of the election and designation of a joint annuitant; in (2)(a) at beginning inserted "A joint and survivor annuity" and at end substituted "in accordance with the option selected under subsection (2)(b)" for "that the member nominated by written application, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with"; in (2)(b) at beginning inserted "A member electing to receive a joint and survivor annuity optional allowance may select"; inserted (2)(c) concerning the form and manner of designating a joint annuitant; in (2)(d) before "optional allowance" inserted "a joint and survivor"; in (3)(a) near middle after "for the member's lifetime" substituted "and then to the member's beneficiary as provided in 19-20-1002(3) for the remainder of the period certain if the member dies before receiving monthly benefit payments for the period certain" for "whichever is greater"; in (3)(a)(i) substituted "a 10-year period certain may be elected" for "10 years"; in (3)(a)(ii) substituted "a 10-year or 20-year period certain may be elected" for "20 years"; deleted former (3)(b) that read:"(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice nominating different beneficiaries"; inserted (3)(b) relating to calculating the period certain; in (4)(a) at beginning inserted "Subject to subsection (7)", after "application to the retirement" substituted "system" for "board", and before "optional retirement allowance" inserted "a joint and survivor annuity"; in (4)(b) substituted "retirement system" for "board"; in (5) at beginning substituted "Subject to subsection (7), upon written application to the retirement system, a retired member receiving a joint and survivor annuity optional retirement allowance pursuant to subsection (2)(b) that is effective on or after October 1, 1993, may select" for "A retired member receiving an optional retirement allowance pursuant to (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select"; in (7) substituted current text for former text that read: "The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the joint annuitant"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 210 in (2) near end substituted "application" for "designation"; in (3)(b) near end substituted "nominating" for "designating"; in (4)(a)(ii) and (5)(b) in middle substituted "any ongoing or future distribution of any portion of the retiree's benefits" for "the optional retirement allowance"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 59 in (2)(a), (2)(b), (2)(c), (4)(a)(i) at end, and (7) substituted "joint annuitant" for "designated beneficiary"; in (1) deleted last sentence that read: "If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member"; in (2) near end after "allowance payable to the" substituted "joint annuitant" for "person"; inserted (2)(d) providing that certain designations are void; in (4)(a), (4)(a)(i), (4)(a)(ii) in three places, (5), (5)(a), and (5)(b) in three places substituted "joint annuitant" for "beneficiary"; in (5)(a) at end after "following the death of the" substituted "original joint annuitant" for "designated beneficiary"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 in (1) near beginning of first sentence before "allowances" deleted "optional" and after "subsection (2)" inserted "or (3)"; in (3)(a) in introductory clause substituted current text for "Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.

(i) The member shall elect one of the following certain time periods"; in (4)(a) near middle after "allowance may" inserted "select a different actuarially equivalent optional allowance and" and at end after "beneficiary" deleted "select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance"; in (5) near middle after "application to" inserted "select a different actuarially equivalent optional allowance and designate a different beneficiary or to"; in (7) near middle after "board" deleted "to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both"; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 111 near beginning of (3)(a) and (3)(b) substituted references to written application for references to written request; in (3)(a) at end after "allowance" substituted "to a normal form of retirement allowance" for "to a regular retirement or disability allowance"; in (3)(a)(i) inserted second sentence requiring benefit to be converted to normal form of allowance effective on the first of the month following death of beneficiary; in (3)(a)(ii) inserted second sentence requiring benefit to be converted to normal form of allowance effective on the first of the month following receipt of application and verification; in (4) at beginning deleted "Effective on the first of the month following the death of a person nominated as the designated beneficiary" and following "October 1, 1993" substituted "may file a written application to revert the optional retirement allowance" for "will revert"; inserted (4)(a) requiring benefit to revert to full normal form of allowance effective on the first of the month following death of beneficiary; inserted (4)(b) regarding procedure for reversion of benefit to full normal retirement allowance as part of divorce settlement; in (6) near beginning after "member" substituted "shall file the written application required by subsection (3) or (4)" for "may, within 18 months of the death of the designated beneficiary, file a written application", following "beneficiary" substituted "or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary" for "and to select an actuarially equivalent optional allowance", and deleted former second sentence that read: "The optional allowance is effective on the first day of the month following receipt of the retiree's application"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 near beginning of (2) substituted "member's service retirement or disability retirement allowance at the time of the member's retirement effective date" for "member's retirement or disability allowance at the time of the member's retirement"; deleted former (2)(d) that read: "Option D—some other benefit will be paid either to the member or the member's surviving designated beneficiary in accordance with provisions approved by the retirement board"; inserted (2)(d), (2)(d)(i), and (2)(d)(ii) providing for payment for period certain or for life; in (3)(a), after "a retired member", inserted "whose effective date of retirement is before October 1, 1993"; in (4), in first sentence, substituted "following the death" for "following receipt of notification of the death" and substituted "(2)(a), (2)(b), or (2)(c)" for "(2)", and inserted third and fourth sentences allowing change of beneficiary and selection of actuarially equivalent optional allowance and establishing effective date of optional allowance; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 9 in (1), near beginning of second sentence, substituted "member" for "beneficiary"; deleted former (2)(d) and (2)(e) that read: "(d) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor"; inserted (4) regarding reversion of full normal form of retirement allowance upon death of designated beneficiary; and made minor changes in style.

1985 Amendment: Inserted (3) allowing retired member to change options in case of divorce or death of contingent annuitant.

Administrative Rules

ARM 2.44.512 Change of beneficiary and/or change of retirement option.

ARM 2.44.525 Calculation of age.

19-20-703. Payments to be monthly.

Compiler's Comments

2021 Amendment: Chapter 173 in (3) in middle of first sentence after "the age of 70 ½" inserted "if the member was born before July 1, 1949, or the age of 72 if the member was born on or after July 1, 1949"; and made minor changes in style. Amendment effective July 1, 2021.

2011 Amendment: Chapter 59 in (4) after "member's" substituted "joint annuitant" for "beneficiary". Amendment effective July 1, 2011.

2009 Amendments — Composite Section: Chapter 282 in (3) near beginning of first sentence before "member's" inserted "inactive" and at end of second sentence substituted "19-20-702(3)(a)(i)" for "19-20-702(2)(d)(i)(A)"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 298 in (2) at beginning inserted exception clause; inserted (5) providing time for retirement allowance commencement if member terminates within 30 days of last day of school year; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 111 inserted (3) describing when distribution of benefit must begin and procedure for distribution if member fails to apply for benefits by proper date; and inserted (4) prohibiting recalculation of life expectancy of member or beneficiary after benefits commence. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 at beginning of (1) substituted "All retirement allowances" for "All pensions and annuities"; inserted (2), (2)(a), and (2)(b) establishing commencement date of retirement allowance; and made minor changes in style. Amendment effective April 30, 1997.

Administrative Rules

ARM 2.44.506 Benefit payments.

19-20-706. Exemption from taxation and legal process.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) near beginning after "exempted from any" deleted "state" and after "municipal tax" deleted "of the state of Montana"; deleted former (1)(a) that read: "(a) a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c); or"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment: Chapter 276 in (1)(b) near beginning substituted "refund" for "withdrawal". Amendment effective October 1, 2019.

2009 Amendment: Chapter 382 in (1)(a) after "in excess of" deleted "$3,600 or adjusted by" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1997 Amendments: Chapter 442 at beginning of introductory clause, after "19-20-305", substituted "the retirement allowances" for "the pensions, annuities". Amendment effective April 30, 1997.

Chapter 552 in introductory clause inserted "and 19-20-306". Amendment effective July 1, 1997.

1995 Amendment: Chapter 111 near beginning substituted "19-20-305" for "19-2-907". Amendment effective March 10, 1995.

1993 Amendment: Chapter 259 at beginning inserted exception clause.

1991 Amendment: Inserted (1)(a) concerning adjusted retirement allowance or retirement allowance in excess of $3,600. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

1989 Amendment: In (1) changed "refund" to "withdrawal".

1985 Amendment: In (1) near middle inserted exception clause; made minor changes in phraseology in (2) and (3); and in (3) at end, inserted "in this chapter".

Case Notes

No Private Contract Created by Statute — State Prohibited From Surrendering Power to Tax: After the Legislature enacted Ch. 823, L. 1991, to tax retirement pension benefits that had previously been untaxed, the retirees sued, claiming that they had a contractual right to a continued exemption from taxation. Citing Wage Appeal v. Bd. of Personnel Appeals, 208 M 33, 676 P2d 194 (1984), the Supreme Court held that the former tax exemption was only a policy statement that could be changed by the Legislature and that the Legislature did not clearly manifest an intention in the law in question to create a private contractual right. Additionally, the Supreme Court held that the state was prohibited by Art. VIII, sec. 2, Mont. Const., from promising any group of taxpayers that it would never tax them. Sheehy v. Pub. Employees Retirement Div., 262 M 129, 864 P2d 762, 50 St. Rep. 1477 (1993).

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-20-710. Maximum benefit limitation.

Compiler's Comments

2003 Amendment: Chapter 174 in first sentence after "Code" inserted "as adjusted for cost-of-living increases"; in second sentence substituted "a qualified governmental excess" for "an excess" and at end substituted "19-20-212" for "19-20-718"; and made minor changes in style. Amendment effective March 31, 2003.

1999 Amendment: Chapter 111 in first sentence after "Code" deleted "of 1986 and adjusted annually by the commissioner of internal revenue service" and inserted second sentence authorizing benefits in excess of limits to be paid from excess benefit arrangement subject to 19-20-718; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Federal Statute: Section 415 of the Internal Revenue Code referred to in this section may be found at 26 U.S.C. 415.

19-20-715. Earned compensation — limitations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 210 in (2)(a) at beginning deleted "In determining a member's retirement allowance under 19-20-802 or 19-20-804", after "each year" substituted "that is used to" for "of the 3 years that", and after "previous year's" substituted "reported earned compensation not including" for "earned compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendments — Composite Section: Chapter 59 in (2) in two places before "compensation" inserted "earned". Amendment effective July 1, 2011.

Chapter 151 in (2) after "except" substituted "increases that result from movement on the employer's adopted salary matrix" for "as provided by rule by the retirement board"; in (3) substituted "19-20-716(1)(b)" for "19-20-716". Amendment effective July 1, 2011.

2003 Amendment: Chapter 174 in first sentence in (1) after "Code" inserted "as adjusted for cost-of-living increases" and inserted fourth sentence requiring changes in maximum limits to be applied prospectively. Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 inserted (2) limiting to 110% of prior year's compensation amount used in calculation of average final compensation; and inserted (3) requiring excess amount of earned compensation to be considered termination pay. Amendment effective April 30, 1997.

Effective Date: Section 13(2) provided that this section is effective July 1, 1995.

Administrative Rules

ARM 2.44.518 Limit on earned compensation.

ARM 2.44.528 Extra duty compensation.

19-20-716. Termination pay.

Compiler's Comments

2015 Amendment: Chapter 210 in (1)(b) at end of first sentence inserted "under 19-20-805". Amendment effective July 1, 2015.

2013 Amendments — Composite Section: Chapter 366 in (1) after "(5)" deleted "by signing a binding, irrevocable written election at least 90 days before the member's termination date"; in (2) at beginning substituted "If a member signs a binding, irrevocable written election for either an option 1 or option 2 benefit" for "A binding, irrevocable written election required by this section must be signed by both the member and the employer" and after "date" inserted "the employee contributions required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer"; deleted former (3) that read: "(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 389 in (1)(b) in third sentence inserted "19-20-608, and 19-20-609"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2007 Amendments — Composite Section: Chapter 90 inserted (3) regarding date of termination; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 305 in (1)(b) inserted fourth sentence concerning contribution amount equal to termination pay multiplied by rate in 19-20-607. Amendment effective July 1, 2007.

2005 Amendment: Chapter 320 in (1) near middle inserted reference to subsection (5); in (3)(b) inserted exception clause; inserted (4) relating to excess member contributions; in (5) near middle after "subsection (1)" deleted "or if the member's contribution is greater than the total amount of termination pay"; and made minor changes in style. Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 throughout section substituted references to sign for references to execute; in (2) in introduction near beginning before "election" inserted "written" and inserted "at least 90 days prior to the member's termination date"; in (2)(d) near middle after "is the date" substituted "that the irrevocable written election is signed" for "of execution of the binding, irrevocable election" and inserted second sentence requiring effective date to be at least 90 days before member's termination date; in (4) near beginning of first sentence substituted "and the member's employer fail to sign" for "fails to make"; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 in (1) after "select" inserted "subject to subsection (4) and by executing a binding, irrevocable written election at least 90 days before the member's termination date"; at beginning of (1)(a) inserted "Option 1" and in first sentence substituted "the total termination pay" for "termination pay"; in (1)(b) inserted "Option 2", in first sentence substituted "the total termination pay" for "termination pay", and inserted fourth sentence requiring contributions to be made at time of termination; in (1)(c) inserted "Option 3" and in second sentence after "employer" deleted "and any contributions made under 19-20-602 and 19-20-605 must be refunded"; inserted (2) requiring binding, irrevocable election to be executed by member and employer and outlining the contributions statements required to be made by member; inserted (3) outlining contributions required to be deducted from termination pay and those picked up by the employer; inserted (4) providing contribution procedure for member who fails to make written election within time period or who contributes amount greater than termination pay amount, prohibiting employer from picking up contribution, and subjecting contribution to limits of federal tax code; and made minor changes in style. Amendment effective on later of occurrence of contingency or July 1, 1999.

Contingent Effective Date: Section 29(3), Ch. 111, L. 1999, provided: "The provisions in [sections 9, 13, and 18] [19-20-415, 19-20-602, and 19-20-716], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan." The contingency occurred on March 3, 1999, and the amendments to this section became effective July 1, 1999.

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

Administrative Rules

ARM 2.44.506 Benefit payments.

ARM 2.44.515 Correction of errors on contributions and overpayments.

ARM 2.44.517 Formula for determining contributions due on termination pay.
ARM 2.44.517A Reporting of termination pay.

19-20-718. Maximum contribution limitation.

Compiler's Comments

2015 Amendment: Chapter 210 inserted (4)(e) regarding treating member receiving differential wage payments as employed by employer pursuant to Internal Revenue Code. Amendment effective July 1, 2015.

Retroactive Applicability: Section 33, Ch. 210, L. 2015, provided: "[Section 25] [19-20-718] applies retroactively, within the meaning of 1-2-109, to differential wage payments made on or after January 1, 2009."

2009 Amendment: Chapter 282 inserted (4)(b) regarding compensation for limitation years beginning after December 31, 2000; inserted (4)(c) regarding payment of compensation for limitation years beginning on and after September 1, 2009; inserted (4)(d) limiting compensation for limitation years beginning on or after September 1, 2009; and made minor changes in style. Amendment effective July 1, 2009.

Retroactive Applicability: Section 23(2), Ch. 282, L. 2009, provided: "[Section 11] [amending 19-20-718] applies retroactively, within the meaning of 1-2-109, to pension year benefits beginning after January 1, 2001."

2005 Amendment: Chapter 320 in (1) near end after "system" inserted "required under part 4 or 6 of this chapter". Amendment effective April 21, 2005.

Removal of Contingent Effective Date: Section 17, Ch. 320, L. 2005, amended sec. 29(2), Ch. 111, L. 1999, by removing language related to a contingent effective date and replacing it with an effective date of July 1, 2005.

Contingent Effective Date: Section 29(2), Ch. 111, L. 1999, provided: "The provisions in [sections 4 and 19] [19-20-212 and 19-20-718], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan."

2003 Amendment: Chapter 174 at beginning of (1)(a) deleted "If the system's law requires a lump-sum payment for purchase of service credit"; in (1)(b) after "qualified" inserted "governmental" and at end inserted "if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212"; in (4) near end of first sentence after "125" inserted "132(f)" and inserted second sentence requiring changes in maximum limits to be applied prospectively; and made minor changes in style. Amendment effective March 31, 2003.

19-20-719. Guaranteed annual benefit adjustment — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 245, L. 2023. Amendment effective July 1, 2023.

Retroactive Applicability: Section 15, Ch. 245, L. 2023, provided: "[Section 7] [19-20-719] applies retroactively, within the meaning of 1-2-109, to all guaranteed annual benefit adjustment increases on or after July 1, 2013."

2013 Amendment: Chapter 389 in (1) substituted current text for former text that read: "On January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%"; inserted (2) concerning retirement allowance increases payable to members; in (3) after "section if" deleted "the retiree has received" and after "benefit payments" inserted "have been made"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2007 Amendments — Composite Section: Chapter 285 in (3) after "On" deleted "January 1, 2002, and" and after "system's" deleted "biennial"; and in (3)(a) in two places after "recent" deleted "biennial". Amendment effective June 1, 2007. The amendments by Ch. 305 rendered the amendments by Ch. 285 void.

Chapter 305 in (1) at beginning deleted "Subject to subsection (3)"; in (2) before "annual" deleted "minimum"; deleted former (3) and (4) that read: "(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section"; and made minor changes in style. Amendment effective July 1, 2007.

2003 Amendment: Chapter 174 near middle of (2) substituted "retiree has received at least 36 monthly retirement benefit payments prior to January 1" for "retiree's most recent retirement effective date is at least 36 months prior to January 1". Amendment effective March 31, 2003.

2001 Amendment: Chapter 149 in (1) at beginning inserted "Subject to subsection (3)"; inserted (3) allowing the board, subject to certain requirements, to increase the annual benefit adjustment until a maximum of 3% is guaranteed; and made minor changes in style. Amendment effective March 29, 2001.

Nonseverability: Section 8, Ch. 360, L. 1999, was a nonseverability clause.

Effective Date: Section 9, Ch. 360, L. 1999, provided: "[This act] is effective July 1, 1999."

19-20-722. Eligible rollover distributions.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 135, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2027.

Termination Provision Repealed: Section 1, Ch. 189, L. 2015, repealed sec. 5, Ch. 129, L. 2009, which terminated 2009 amendments to this section June 30, 2015. Effective April 2, 2015.

2013 Amendments — Composite Section: Chapter 238 in (1) after "employed" deleted "by an employer"; and inserted (1)(c) requiring certain members to complete the break-in-service period before being employed in a reportable position. Amendment effective July 1, 2013.

Chapter 282 in (8) in two places substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2011 Amendments — Composite Section — Code Commissioner Correction: Chapter 59 in (1)(a) after "may be employed part-time by" substituted "an employer in a position that is reportable to the retirement system" for "a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system"; in (1)(b) at beginning deleted "For the purposes of this subsection (1)" and after "retirement benefits includes all" substituted "amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year" for "remuneration paid to the retired member"; in (1)(b)(i) substituted "health insurance premiums directly paid" for "the amount of health insurance premiums paid" and inserted "for health care coverage provided by the employer"; in (3) after "[19-20-732]" deleted "and 19-20-733", in (3)(a) at beginning after "position" substituted "but" for "or" and in last sentence after "benefit must be" substituted "suspended" for "canceled"; in (3)(b) at beginning after "full-time position" substituted "or employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment" for "must be canceled beginning in the month in which the retired member returns to full-time employment"; in (4) substituted definition for "For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102"; inserted (5) concerning the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract; inserted (6) requiring a retired member to provide written notice of postretirement employment to the retirement system; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 151 in (1)(a) after "employed" deleted "part-time"; in (3) after "employed" deleted "in a part-time position or"; deleted former (3)(b) that read: "(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment"; in (4) after "position" substituted "that is reportable to" for "eligible to participate in"; inserted (7) concerning earnings of retired members that are reportable to the retirement system; and made minor changes in style. Amendment effective July 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Because Ch. 151 deleted subsection (3)(b) and Ch. 59 amended it, the Code Commissioner has resolved the conflict by reinserting language in subsection (3)(b) to conform to the apparent intent of the Legislature in passing both chapters.

2009 Amendment: Chapter 298 in (1)(a) after "Except as" inserted "provided in 19-20-732 or as"; in (3) substituted "Except as provided in 19-20-732 and 19-20-733" for "Except as provided in subsection (5)"; deleted former (4) and (5) that read: "(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled"; and made minor changes in style. Amendment effective July 1, 2009.

The amendments to this section made by sec. 2, Ch. 129, L. 2009, and by sec. 5, Ch. 298, L. 2009, were rendered void by sec. 9, Ch. 298, L. 2009, a coordination section.

The amendment to this section made by sec. 12, Ch. 282, L. 2009, was rendered void by sec. 8, Ch. 298, L. 2009, a coordination section.

Termination: Section 5, Ch. 129, L. 2009, terminated amendments made to this section by sec. 2, Ch. 129, L. 2009, which were incorporated into amendments made by sec. 9, Ch. 298, L. 2009, a coordination section. Those amendments terminate June 30, 2015. The code commissioner has inserted brackets around the temporary language.

2007 Amendments — Composite Section: Chapter 90 inserted (6) defining position eligible to participate in the retirement system; inserted (7) regarding suspension of retirement allowance; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 305 inserted (1)(b) concerning maximum compensation and items excluded from remuneration; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 19, Ch. 320, L. 2005, provided that this section is effective on passage and approval. Approved April 21, 2005.

Retroactive Applicability: Section 20, Ch. 320, L. 2005, provided: "[Section 14(4)(b)] [19-20-731(4)(b)] applies retroactively, within the meaning of 1-2-109, to benefits recalculated on and after July 1, 2002."

19-20-732. Reemployment of certain retired teachers, specialists, and administrators — procedure — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 135, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2027.

Extension of Termination Date: Section 4, Ch. 135, L. 2023, amended sec. 4, Ch. 307, L. 2019, by extending the termination date imposed by Ch. 307 to June 30, 2027. Effective July 1, 2023.

2021 Amendment: See 2021 Session Law for amendment made by sec. 46, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 307 in (1)(a)(i) substituted "27 or more years" for "30 or more years"; in (1)(a)(iii) at end inserted last sentence requiring verification by the office of public instruction that the employer has advertised the position as required; in (1)(e) substituted current text for former text that read: "the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section"; inserted (6)(a) defining the term "administrator"; in (6)(b) at end inserted "that employs a retired member and is a second-class or third-class elementary district under 20-6-201 or a second-class or third-class high school district under 20-6-301"; and made minor changes in style. Amendment effective May 7, 2019, and terminates June 30, 2025.

Applicability: Section 3, Ch. 307, L. 2019, provided: "[This act] applies to contracts initiated on or after [the effective date of this act]." Effective May 7, 2019.

Termination Provision Repealed: Section 1, Ch. 189, L. 2015, repealed sec. 5, Ch. 129, L. 2009, which terminated this section June 30, 2015. Effective April 2, 2015.

2013 Amendment: Chapter 389 in (2) inserted "19-20-608, and 19-20-609"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

Effective Date — Applicability: Section 4, Ch. 129, L. 2009, provided: "[This act] is effective July 1, 2009, and applies to retired teachers, specialists, and administrators who are employed for school fiscal years beginning on or after [the effective date of this act] and who will exceed the postretirement limits provided in 19-20-731."

Termination: Section 5, Ch. 129, L. 2009, provided: "[This act] terminates June 30, 2015."

19-20-733. Resumption of employment by retired member — suspension of benefits.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 189, L. 2015, repealed sec. 5, Ch. 129, L. 2009, which terminated reference to 19-20-232 in this section June 30, 2015. Effective April 2, 2015.

2013 Amendment — Coordination: Chapter 366 in introduction inserted "subject to 19-20-734, the following provisions apply"; in (2) at beginning deleted "Except as provided in subsection (4)"; in (3)(a) substituted "subsection (3)(c)" for "subsection (4)"; inserted (3)(c) regarding death of joint annuitant prior to member's reemployment; deleted former (4) that read: "(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled"; and made minor changes in style. Amendment effective July 1, 2013.

The amendments to this section made by sec. 3, Ch. 238, L. 2013, and sec. 5, Ch. 366, L. 2013, were rendered void by sec. 12, Ch. 366, L. 2013, a coordination section.

2011 Amendment: Chapter 59 in (1) near beginning after "if a retired member returns to" deleted "full-time"; in (3)(a)(i) in two places substituted "joint annuitant" for "beneficiary" and in last sentence near end after "retirement" substituted "benefit option and" for "allowance". Amendment effective July 1, 2011.

Effective Date: Section 10, Ch. 298, L. 2009, provided that this section is effective July 1, 2009.

Termination: Section 5, Ch. 129, L. 2009, terminated sec. 1, Ch. 129, L. 2009, which was enacted as 19-20-732. Section 19-20-732 terminates June 30, 2015. Because a reference to 19-20-732 was inserted into this section by sec. 7, Ch. 298, L. 2009, a coordination section, the reference to that section terminates June 30, 2015. The code commissioner has inserted brackets around the temporary language.

19-20-734. Break-in-service requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 135, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2027.

Termination Provision Repealed: Section 1, Ch. 189, L. 2015, repealed sec. 6, Ch. 238, L. 2013, which terminated reference to 19-20-232 in this section June 30, 2015. Effective April 2, 2015.

Effective Date: Section 5, Ch. 238, L. 2013, provided that this section is effective July 1, 2013.

Termination: Section 6, Ch. 238, L. 2013, provided that the bracketed language in this section, referencing 19-20-732, terminates June 30, 2015.

Part 8
Superannuation Retirement

Part Administrative Rules

ARM 2.44.509 Computation of average final compensation.

19-20-801. Eligibility for service retirement.

Compiler's Comments

2019 Amendment: Chapter 276 in (5) after "the member's right to" substituted "a refund of" for "withdraw". Amendment effective October 1, 2019.

2013 Amendment — Coordination: Chapter 366 substituted current language regarding service retirement for former language that read: "A member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application." Amendment effective July 1, 2013.

The amendments to this section made by sec. 6, Ch. 366, L. 2013, and sec. 13, Ch. 389, L. 2013, were rendered void by sec. 13, Ch. 366, L. 2013, a coordination section.

1999 Amendment: Chapter 111 near beginning after "service" deleted "whose last 5 years of creditable service were in this state", after "part-time" inserted "creditable", and at end after "application" deleted "setting forth the fact of the member's retirement". Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 near end substituted "if the member has terminated employment in all positions from which the member is eligible to retire and files" for "if he files"; and made minor changes in style. Amendment effective April 30, 1997.

1983 Amendment: Reduced retirement period from 30 to 25 years.

Administrative Rules

ARM 2.44.412 National guard, reservists, and veterans called to active duty.

ARM 2.44.509 Computation of average final compensation.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

19-20-802. Early retirement.

Compiler's Comments

2015 Amendment: Chapter 210 in (1)(a) and (1)(b) at beginning inserted "vested"; in (1)(a) before "has attained" deleted "who has been credited with at least 5 years of creditable service and"; and in (1)(b) before "has attained" deleted "who has at least 5 years of creditable service and". Amendment effective July 1, 2015.

2013 Amendment — Coordination: Chapter 389 in (1)(a) inserted "tier one", inserted "been credited with", and after "50" substituted "is eligible for an early retirement allowance" for "may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application"; inserted (1)(b) concerning tier two members; inserted (2) concerning written application; in (3) after "most recent" inserted "actuarial"; and made minor changes in style. Amendment effective July 1, 2013.

The amendment to this section made by sec. 7, Ch. 366, L. 2013, was rendered void by sec. 14, Ch. 366, L. 2013, a coordination instruction.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendment: Chapter 151 in (2) after "19-20-804" deleted "and section 5, Chapter 549, Laws of 1981" and substituted "using actuarially equivalent factors based on the most recent valuation of the system" for "as follows"; deleted former (2)(a) and (2)(b) that read: "(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service"; and made minor changes in style. Amendment effective July 1, 2011.

2005 Amendment: Chapter 320 in (2) deleted reference to subsection (1) of 19-20-804. Amendment effective April 21, 2005.

1999 Amendment: Chapter 111 in (1) at beginning after "who" inserted "is not eligible for service retirement but who", after "service" deleted "whose last 5 years of creditable service were in this state", and at end after "application" deleted "setting forth the fact of his retirement"; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1983 Amendment: In (2)(a) and (2)(b), reduced number of years to be figured for full retirement from 30 to 25.

1981 Amendments: Chapter 396 decreased early retirement age from 55 to 50 in (1); inserted "up to a maximum of 60 months" after "number of months" in (2)(a); added (2)(b) providing method of reducing retirement allowance for up to 60 months in excess of 60 months of superannuation retirement date as calculated in subsection (2)(a); and made minor changes in phraseology.

Chapter 549 changed reference in (2) from "19-4-804(2)" to "section 5, Chapter 549, Laws of 1981".

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.509 Computation of average final compensation.

Case Notes

Compulsory Retirement: Motion and rules adopted by school trustees requiring the retirement of all teachers upon arriving at the age of 65 years were void. Abshire v. School District, 124 M 244, 220 P2d 1058 (1950).

19-20-804. Allowance for service retirement — professional retirement option allowance — creditable service limitation.

Compiler's Comments

2013 Amendment: Chapter 389 in (1) before "member" inserted "tier one or tier two", substituted "19-20-801(1) or (2)" for "19-20-801", and at end after "service" deleted "and service transferred under 19-20-409"; inserted (2) concerning professional retirement option; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2009 Amendment: Chapter 282 near beginning after "member who" substituted "qualifies for benefits pursuant to 19-20-801" for "has attained normal retirement age". Amendment effective July 1, 2009.

2005 Amendment: Chapter 320 deleted former (2) through (5) from both versions, but bracketed language in (4) appeared only in temporary version, that read: "(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) Each year on July 1 following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in [19-20-806 and] subsection (5) of this section, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated"; and made minor changes in style. Amendment effective April 21, 2005.

2003 Amendments — Composite Section: Chapter 120 at beginning of (1) inserted exception clause; in (4)(a) inserted reference to 19-20-806; and made minor changes in style. Amendment effective July 1, 2003, and terminates July 1, 2006.

Chapter 402 inserted (4)(d) exempting retired member elected or appointed as county superintendent of schools who elects not to become active member from statutorily specified employment and earnings limits. Amendment effective April 17, 2003.

Saving Clause: Section 4, Ch. 120, L. 2003, was a saving clause.

Effective Date — Applicability: Section 5, Ch. 120, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804."

2001 Amendment: Chapter 45 in (1) near beginning substituted "a member who has attained normal retirement age" for "an eligible member"; in (2)(a) after "average final compensation" deleted "plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement"; inserted (3) providing increase in maximum earning amount allowed under subsection (2)(a); and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1999 Amendment: Chapter 111 at end of (1) after "19-20-409" deleted "and additional service purchased under 19-20-412"; in (2) after "employed" substituted "part-time in a position specified in 19-20-302" for "as a part-time or substitute teacher in Montana"; inserted (3)(a) requiring cancellation of benefit of retired member employed full-time or earning more than allowed with exception; inserted (3)(b) regarding reinstatement of benefits; inserted (3)(c) regarding recalculation of benefits upon reemployment of previously retired member; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 in (1), at beginning, substituted "Upon termination, an eligible member" for "Upon superannuation retirement, a member", after "receive a retirement allowance" deleted "consisting of a pension which, together with an annuity, provides a retirement allowance", and after "average final compensation" inserted reference to 19-20-715; at beginning of (2) inserted exception clause; inserted (3) relating to reemployment of early-retired member with same employer and repayment of retirement allowance payments; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: At end of (1), after "multiplied by", substituted "the sum of the number of years of creditable service, service transferred under 19-4-409 [renumbered 19-20-409], and additional service purchased under 19-4-412 [renumbered 19-20-412]" for "the number of years of creditable service". Amendment effective July 1, 1989.

1983 Amendment: Increased and further defined amount a retired member can receive from "the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation . . .".

1981 Amendment: Deleted subsection that provided a minimum annual retirement allowance of $2,400 for a member who has 30 or more years of service and a reduced allowance for a member with less than 30 years based on a ratio.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.509 Computation of average final compensation.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in this section, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

Attorney General's Opinions

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

19-20-805. Calculation of average final compensation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 39 deleted former (5) that read: "(5) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(8)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection (5)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)." Amendment effective July 1, 2017.

2013 Amendments — Composite Section: Chapter 366 in (5)(a) substituted "19-20-101(8)(b)" for "19-20-101(7)(b)". Amendment effective July 1, 2013.

Chapter 389 in (1)(a) before "member" inserted "tier one"; inserted (1)(b) concerning tier two members; in (2)(a) before "member" inserted "tier one" and near end inserted "during the 5 years preceding termination"; inserted (2)(b) concerning tier two members' earned compensation; in (3) inserted "under subsection (2)"; in (4) inserted "if a tier one member or 5 consecutive years of full-time service if a tier two member"; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendment: Chapter 59 inserted (1) concerning the method for calculating average final compensation; in (2) following "19-20-804" inserted "or 19-20-902"; in (3)(a) near end after "average final compensation" substituted "must" for "may"; inserted (4) concerning the conversion of benefits excluded from earned compensation to earned compensation by an employer; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 90 in (2)(a)(ii) at end deleted "divided by the member's part-time teachers' retirement system service credit". Amendment effective March 30, 2007.

2003 Amendment: Chapter 174 in (1) near middle of first sentence after "5 years" inserted "immediately", after "member's" substituted "termination" for "retirement", and after "earned" substituted "in the 3 years used to calculate average final compensation" for "in the final 3 years"; inserted (2) outlining two options for calculating member's average final compensation when member transfers service without 3 consecutive years of full-time service and requiring average final compensation to be adjusted to exclude compensation considered termination pay; and made minor changes in style. Amendment effective March 31, 2003.

Effective Date: Section 33, Ch. 442, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

19-20-810. Termination of employment — retired member status — certification of termination date.

Compiler's Comments

2019 Amendment: Chapter 276 in (1) near end after "withdrawal" deleted "of the member's accumulated contributions". Amendment effective October 1, 2019.

Effective Date: Section 15, Ch. 366, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 9
Disability Retirement

19-20-901. Eligibility for disability retirement — determination by board.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2013 Amendment: Chapter 389 in (1) inserted exception clause; inserted (5) concerning disability retirement ineligibility; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

1999 Amendment: Chapter 111 in (1) in second sentence after "board" inserted "or its representative" and inserted third sentence requiring board's representative to report to board findings and action taken by the representative for board approval; and made minor changes in style. Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1993 Amendment: Chapter 226 inserted (2) relating to exams ordered, hearings conducted, and subpoenas issued by the Board or its representative in making a determination; inserted (3) allowing the Board to secure and pay for professional services to carry out this part; and made minor changes in style. Amendment effective March 30, 1993.

1991 Amendment: Near beginning and near middle of first sentence, before "member", deleted "active", near middle, after "service", inserted "and who has become disabled while being an active member", and at end substituted "he terminates his employment" for "his disability caused his retirement"; and made minor changes in style. Amendment effective February 1, 1991.

Administrative Rules

ARM 2.44.412 National guard, reservists, and veterans called to active duty.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

19-20-902. Allowance for disability retirement.

Compiler's Comments

1999 Amendment: Chapter 111 in (1)(a) after "service" inserted "including" and after "19-20-409" deleted "and additional service purchased under 19-20-412". Amendment effective July 1, 1999.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

1997 Amendment: Chapter 442 at end of (1) inserted "the greater of"; at end of (1)(a), after "19-20-412", deleted "if the retirement allowance exceeds one-fourth of the member's average final compensation"; at beginning of (1)(b) deleted "a pension that, together with the member's annuity, provides a total retirement allowance equal to"; inserted (2) establishing amount of earned compensation for purposes of calculation of average final compensation of member awarded early disability retirement allowance and limiting termination pay; and made minor changes in style. Amendment effective April 30, 1997.

1993 Amendment: Chapter 226 deleted part of former (1) that provided that if eligible, a member must receive the superannuation allowance provided for under part 8 of this chapter; deleted (2)(a) that provided that a member not eligible for a superannuation allowance must receive an annuity that would be the actuarial equivalent of accumulated contributions at the time of retirement; deleted introductory provision of (2)(b) that provided that a member receive a pension, together with the annuity; deleted (3) that provided that the retirement allowance could not exceed one-sixtieth of the average final compensation multiplied by the number of years that would be creditable to the member if employment would have continued until the attainment of the minimum age for superannuation retirement; and made minor changes in style. Amendment effective March 30, 1993.

1989 Amendment: Near middle of (2)(b), after "multiplied by", substituted "the sum of the number of years of his creditable service, service transferred under 19-4-409 [renumbered 19-20-409], and additional service purchased under 19-4-412 [renumbered 19-20-412]" for "the number of years of his creditable service". Amendment effective July 1, 1989.

1987 Amendment: In (1), after "allowance", deleted "and other benefits"; and near beginning of (2), after "eligible for the", substituted "allowance" for "benefits".

Attorney General's Opinions

Earned Compensation — Severance Payments — Unused Sick or Vacation Leave: Contractual severance payments and payments based on unused sick or vacation leave are earned compensation of a member for the year in which they are actually paid to the member provided they are properly reported to the system. Severance payments that are not provided for by contract and are unrelated to length of service or unused sick or vacation leave are not earned compensation. 37 A.G. Op. 176 (1978), clarifying 37 A.G. Op. 113 (1978).

19-20-903. Medical examination of disability retiree.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 245, L. 2023. Amendment effective July 1, 2023.

1997 Amendment: Chapter 442 in (1), in first sentence, substituted "board may require a disability benefit recipient" for "board may require and, upon the beneficiary's application, shall permit a disability beneficiary", in second sentence substituted "benefit recipient" for "beneficiary", and inserted third through sixth sentences providing for Board determination of disability based on examination and request for reconsideration; inserted (2) requiring former employer to grant preference to member whose disability retirement is canceled by Board; at beginning of (3) substituted "If a disability benefit recipient" for "Should a disability beneficiary"; and made minor changes in style. Amendment effective April 30, 1997.

1987 Amendment: In (1), near end of first sentence, deleted reference to the Medical Board before "a physician" and substituted "retirement board" for "medical board"; and in (2), after "submit to", substituted "a medical examination as required in subsection (1)" for "at least one medical examination in any year by the medical board or its representative".

19-20-904. Adjustment of allowance.

Compiler's Comments

2015 Amendment: Chapter 210 in (1)(a) in two places after "median" substituted "average final compensation" for "salary". Amendment effective July 1, 2015.

1997 Amendment: Chapter 442 throughout section substituted references to retiree for references to beneficiary; in (1)(a), at beginning, inserted exception clause and after exception clause substituted "a retiree receiving a disability retirement allowance" for "a disability beneficiary"; inserted (1)(b) relating to reemployment of disabled member with same employer and repayment of retirement allowance payments; in (2), at beginning, substituted "If the disabled retiree's" for "If the beneficiary's" and substituted "the retirement allowance" for "the beneficiary's retirement allowance"; deleted (4) that read: "(4) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the beneficiary was retired may not become a member of the retirement system while receiving a reduced benefit"; and made minor changes in style. Amendment effective April 30, 1997.

1995 Amendment: Chapter 111 near middle of (1), before "be reduced", substituted "retirement allowance" for "pension" and after "together with" deleted "his annuity and"; near beginning of (2) substituted "the beneficiary's retirement allowance" for "his pension", near middle substituted "the new allowance may not exceed the retirement allowance" for "the new pension may not exceeded the pension", and after "beneficiary" deleted "together with his annuity"; inserted (3) providing that the Board may require a recipient of a disability retirement allowance to submit an earning statement; and made minor changes in style. Amendment effective March 10, 1995.

1987 Amendment: In (1), at beginning after "If", deleted "the medical board reports and certifies to the retirement board that" and near middle deleted requirement that Retirement Board concur in such report.

1983 Amendment: Near middle and at end of (1), after "average final compensation" inserted provision relating to median salary of retirees during preceding year.

Administrative Rules

ARM 2.44.524 Adjustment of disability allowance for outside earnings.

19-20-905. Cancellation of allowance and restoration of membership.

Compiler's Comments

2021 Amendment: Chapter 173 in (1) near middle substituted "calendar year" for "fiscal year". Amendment effective July 1, 2021.

2017 Amendment: Chapter 39 in (1) after "employed" substituted "in a position reportable to the retirement system and earns compensation in any fiscal year in excess of the limitation provided in 19-20-904" for "full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302", in middle after "cease" substituted "and" for "If the retiree is employed full-time by an employer covered under this chapter", and near end after "system" inserted "effective on the first day of the month following the month in which the earnings limitation was exceeded"; and made minor changes in style. Amendment effective July 1, 2017.

2009 Amendment: Chapter 282 in (1) deleted former third sentence that read: "Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 174 in (1) near beginning of second sentence after "employed" inserted "full-time". Amendment effective March 31, 2003.

1997 Amendment: Chapter 442 in (1), in first sentence, substituted "If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease" for "If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he" and at beginning of second sentence inserted "If the retiree is employed by an employer covered under this chapter, the retiree"; in (2), near beginning, substituted "restored to active membership" for "restored to active service", after "age of 55 years" substituted "the member's retirement allowance" for "his pension", after "may not exceed" substituted "the retirement allowance" for "the pension", after "the sum of" substituted "the retirement allowance that the member was receiving" for "the pension which he was receiving", and after "last restoration to service" substituted "and the retirement allowance" for "and the pension"; and made minor changes in style. Amendment effective April 30, 1997.

Part 10
Death Benefits

19-20-1001. Payments upon death of member prior to retirement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec.11, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 276 in (1)(a) substituted current text for former text that read: "the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death"; inserted (1)(b) providing a $500 lump sum payment; inserted (1)(c) providing a $200 monthly payment; in (2)(a) substituted current first sentence for former text that read: "In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the designated beneficiary may elect to receive a retirement allowance" and in second sentence after "The retirement allowance" deleted "for the beneficiary of the member", after "option A" inserted "joint and survivor annuity optional allowance", and at end substituted "19-20-702(2)" for "19-20-702(2)(a)"; in (2)(c) substituted current text for former text that read: "(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member's accumulated contributions at the time of the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate"; deleted former (3), (4), (5), and (6) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 210 in (2)(a) at beginning deleted "Except as provided in subsection (2)(d)", substituted "designated beneficiary" for "nominated beneficiary", in second sentence after "allowance" inserted "for the beneficiary of the member", and substituted "19-20-715(2)(a)" for "19-20-715(2)"; deleted former (2)(d) that read: "(d) The nominated beneficiary of a deceased tier two member may elect to receive a retirement allowance as permitted under subsection (2)(a) only if the tier two member died within 1 year of the last day on which the tier two member was employed in a position reportable to the retirement system. If the tier two member was an inactive member for more than 1 year before the member's date of death, the tier two member's accumulated contributions must be paid pursuant to subsection (1)"; in (3) and (4) substituted "retirement system" for "state of Montana"; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendment: Chapter 389 in (2)(a) at beginning inserted exception clause; inserted (2)(d) concerning retirement allowances for nominated beneficiaries; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendment: Chapter 59 in (2)(a) substituted "19-20-715(2)" for "19-20-715"; in (2)(c) substituted "a beneficiary receiving payments under subsection (2)(a) dies and payments" for "payments", and after "accumulated contributions" substituted "at the time of" for "before"; in (5) after "upon the member's death" deleted "or if a family law order has been issued"; in (5)(a) after "each beneficiary" deleted "and alternate payee, if applicable"; inserted (6) providing that an alternate payee's rights must be given priority over a beneficiary's rights; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 in (2)(a) near middle after "19-20-804" substituted "without reference to 19-20-715" for "and section 5, Chapter 549, Laws of 1981"; in (5) near end of introductory clause after "death" inserted "or if a family law order has been issued"; in (5)(a) after "beneficiary" inserted "and alternate payee, if applicable"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 320 in (2) near middle deleted reference to subsection (1) of 19-20-804. Amendment effective April 21, 2005.

2001 Amendment: Chapter 45 in (1) near middle substituted "to the beneficiary that" for "to a person" and substituted "written application" for "written designation"; inserted (2)(b) providing for effective date of retirement allowance; in (2)(c) near beginning substituted "the beneficiary" for "a recipient" and at end substituted "beneficiary's estate" for "beneficiary"; inserted (5) concerning payment if member nominated more than one beneficiary; and made minor changes in style. Amendment effective March 16, 2001.

Saving Clause: Section 25, Ch. 45, L. 2001, was a saving clause.

1997 Amendment: Chapter 442 in (2)(a), at end of first sentence, substituted "the nominated beneficiary may elect to receive a retirement allowance" for "the beneficiary nominated by the deceased member may elect to receive a monthly life annuity" and at beginning of second sentence substituted "The retirement allowance must be" for "The monthly life annuity shall be"; in (2)(b), after "made", substituted "to a recipient" for "to an annuitant", after "accumulated contributions" substituted "before the member's death" for "prior to the annuitant's death", after "between" substituted "the total retirement allowance payments" for "the total annuity payments", and substituted "accumulated contributions at the time of the member's death must be paid" for "accumulated contributions shall be paid"; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: In second sentence of (2)(a) deleted reference to 19-4-802; and in (4) increased monthly sum payable to each minor child from $100 to $200. Amendment effective July 1, 1989.

Applicability — Code Commissioner Correction: Section 7, Ch. 56, L. 1989, provided in part that [section 3(4)] applies to minor children receiving benefits under 19-4-1001 (renumbered 19-20-1001) and 19-4-1002 (renumbered 19-20-1002] on or after July 1, 1989. As originally drafted, "[section 3(4)]" referred to subsection (4) of 19-4-1001 (renumbered 19-20-1001). A new section was added to House Bill No. 314 (Ch. 56, L. 1989), but the internal references in section 7 were not changed to reflect the renumbered sections. Therefore, the Code Commissioner has determined, pursuant to sec. 83, Ch. 83, L. 1989, that the applicable section referenced in sec. 7, Ch. 56, L. 1989, is "[section 4(4)]", codified as 19-4-1001(4) (renumbered 19-20-1001(4)).

1981 Amendment: Changed reference in (2)(a) from 19-4-804(2) to sec. 5, Ch. 549, L. 1981.

Benefit Adjustment — Interim Study Committee Bill: Chapter 549, L. 1981 (HB 45), did not amend this section but provided for a one-time cost-of-living increase. The bill was introduced at the request of the Study Committee on Public Retirement Systems. See committee report, Legislative Council, 1980.

Administrative Rules

ARM 2.44.412 National guard, reservists, and veterans called to active duty.

ARM 2.44.527 Payment for service — calculation of retirement benefits.

Case Notes

Beneficiary Designated in Writing — Takes Proceeds Over Surviving Widow: While married to his first wife, the decedent became a member of the Teachers' Retirement System. He designated in writing his first wife as beneficiary of the proceeds of the pension account; that designation remained unchanged. When the couple divorced, they executed a property settlement agreement whereby each waived rights in the other's estate. The decedent did not submit a change of beneficiary form after he remarried. After his death, his second wife brought the present action to recover proceeds contributed to the retirement system, a large portion of which was contributed during her marriage to the decedent. Pursuant to the provisions of this statute which controls, the proceeds of the account can be paid only to the one nominated by a written designation or, in the absence of such nomination, to the decedent's estate. The operation of the system is governed by statute, and the stability of the system depends upon adherence to the statutory scheme. The person nominated in the written designation is entitled to the proceeds. A number of jurisdictions would allow a deviation from the written nomination but only if there was an intent to change the designation, coupled with some affirmative action to show a desire to make the change. In the present case, the second wife would not prevail under even this more liberal view as there is no evidence the decedent took any step to change the beneficiary designation. The proceeds properly were awarded to the first wife even though she waived her rights in her former husband's estate. Sowell v. Teachers' Retirement System, 214 M 200, 693 P2d 1222, 41 St. Rep. 2413 (1984), distinguished in In re Marriage of Butler, 243 M 521, 795 P2d 467, 47 St. Rep. 1376 (1990).

19-20-1002. Payments on death of retiree.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 245, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 276 in (1)(a) substituted current text for former text that read: "a death benefit of $500 is payable to the joint annuitant or designated beneficiary"; inserted (1)(b) concerning a monthly payment to each minor child of a deceased retiree when the child reaches age 18; substituted current (2), (3), and (4) for former (2), (3), and (4) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 39 in (2) at beginning inserted exception clause; inserted (4) concerning how payments are made if the retired member elected period certain and life retirement allowance; and made minor changes in style. Amendment effective July 1, 2017.

2011 Amendment: Chapter 59 in (1) near beginning after "death of a" inserted "retired", after "member" deleted "after retirement", and after "payable to the" inserted "joint annuitant or"; in (2) substituted language regarding payment to estate for "In the event that payments made to a benefit recipient do not equal the amount of the member's accumulated contributions before the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the beneficiary". Amendment effective July 1, 2011.

1997 Amendment: Chapter 442 in (2), near beginning, substituted "a benefit recipient" for "an annuitant" and after first "accumulated contributions" substituted "before the member's retirement" for "prior to the annuitant's death"; in (3), near end, substituted "deceased retiree" for "deceased member"; and made minor changes in style. Amendment effective April 30, 1997.

1989 Amendment: In (3) increased monthly sum payable to each minor child from $100 to $200. Amendment effective July 1, 1989.

Applicability — Code Commissioner Correction: Section 7, Ch. 56, L. 1989, provided in part that [section 4] applies to minor children receiving benefits under 19-4-1001 (renumbered 19-20-1001) and 19-4-1002 (renumbered 19-20-1002) on or after July 1, 1989. As originally drafted, "[section 4]" referred to 19-4-1002 (renumbered 19-20-1002). A new section was added to House Bill No. 314 (Ch. 56, L. 1989), but the internal references in section 7 were not changed to reflect the renumbered sections. The Code Commissioner has determined, pursuant to sec. 83, Ch. 83, L. 1989, that the applicable section referenced in sec. 7, Ch. 56, L. 1989, is "[section 5]", codified as 19-4-1002 (renumbered 19-20-1002).

Section Not Codified: Section 75-6208(5)(d), R.C.M. 1947, was not codified in the MCA, as redundant with 19-4-1002(3)(f) (renumbered 19-20-1002(3)(f)). This section has not been repealed and is still valid law. Citation may be made to sec. 103, Ch. 5, L. 1971, as amended by sec. 2, Ch. 57, L. 1971 and sec. 2, Ch. 422, L. 1971.

Administrative Rules

ARM 2.44.507 Payment of children's benefits.

19-20-1003. Payment of death benefits.

Compiler's Comments

2011 Amendment: Chapter 59 in (3) after "benefits payable to a" inserted "retired" and after "member's beneficiary" inserted "or joint annuitant". Amendment effective July 1, 2011.

2009 Amendment: Chapter 282 in (4) near end of second sentence after "provided in" substituted "19-20-702(3)(a)(i)" for "19-20-702(2)(d)(i)(A)". Amendment effective July 1, 2009.

Saving Clause: Section 28, Ch. 111, L. 1999, was a saving clause.

Effective Date: Section 29(1), Ch. 111, L. 1999, provided that this section is effective July 1, 1999.

19-20-1004. Compliance with federal act.

Compiler's Comments

Effective Date: Section 22, Ch. 282, L. 2009, provided that this section is effective July 1, 2009.

Retroactive Applicability: Section 23(3), Ch. 282, L. 2009, provided: "[Section 17] [enacting 19-20-1004] applies retroactively, within the meaning of 1-2-109, to teachers' retirement system member deaths on and after January 1, 2008."

19-20-1005. Alternate beneficiaries.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-1006. When beneficiaries designated — eligible beneficiaries — right to renounce.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-1007. Requirements for beneficiary designation to be effective.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-1008. Changes to beneficiary designations — limitations on changing spouse beneficiary interest.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-1009. Payment to minor child — opportunity to name custodian.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

19-20-1013. Supremacy of retirement system provisions.

Compiler's Comments

Effective Date: Section 24(1), Ch. 276, L. 2019, provided that this section is effective July 1, 2019.

Part 11
Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance.

Compiler's Comments

2015 Amendment: Chapter 210 in (1) at end substituted last sentence for "Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement"; and in (2) at end deleted "and paid directly to the employer or the employer's insurance carrier". Amendment effective July 1, 2015.

2013 Amendment: Chapter 366 in (3) substituted "commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification" for "verify"; in (4) substituted current language for "notify the retired member of any changes"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 59 in (2) before "beneficiary" inserted "joint annuitant or". Amendment effective July 1, 2011.

2007 Amendment: Chapter 90 in (1) near beginning of first sentence inserted "approved" and in second sentence at beginning inserted "Premiums withheld may be"; inserted (3) requiring employer verification of insurance deductions; and made minor changes in style. Amendment effective March 30, 2007.

2003 Amendment: Chapter 174 inserted (2) allowing eligible beneficiary of retired member to elect continued withholding of monthly insurance premium from monthly retirement benefit for direct payment to employer or insurance carrier; and made minor changes in style. Amendment effective March 31, 2003.

Part 12
Unpaid Contributions and Overpayments

Part Compiler's Comments

Effective Date: Section 32, Ch. 210, L. 2015, provided that this part is effective July 1, 2015.

19-20-1212. Recovery methods.

Compiler's Comments

2019 Amendment: Chapter 276 in (1)(g) before "death benefit" inserted "lump-sum" and at end substituted "19-20-1001(1)(b) or 19-20-1002(1)(a)" for "19-20-1001(3) or 19-20-1002(1)". Amendment effective October 1, 2019.

CHAPTER 21
UNIVERSITY SYSTEM RETIREMENT PROGRAM

Part 1
General Provisions

19-21-101. Authority to establish university system retirement program.

Compiler's Comments

2013 Amendment: Chapter 282 substituted "university system retirement program" for "optional retirement program"; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendment: Chapter 490 inserted last sentence requiring compliance with Internal Revenue Code; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

19-21-102. Definitions.

Compiler's Comments

2013 Amendment: Chapter 282 in definition of program substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

1999 Amendment: Chapter 471 inserted definitions of program and public employees' retirement system; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-21-103. Duties of board of regents.

Compiler's Comments

2001 Amendment: Chapter 490 inserted (1) regarding action as fiduciary and exercise of fiduciary authority; and made minor changes in style. Amendment effective July 1, 2001.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Part 2
Participation — Benefits

19-21-201. Participation in program.

Compiler's Comments

2017 Amendment: Chapter 40 in (1) near beginning substituted "this section" for "subsection (2)"; in (2)(b) at beginning inserted exception clause; in (2)(b)(i) at end inserted "subject to subsection (7)"; in (3) after "the public employees' retirement system" inserted "or the teachers' retirement system"; in (4) near beginning inserted "under this section"; in (4) and (5) after "the teachers' retirement system" inserted "or the public employees' retirement system"; in (5) after "If an eligible" substituted "person" for "officer or staff member"; inserted (7) regarding a person who is a member of both the public employees' retirement system and the teachers' retirement system; and made minor changes in style. Amendment effective February 22, 2017.

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 deleted former (6) that read: "(6) Subject to and as provided in 19-3-2112, a university system employee in a position covered under the public employees' retirement system may elect to participate in the program."

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) in first sentence, in (1)(c), in (2) in introductory clause, and in (2)(b)(ii) before "program" deleted "optional retirement" or "optional retirement plan"; in (2)(b) in introductory clause substituted "An eligible person" for "A person"; inserted (2)(d) making a person ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system under subsection (1) or in the public employees' retirement system under subsection (2); in (3) near beginning substituted "irrevocable election" for "notice"; inserted (6) allowing certain university system employees to elect to participate in the program; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1993 Amendment: Chapter 178 in (1), at beginning, inserted exception clause; and inserted (2) requiring an eligible person hired after July 1, 1993, to become a member of the optional retirement plan unless on the date hired, the person is an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 4 (chapter 4 renumbered Title 19, chapter 20), and the person elects within 30 days of being hired to remain with the retirement system of which the person is a member on the date hired. Amendment effective July 1, 1993.

Case Notes

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under 19-21-202, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-21-202. Effect on rights under teachers' retirement system.

Compiler's Comments

2019 Amendment: Chapter 276 in (2) at end substituted "19-20-603" for "19-20-603(1)" and deleted former last sentence that read: "A member who elects to participate in the program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the system under 19-20-304(4)." Amendment effective October 1, 2019.

2001 Amendment: Chapter 490 in (1) near beginning after "An election under" substituted "19-21-201" for "19-21-201(1) through (3) and (5)". Amendment effective July 1, 2001.

Effective Date Changed: Section 38(5), Ch. 490, L. 2001, amended sec. 79, Ch. 471, L. 1999, to make this section effective July 1, 2001, rather than on occurrence of a contingency or July 1, 2002, whichever was earlier.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 throughout section before "program" deleted "optional retirement"; in (1) inserted reference to subsections (1) through (3) and (5) of 19-21-201; and in (2) in second and third sentences before "system" deleted "retirement". Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner."

Case Notes

State Control Over Financial Consequences of Pension Plan Associated With Public Employment — Retirement Policy Rationally Related to Government Interest: Plaintiff challenged the statutory scheme governing the eligibility for public pensions for employees who work for a school district, retire, and then work for the University System. The District Court held that the statutory proscription in this section that prevents a retired teacher from receiving benefits from a state-sponsored retirement program while remaining an employee and contributing member of another private retirement program violated the constitutional right to equal protection. On appeal, the Supreme Court applied the rational basis test and reversed. There remains nothing irrational about the state deciding that at any one time, a public employee should not be both drawing a new salary and accruing a public pension and receiving an old public pension. When the job and its associated pension plan involve public employment, the state's interest in and control over the financial consequences are a legitimate exercise of the constitutional mandate in Art. VIII, sec. 15, Mont. Const., and the District Court incorrectly held that the statutory scheme was an equal protection violation. Farrier v. Teachers' Retirement Bd., 2005 MT 229, 328 M 375, 120 P3d 390 (2005).

Retention of Rights by Inactive Member of Teachers' Retirement System — Benefits Due Only Upon Termination of Membership: Farrier was a full-time teacher and regularly contributing member of the Teachers' Retirement System (TRS) when he accepted a part-time university position. Farrier then elected to have his retirement benefits paid into the optional retirement program instead of the TRS. After retiring from the teaching position, Farrier began receiving benefits from the TRS and accepted a full-time university position. The Teachers' Retirement Board informed Farrier that if he exceeded the postretirement earning limitation in 19-20-804, his TRS benefits would be suspended until he retired from the university. The District Court found that under this section, Farrier retained all rights as an inactive member of the TRS and that Farrier was entitled to receive benefits while maintaining an inactive status. On appeal, the Supreme Court held that Farrier was correctly classified as an inactive TRS member and as such retained all rights as an inactive member, including the right to withdraw all accumulated contributions or to remain an inactive member with the right to qualify for benefits. However, the District Court incorrectly concluded that Farrier was entitled to TRS benefits as an inactive member, and Farrier was precluded from receiving further benefits until membership with the TRS was terminated. Farrier v. Teachers' Retirement Bd., 2003 MT 278, 317 M 509, 78 P3d 1207 (2003).

19-21-203. Contributions — supplemental contributions.

Compiler's Comments

2011 Amendment: Chapter 273 in (1)(b)(ii) inserted "to each participant whose wages or salary and benefits are paid from the current unrestricted subfund as described in 17-2-102". Amendment effective July 1, 2011.

2009 Amendments — Composite Section: Chapter 2 in (1)(b)(ii) in second sentence after "board" deleted brackets around "of regents". Amendment effective October 1, 2009.

Chapter 426 in (1)(b)(i) at end deleted "and certify to the state treasurer the total amount for all participants combined"; in (1)(b)(ii) at beginning deleted "Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred", near beginning of second sentence following "amounts" substituted "allocated" for "transferred", and near end following "appropriated" inserted "to the board of regents from the general fund"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 306 inserted (1)(b) concerning calculation of earned compensation and transfer of calculated amount; in (1)(c) near middle after "added to" inserted "the sum of", after "contribution" inserted "plus the contribution made under subsection (1)(b)(ii)", and substituted "13%" for "12%"; in (2)(b) at beginning inserted "Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section", after "participant's" inserted "contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b)", substituted reference to subsection (1)(c) for reference to subsection (2)(a), and increased percentage from 12% to 13%; and made minor changes in style. Amendment effective July 1, 2007.

2007 Code Commissioner Correction: The code commissioner has bracketed the language in the second sentence of (1)(b)(ii) to clarify that the reference to the board refers to the board of regents.

2003 Amendment: Chapter 114 in (3) after "Code" substituted "26 U.S.C. 403(b), as amended" for "of 1954" and at end inserted "26 U.S.C. 414(h)(2), as amended". Amendment effective October 1, 2003.

2001 Amendment: (Version effective on occurrence of contingency or July 1, 2002, whichever is earlier) Chapter 490 inserted introductory clause regarding program participants; deleted former (5)(b) that read: "(b) For employees electing to become program members pursuant to 19-3-2112, the board of regents shall, in addition to other contributions required under this section, contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117(2)(b) and adjusted pursuant to 19-3-2121"; and made minor changes in style.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

1999 Amendment: Chapter 471 in (1) near beginning before "program" deleted "optional retirement"; inserted (5)(b) requiring that for employees electing to become program members under 19-3-2112, the board shall contribute to the public employees' retirement system the plan choice rate provided in 19-3-2117 and adjusted under 19-3-2121; and made minor changes in style. Amendment effective on occurrence of contingency or July 1, 2002, whichever is earlier.

Contingent Effective Date: Section 79(4), Ch. 471, L. 1999, provided that the amendments to this section are "effective contingent upon certification, as provided in [section 65] [not codified], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier". Section 65 provided in subsection (2) that "The board shall certify to the governor and the secretary of state the date on which the defined contribution retirement plan established pursuant to [sections 42 through 63] [chapter 3, part 21, of this title] is ready to become operational and shall provide a copy of the certification to the code commissioner." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

1997 Amendment: Chapter 419 in (5) substituted "make the supplemental contributions to the teachers' retirement system as provided in 19-20-621" for "contribute the amounts specified in subsection (5)(b) to the teachers' retirement system", after "incurred by" deleted "the employees of", after "university system" deleted "who elect or who are required to become members of the optional retirement plan. The contributions paid by the board are", and at end deleted "and must be consistent with the requirements of 19-21-111"; and deleted (5)(b) that read: "(b) (i) Beginning July 1, 1993, through June 30, 1997, the contributions to be made by the board of regents must equal 2.503% of earned compensation attributable to optional retirement participants.

(ii) Beginning July 1, 1997, the contribution rate must be adjusted, pursuant to 19-20-201, based on the actual experience of the members of the Montana university system who are members of the teachers' retirement system, and must be set at a rate sufficient to amortize the past service liability of the university system members by July 1, 2033". Amendment effective July 1, 1997.

1993 Amendment: Chapter 178 at end of (1) substituted "an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation" for "an amount equal to the employer contribution required under 19-4-605"; in former (2), (2)(a), and (2)(a)(i) deleted requirement that the Board of Regents' contribution be apportioned and paid to the designated companies in an amount equal to the greater of the employer contribution to the Teachers' Retirement System not used to amortize past service unfunded liability or in an amount that, when added to the participant's contribution, is equal to 10% of the participant's contribution; deleted (2)(b) providing that the balance of the contribution went to the Teachers' Retirement System; inserted (2) allowing the Board to reduce the participant's contribution to an amount not less than 6% of the participant's earned compensation and to increase the employer's contribution rate to an amount not exceeding 6% and requiring the sum of the participant's and employer's contribution to remain at 12%; and inserted (5) pertaining to contributions by the Board of Regents to the Teachers' Retirement System for employees of the University System for past service liability incurred by active, inactive, and retired members of the Teachers' Retirement System. Amendment effective July 1, 1993.

19-21-211. Payment of benefits.

Compiler's Comments

2013 Amendment: Chapter 282 substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

19-21-212. Exemption from taxation, legal process, and assessments.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) at beginning after "(1)" deleted "except for a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c)" and after "exempt from any" deleted "state"; and made minor changes in style. Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2013 Amendment: Chapter 282 substituted "university system retirement program" for "optional retirement program". Amendment effective October 1, 2013.

2009 Amendment: Chapter 382 in (1) after "in excess of" deleted "$3,600 or adjusted by" and after "15-30-2110(2)(c)" deleted reference to subsection (ii); and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 9, Ch. 382, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008."

1997 Amendment: Chapter 552 at beginning of introduction inserted exception clause and at end substituted "on the contributions" for "thereon". Amendment effective July 1, 1997.

1991 Amendment: Inserted (1) concerning adjusted retirement allowance or retirement allowance in excess of $3,600. Amendment effective May 24, 1991.

Preamble: The preamble attached to Ch. 823, L. 1991, provided: "WHEREAS, the State of Montana desires to tax federal, state, and private retirement benefits equally; and

WHEREAS, the State of Montana has in the past provided its employees with a benefit of employment through its tax system; and

WHEREAS, the Legislature desires and encourages qualified employees to enter and remain in public service; and

WHEREAS, it is the policy of the State of Montana to encourage public employees who become superannuated or incapacitated to retire and, to that end, to provide sufficient benefits to provide for retirement; and

WHEREAS, the Legislature wishes to encourage all retired persons to remain within Montana to provide a critical mass of retired persons who use certain services and facilities that are important to retired persons and that may keep and perhaps entice other retired persons into the state; and

WHEREAS, the Legislature has in the past granted increases in retirement benefits in a manner designed to provide relatively greater increases to those retirees who were employed during the years of low wages and whose benefits are relatively small; and

WHEREAS, the Legislature therefore grants an increase in benefits to its former public employees who are residents of the state to provide compensation to encourage them to remain in Montana."

Severability: Section 20, Ch. 823, L. 1991, was a severability clause.

Retroactive Applicability: Section 22, Ch. 823, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

Case Notes

PERS Funds Not Exempt in Bankruptcy Proceeding: Accumulated contributions in the Montana Public Employees' Retirement System (PERS) account are not a spendthrift trust excluded from the estate under 11 U.S.C. 541 of the federal bankruptcy code. In re Anderson, 43 St. Rep. 1861 (1986) (U.S. Bankruptcy Court for the District of Montana).

19-21-213. Participation by employees in positions covered by public employees' retirement system.

Compiler's Comments

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

19-21-214. Contributions and allocations for employees in positions covered under public employees' retirement system.

Compiler's Comments

2015 Amendment — Coordination: Chapter 170 in (2) substituted "subsections (3) and (4)" for "subsection (3)" and inserted "received under 19-3-316"; in (2)(b) substituted "19-3-316(4)(b)" for "19-3-316" and inserted "an amount equal to"; inserted (2)(c) regarding allocations to defined benefit plan unfunded liabilities; inserted (2)(d) regarding allocations beginning July 1, 2015, to defined benefit plan and to member's retirement account; in (3) substituted current language regarding annual increase in allocations until 2024 for former (3) that read: "(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121"; inserted (4) regarding allocations to member's retirement account after board's verification that plan choice rate unfunded actuarial liability is paid off; and made minor changes in style. Amendment effective July 1, 2015.

The amendment to this section made by sec. 4, Ch. 190, L. 2015, was rendered void by sec. 6, Ch. 190, L. 2015, a coordination instruction.

The amendment to this section made by sec. 1, Ch. 191, L. 2015, was rendered void by sec. 2, Ch. 191, L. 2015, a coordination section.

Preamble: The preamble attached to Ch. 170, L. 2015, provided: "WHEREAS, employer contributions equal to 2.37% of compensation for covered members in the Public Employees' Retirement System Defined Contribution Retirement Plan (PERS-DCRP) and the Montana University System Retirement Program (MUS-RP) are statutorily allocated to the Public

Employees' Retirement System Defined Benefit Retirement Plan (PERS-DBRP) as the plan choice rate; and

WHEREAS, additional employer contributions equal to 0.37% of a member's compensation are also allocated to the plan choice rate and this percentage will increase by 0.1% each year through 2024; and

WHEREAS, the plan choice rate was established to pay the portion of the PERS-DBRP unfunded actuarial liabilities associated with PERS members who elected to join the PERS-DCRP rather than the PERS-DBRP plan and also to pay for any increase to the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, section 19-3-2121, MCA, requires that the plan choice rate be adjusted if it is actuarially determined to be too high or too low to pay off the associated unfunded actuarial liabilities within an established timeframe and if there is an actual change in the normal cost of benefits in the PERS-DBRP resulting from PERS members selecting the PERS-DCRP; and

WHEREAS, the normal cost of benefits in the PERS-DBRP has never significantly changed because of PERS members selecting the PERS-DCRP; and

WHEREAS, the Public Employees' Retirement Board's actuary determined that as of June 30, 2014, the unfunded actuarial liability associated with the plan choice rate is $5,903,188, and is estimated to be fully paid off within the next 2 to 3 years."

Retroactive Applicability: Section 7, Ch. 170, L. 2015, provided: "[Section 4(2)(c) and (3)] [19-21-214(2)(c) and (3)] applies retroactively, within the meaning of 1-2-109, to contributions under 19-21-214(2)(b) made on and after July 1, 2013."

2011 Amendments — Composite Section: Chapter 99 in (2)(b) at beginning deleted "on July 1, 2007, through June 30, 2009, 0.135% of compensation and". Amendment effective July 1, 2011.

Chapter 369 in (2)(b) at beginning deleted "on July 1, 2007, through June 30, 2009, 0.135% of compensation and" and at end deleted "in the following order"; deleted former (2)(b)(i) that read: "(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 371 in (2) in introductory clause after "contribution" deleted "under subsection (1)(b) must be allocated as follows"; in (2)(a) inserted introductory clause; inserted (2)(b) specifying employer contribution beginning July 1, 2007, and July 1, 2009, and providing for allocation of contributions; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 10, Ch. 371, L. 2007, was a saving clause.

Severability: Section 11, Ch. 371, L. 2007, was a severability clause.

2003 Amendment: Chapter 114 in (2)(c) substituted "19-3-112(1)(b)" for "19-3-112(1)(c)". Amendment effective October 1, 2003.

Saving Clause: Section 41, Ch. 490, L. 2001, was a saving clause.

Severability: Section 42, Ch. 490, L. 2001, was a severability clause.

Contingent Effective Date: Section 43(2), Ch. 490, L. 2001, provided: "(2) [Sections 34 and 37] [19-21-213 and 19-21-214] are effective contingent upon certification by the public employees' retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan is ready to become operational or on July 1, 2002, whichever is earlier." The contingency occurred pursuant to a letter dated May 23, 2002, which certified that the defined contribution retirement plan "is ready to become and will become operational as of July 1, 2002".

CHAPTER 50
DEFERRED COMPENSATION

Chapter Administrative Rules

Title 2, chapter 43, subchapter 51, ARM Deferred compensation plan.

Part 1
General Provisions

19-50-101. Definitions.

Compiler's Comments

2015 Amendment: Chapter 140 in definition of participant substituted "either an employee who is enrolled or a previous employee who remains enrolled" for "an employee enrolled"; and made minor changes in style. Amendment effective March 30, 2015.

2013 Amendment: Chapter 145 in definition of participant after "enrolled in" substituted current language for "the plan"; in definition of political subdivision at end inserted "including the Montana university system"; inserted definitions of Roth account and Roth deferral; and made minor changes in style. Amendment effective July 1, 2013.

1999 Amendment: Chapter 471 in definition of administrator substituted "or "board" means the public employees' retirement board created in 2-15-1009" for "means the department of administration created by 2-15-1001"; deleted definition of advisory council that read: ""Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016"; deleted definition of department that read: ""Department" means the department of administration created by 2-15-1001"; and made minor changes in style. Amendment effective July 1, 1999.

1981 Amendment: Substituted the entire section (see 1981 Session Law for text) for "For the purposes of this chapter, "employee" means any person, whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision for which compensation is paid".

19-50-102. Deferred compensation programs permitted — rules.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 114 in (1) near middle after "Code" substituted "26 U.S.C. 457, as amended" for "of 1954 (26 U.S.C. 457), as amended or superseded". Amendment effective October 1, 2003.

Chapter 429 at end of (4)(d) and (4)(e) inserted language concerning exemption from commission's regulation; and made minor changes in style. Amendment effective July 1, 2003.

1999 Amendment: Chapter 471 in (4) in four places and in (7) in one place substituted "board" for "department". Amendment effective July 1, 1999.

1997 Amendments: Chapter 37 in (2), near middle of first sentence after "compensation", inserted "to one or more of the investment options provided in subsection (4)"; in (4), at beginning of introductory clause after "The", substituted provisions regarding selection of investment options for "amount of compensation deferred under this chapter may be used to purchase"; in (4)(a), at beginning of first sentence, deleted "shares in" and at beginning of third sentence, after "These", inserted "state-invested", after "separate" substituted "accounting" for "accounts", and at end, after "maintained", deleted "for participants in the state deferred compensation investment fund"; inserted (4)(d) allowing investment of funds managed pursuant to investment services contracts; inserted (4)(e) allowing investment of mutual funds; in (4)(f) extended reference to exclude subsections (4)(d) and (4)(e) and deleted "as specified by the participant"; substituted language in (5) requiring that deferred compensation plan funds be held in a trust, custodial account, or insurance contract for former language that read: "The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator"; and made minor changes in style. Amendment effective February 24, 1997.

Chapter 42 in (1), after "Internal Revenue Code of 1954", inserted "(26 U.S.C. 457)"; in (4)(f) substituted "combination of the items in subsection (4)(a), (4)(b), or (4)(c)" (references changed by Ch. 37 amendment) for "combination of subsections (a), (b), or (c) above"; and made minor changes in style. Amendment effective March 12, 1997.

Retroactive Applicability: Section 2, Ch. 37, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to compensation deferred by employees, as defined in 19-50-101, and to deferred compensation plans established before [the effective date of this act]." Effective February 24, 1997.

1981 Amendment: All new language (see 1981 Session Law for text). See Sec. 1, Ch. 60, L. 1977, for prior language.

Statement of Intent: The statement of intent attached to SB 449 (Ch. 472, L. 1981) provided: "The Legislature intends that an administrator of a deferred compensation program in the State of Montana shall contract administrative and marketing services with private corporations, institutions, or individuals when eligible deferred compensation programs are established under this act, if these contracts result in the protection of participants' interests and the safeguarding of the plan's assets.

A statement of intent for this bill is necessary in that section 2 [19-2-102, renumbered 19-50-102] grants the Department of Administration [functions transferred to Public Employees'

Retirement Board] or the appropriate officer of a political subdivision of the State of Montana the authority to promulgate rules for the proper administration of deferred compensation plans. It is contemplated that the rules will address the following:

(1) procedures for enrolling employees in the plan;

(2) the content of the plan agreement that is consistent with section 457 of the Internal Revenue Code;

(3) rules for granting financial hardships due to unforeseen emergencies;

(4) rules regarding the participation of political subdivisions in the state deferred compensation plan; and

(5) rules governing the performance of marketing representatives or consultants who may be hired to present the plan to employees."

Administrative Rules

Title 2, chapter 43, subchapter 51, ARM Deferred compensation plan.

Case Notes

Dissolution of Marriage — Property Settlement: In a dissolution of marriage and property settlement case, the District Court did not err in finding that each party was entitled to his or her respective deferred compensation account when the parties were earning approximately the same income and were free to choose how much of their income they wished to defer. In re Marriage of Selsor/Mossman, 256 M 260, 846 P2d 972, 50 St. Rep. 80 (1993).

Qualified Plan: The language of the legislative act (prior to 1981 amendment of this section) clearly indicated the term "qualified plan" meant a plan qualifying for deferral of income taxation under federal laws and not only a plan under section 401(a) of the Internal Revenue Code. Mont. Ass'n of Underwriters v. Dept. of Administration, 172 M 211, 563 P2d 577 (1977).

19-50-103. No effect on other retirement programs — taxes deferred — Roth deferral exception.

Compiler's Comments

2013 Amendment: Chapter 145 in (2) at beginning inserted exception clause; inserted (3) concerning inclusion of Roth accounts in any deferred compensation program; in (4) substituted "in existence in 1974" for "now in existence"; and made minor changes in style. Amendment effective July 1, 2013.

2005 Amendment: Chapter 329 in second sentence near middle substituted "severance from employment" for "separation from service". Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 near middle of first sentence after "Code" substituted "26 U.S.C. 403(b), as amended" for "of 1954"; and made minor changes in style. Amendment effective October 1, 2003.

1981 Amendment: Substituted "or a political subdivision" for "county, city, town, or other political subdivision" in the middle of the section; and substituted "participant or his beneficiary because of separation from service, retirement, or unforeseeable emergency" for "employee" at the end of the second sentence.

19-50-104. Eligibility to catch up — normal retirement age.

Compiler's Comments

2015 Amendment: Chapter 140 in (2)(a) and (2)(b) substituted reference to 50 years for reference to 40 years. Amendment effective March 30, 2015.

2013 Amendment: Chapter 240 in (1)(a) substituted "age or both age and length of service" for "age, length of service, or both". Amendment effective April 22, 2013.

2005 Amendment: Chapter 329 in (1) at beginning inserted exception clause; in (1)(b) at beginning increased age from 60 to 65, after "plan or" inserted "system", and at end inserted "or is an independent contractor"; inserted (2) relating to an eligible plan with participants that include qualified police or firefighters; inserted (3) providing who qualified police and firefighters include; and made minor changes in style. Amendment effective July 1, 2005.

Effective Date: Section 132(1), Ch. 99, L. 2001, provided that this section is effective on passage and approval. Approved March 21, 2001.

Part 2
Administration

19-50-201. Board authorized to make contracts with political subdivisions.

Compiler's Comments

1999 Amendment: Chapter 471 in (1) in one place, in (2)(a) in one place, and in (2)(b) in two places substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: All new language (see 1981 Session Law for text). For prior language see Sec. 2, Ch. 60, L. 1977.

19-50-202. Administration of program.

Compiler's Comments

1999 Amendment: Chapter 471 in first sentence substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: Completely rewritten (see 1981 Session Law for text). For prior language see Sec. 3, Ch. 264, L. 1974.

19-50-203. Payments authorized.

Compiler's Comments

1999 Amendment: Chapter 471 in first sentence substituted "board" for "department". Amendment effective July 1, 1999.

1981 Amendment: Substituted "department or a political subdivision" in the first sentence for "department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to coordinate the deferred compensation program"; substituted "eligible deferred compensation plans" for "qualified plans" in the first sentence; and substituted "state or a political subdivision" for "state, city, town, or other political subdivision" at the end of the section.

19-50-204. Public entity not to be liable.

Compiler's Comments

1981 Amendment: Substituted "state or a political subdivision" for "state, county, city, town, or other political subdivision"; inserted "investment" before "losses"; and inserted "eligible deferred compensation" before "plan".

TITLE 20
EDUCATION

Title Compiler's Comments

Preamble: The preamble attached to Ch. 548, L. 2003, provided: "WHEREAS, public schools are the foundation of Montana, providing citizens with the tools they need to strengthen our state's way of life and extending the principles of liberty; and

WHEREAS, approximately 16,000 full-time and part-time public school teachers guide over 149,000 students in the state of Montana; and

WHEREAS, as prescribed by Article X, section 1, of the Montana Constitution, a fundamental goal of the State of Montana is to establish a system of quality education that will develop the full educational potential of each person; and

WHEREAS, it is consistently proven on national assessments that Montana's excellent educators instruct superior students, and this fine system should be strengthened; and

WHEREAS, the Board of Public Education, of which the Superintendent of Public Instruction and the Governor are members, is constitutionally charged with general supervision over the public school system and other public educational institutions as may be assigned by law; and

WHEREAS, the first step in developing a competitive economy is a quality education system producing a qualified workforce; and

WHEREAS, due to repeated adjustments, revisions, and court decisions, the statutes governing the education system in Montana are plagued by inconsistent language, conflicting provisions, confusing funding mechanisms, and overlapping organizational structures that make it difficult for educators, parents, the legal community, and the general public to understand; and

WHEREAS, in order for the State of Montana to provide for an effective and efficient system of free quality public elementary and secondary education, a comprehensive renewal of education in Montana would be in the best interests of all of the state; and

WHEREAS, the Governor of Montana, the Board of Public Education, the Superintendent of Public Instruction, and the Montana Legislature should convene a commission to examine the various options available for the renewal of public education in Montana."

K-12 Public School Renewal Commission: Section 1, Ch. 548, L. 2003, provided: "(1) There is a K-12 public school renewal commission established to propose changes and new provisions regarding the several components of K-12 public education in Montana, including but not limited to:

(a) the revenue available for public education;
(b) the structure of school district governance;
(c) the methods of funding public education;
(d) the role of the state government in public education; and
(e) the role of the federal government in public education.

(2) Core membership of the renewal commission must include the governor, the presiding officer of the board of public education, the superintendent of public instruction, the speaker of the house of representatives, the president of the senate, the minority leader of the house of representatives, and the minority leader of the senate. Core members may select a designee to represent the core member on the renewal commission.

(3) The governor, in consultation with the core membership, shall:

(a) identify no less than 10 and no more than 25 entities who shall designate a representative to serve on the renewal commission;

(b) appoint a representative from the juvenile corrections division of the department of corrections to serve on the renewal commission;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for the purposes of carrying out the duties of the renewal commission required in this section.

(4) The members of the renewal commission appointed pursuant to subsection (3)(a) may be reimbursed for expenses.

(5) (a) The renewal commission shall submit a final report of its findings and recommendations to the education and local government interim committee by September 15, 2004.

(b) The renewal commission may recommend legislation to the 59th legislature based on the commission's findings.

(6) As used in this section, the term "K-12 public education" includes a state youth correctional facility, as defined in 41-5-103."

CHAPTER 1
GENERAL PROVISIONS

Part 1
Definitions

20-1-101. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 580, L. 2023, inserted definitions of remote instruction and school of the district or school in the district; in definition of average number belonging near middle substituted "attending a school of the district or an offsite instruction setting or receiving remote instruction" for "attending or receiving educational services at an offsite instructional setting"; in definition of minimum aggregate hours at end substituted "includes time spent logging on and off when receiving remote instruction" for "in an offsite instructional setting, includes time spent logging on and off an offsite learning platform"; in definition of offsite instructional setting in first sentence after "instructional setting" substituted "that is an extension of a school of the district, located apart from the school, but within the boundaries of the district" for "at a location, separate from a main school site" and after "school district provides" substituted "in-person pupil instruction" for "for instruction", and inserted second sentence requiring a district to comply with board of public education rules; and made minor changes in style. Amendment effective July 1, 2023.

Section 2, Ch. 724, L. 2023, inserted definition of career coach; and made minor changes in style. Amendment effective October 1, 2023.

Applicability: Section 7, Ch. 580, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2021 Amendments — Composite Section: Chapter 18 in definition of pupil substituted current definition for former definition that read: ""Pupil" means a child who is 5 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense." Amendment effective February 23, 2021.

Chapter 247 in definition of K-12 career and vocational/technical education in (b) near beginning substituted "through advanced opportunities, work-based learning partnerships, and other experiential learning opportunities that contribute" for "that contributes"; in definition of minimum aggregate hours in (a) near end inserted "and, in an offsite instructional setting, includes time spent logging on and off an offsite learning platform"; in definition of offsite instructional setting after "a school district provides for" deleted "the delivery of"; in definition of pupil instruction in first sentence substituted "organized learning opportunities for pupils" for "organized instruction of pupils" and inserted second sentence regarding learning activities to achieve content proficiency and acquisition of knowledge, skills, and abilities by pupils to full educational potential"; in definition of textbook near beginning inserted "digital resource"; and made minor changes in style. Amendment effective April 19, 2021.

Chapter 406 in definition of pupil substituted current definition for former definition (see Ch. 18 note). Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 18, L. 2021, provided: "WHEREAS, the ages at which children are required to be admitted to public schools and the ages at which trustees may admit children at the trustees' discretion are established in 20-5-101, MCA;

WHEREAS, eligibility for inclusion in average number belonging calculations is governed in 20-9-311, MCA; and

WHEREAS, if trustees, at their discretion, enroll an individual 19 years of age or older, that individual needs to be defined as a pupil so that other school laws apply."

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

2019 Amendment: Chapter 16 in definition of pupil near beginning substituted "5 years of age" for "6 years of age". Amendment effective October 1, 2019.

Preamble: The preamble attached to Ch. 16, L. 2019, provided: "WHEREAS, school districts are required to make available at least a half-day kindergarten program to all resident 5-year-olds pursuant to 20-7-117, MCA; and

WHEREAS, 5-year-old kindergarten students currently generate ANB funding pursuant to 20-9-311, MCA, and the clarifications in this bill will have no fiscal impact; and

WHEREAS, neither school districts' obligations in providing special education nor parents' rights in determining when to enroll their child in school will be impacted by the clarifications in this bill; and

WHEREAS, the Legislature of the State of Montana intends no substantive change in current practice, obligations, or funding with these changes and intends only to provide additional clarity to existing practices, obligations, and funding."

2015 Amendment: Chapter 49 inserted definitions of regular school election, school election, and special school election; and made minor changes in style. Amendment effective November 4, 2015.

2005 Amendments — Composite Section: Chapter 138 inserted definition of minimum aggregate hours; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 208 inserted definitions of accreditation standards, at-risk student, educational program, qualified and effective teacher or administrator, and student with limited English proficiency; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 215 inserted definition of aggregate hours; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 570 in definition of average number belonging after "pupils" inserted "physically" and after "attending" inserted "or receiving educational services at an offsite instructional setting from"; inserted definition of offsite instructional setting; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

Section 4, Ch. 570, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 133 substituted definition of K-12 career and vocational/technical education for former definition that read: ""K-12 vocational education" means vocational education in public school kindergarten through grade 12"; deleted definition of vocational education that read: ""Vocational education" means the instruction to prepare or improve the pupil for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education includes guidance and prevocational, related, or technical instruction necessary to prepare the pupil for further vocational education or for entry into employment"; in definition of vocational-technical education inserted "or a tribally controlled community college"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1995 Amendment: Chapter 308 in definition of agricultural experiment station, after "Montana state university", inserted "-Bozeman"; in definition of state university substituted "Montana state university-Bozeman" for "Montana state university, located at Bozeman"; in definition of university substituted "university of Montana-Missoula" for "university of Montana, located at Missoula"; deleted definition of vocational-technical center that read: ""Vocational-technical center" means an institution used principally for the provision of vocational-technical education to persons who qualify as vocational-technical students. These centers are designated by the board of regents upon direction by the legislature. All other public or private institutions or schools are hereby prohibited from using this title"; in definition of vocational-technical education, after "conducted by", deleted "a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendments: Chapter 388 in definition of pupil inserted last sentence referring to ANB calculation.

Chapter 658 inserted definitions of K-12 vocational education, vocational-technical center, and vocational-technical education; and deleted definitions of postsecondary vocational-technical center, postsecondary vocational-technical education, and postsecondary vocational-technical pupil.

Case Notes

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in this section, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Mountain View School Teachers as State Employees: Individuals employed to teach at Mountain View School are not employed by a school district and so do not meet the statutory definition of "teacher" in this section. Therefore, the instructors are considered state employees entitled to the leave benefits provided for other state employees. Mtn. View Educ. Ass'n v. Mtn. View School, 227 M 288, 738 P2d 1288, 44 St. Rep. 1089 (1987).

"Schoolteacher" — Higher Education Faculty Not Included: The plain and ordinary meaning of "schoolteacher" does not encompass higher education faculty, including community college faculty members, especially since community college faculty members are ultimately answerable to the Board of Regents. Community college faculty members are state employees for purposes of entitlement to payment for accumulated sick leave. Rippey v. Bd. of Trustees, 210 M 396, 682 P2d 1363, 41 St. Rep. 1117 (1984), followed, with regard to the fact that "teacher" does not include a community college instructor for tenure purposes, in Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

"Teacher" for Purposes of Tenure Laws:

The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court considered, among other things, the definition of "teacher" and found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983), followed in King v. Hays/Lodge Pole Pub. School District No. 50, 2011 MT 200, 361 Mont. 415, 259 P.3d 772, which held that a teacher position and a principal position are comparable positions under 20-4-203, even when one of the positions has not been eliminated for financial reasons.

Attorney General's Opinions

Vocational-Technical Center Employee Status: There is no principled basis to distinguish a vocational-technical center from any other school for purposes of determining the status of the employees who work there. 38 A.G. Op. 20 (1979).

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a life certificate has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

20-1-102. Legislative goals for public elementary and secondary schools.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 387, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 222 inserted (1) regarding foundation for literacy and numeracy; in (2) at end inserted "and strategically"; in (3) after "effectively" inserted "understand and"; inserted (5) regarding American political, social, and economic systems; inserted (6) regarding political, social, and economic systems worldwide; and made minor changes in style. Amendment effective April 18, 2013.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date: Section 9, Ch. 208, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 7, 2005.

Part 2
Miscellaneous Provisions

Part Law Review Articles

Classroom v. Courtroom: Is the Right to Education Fundamental?, Harper, 51 Mont. L. Rev. 509 (1990).

Interpretations of the Montana Constitution: Education, Goetz, 51 Mont. L. Rev. 340 (1990).

20-1-201. School officers not to act as agents.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-1-202. Oath of office.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-1-203. Delivering items to successor.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-1-205. Conflict of interest.

Case Notes

County Attorney — Conflict of Interests: The County Attorney should advise the school boards they should retain independent counsel to raise the privilege against self-incrimination as a defense to interrogatories propounded by the Human Rights Commission in an investigation of alleged violations of the antidiscrimination law since it is his duty to obtain the evidence and to prosecute if he determines there is a criminal violation. School District v. Human Rights Comm'n, 173 M 113, 566 P2d 799 (1977).

20-1-211. Expenses of officers or employees attending conventions — educational associations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-1-212. Destruction of records by school officer.

Compiler's Comments

Code Commissioner Correction: Pursuant to sec. 40, Ch. 55, L. 2015, the code commissioner in (1) substituted "2-6-1202" for "2-6-403" to correct reference rendered erroneous when Title 2, chapter 6, part 4, was repealed and replaced by Ch. 348, L. 2015.

2013 Amendment: Chapter 33 in (2) substituted current language for: "Student records must be permanently kept, and employment records must be kept for 10 years after termination." Amendment effective February 20, 2013.

1997 Amendment: Chapter 323 in (1), after "Upon the order of the board of trustees", deleted "and with the written approval of the local government records destruction subcommittee provided for in 2-6-403" and near end inserted "and, with written approval of the local government records destruction subcommittee provided for in 2-6-403, any records not referenced in the retention and disposition schedule".

1993 Amendment: Chapter 420 in (1), at beginning, deleted "Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his office: (a) that have served their purpose and that are substantiated by permanent records", before "approval" inserted "written", after "approval of the" substituted reference to local government records destruction subcommittee for "department of commerce", at end deleted "after a retention period of 5 years", and inserted remainder of subsection providing authority for school officer to destroy no longer needed records; substituted (2) concerning student records and employment records for "For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such records must be permanently kept"; and made minor changes in style. Amendment effective April 20, 1993.

1983 Amendments: Chapter 287, in (1)(a), substituted reference to Department of Commerce for reference to Department of Administration.

Chapter 543 inserted, in (1), before "a school officer", "Unless destruction may be otherwise required by federal law"; inserted (1)(b) relating to 5-year retention; and inserted (2) relating to student records and records of employment.

1981 Amendment: In (1)(a) substituted "department of administration" for "department of community affairs".

20-1-213. Transfer of school records.

Compiler's Comments

2015 Amendment: Chapter 55 in (8)(a)(iv) substituted "a high school equivalency diploma" for "general educational development certificate". Amendment effective October 1, 2015.

2011 Amendment: Chapter 15 inserted (8) regarding report to be provided to director of Montana youth challenge program; and made minor changes in style. Amendment effective March 16, 2011.

Effective Date: Section 3, Ch. 157, L. 1997, provided: "[This act] is effective July 1, 1997."

20-1-214. School crossing guards.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Administrative Rules

Title 23, chapter 3, subchapter 11, ARM Adult school crossing guards.

20-1-220. Use of marijuana and tobacco products in public school building or on public school property prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 712, L. 2023. Amendment effective October 1, 2023.

Preamble: The preamble attached to Ch. 712, L. 2023, provided: "WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only qualifying marijuana cultivator licensees to increase production tiers at the licensee's renewals and not at the licensee's discretion; and

WHEREAS, the committee disagreed with this interpretation and provided its analysis; and

WHEREAS, the issue was resolved to the committee's satisfaction; and

WHEREAS, this bill amends section 16-12-223, MCA, to remove all existing doubt whether the Legislature intended to allow a qualifying marijuana cultivator licensee to increase production tiers at their discretion."

2019 Amendment: Chapter 357 in (1) inserted "vapor product, or alternative nicotine product"; deleted former (2) that read: "(2) Subsection (1) does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product"; inserted (2)(a) concerning an educational exception for use of tobacco and related products on public school property; inserted (2)(b) providing an exception clause; in (5) inserted definitions of alternative nicotine product and vapor product; and made minor changes in style. Amendment effective May 7, 2019.

2005 Amendment: Chapter 268 in (1) after "building or" inserted "on public school" and after "property" deleted "during school hours"; deleted former (2)(b) through (2)(d) that read: "(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or

(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district"; inserted (4) concerning penalties provided in 50-40-115; and in (5)(a) substituted public school building or public school property for public school building or property as defined term; and made minor changes in style. Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.

Compiler's Comments

2019 Amendment: Chapter 300 in (3)(b)(ii)(C) after "the Montana resident student financial" substituted "aid" for "assistance". Amendment effective July 1, 2019.

2015 Amendment: Chapter 286 in (3)(b)(ii)(A) substituted "reimbursement for services provided to" for "financial assistance for". Amendment effective July 1, 2015.

Preamble: The preamble attached to Ch. 320, L. 2001, provided: "WHEREAS, even in the time of voluntary membership in the armed services, Congress has chosen as part of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq., to maintain the military selective service registration system as a means for rapid induction of individuals into the armed forces and, as part of that system, still requires adult men between the ages of 18 and 26 to register with the selective service system; and

WHEREAS, the Military Selective Service Act in 50 App. U.S.C. 462(f) requires compliance with the registration requirements of the Military Selective Service Act as a prerequisite to the receipt of federal student financial assistance; and

WHEREAS, 5 U.S.C. 3328(a) makes ineligible for employment by a federal executive agency an individual who has failed to comply with the registration requirements of the Military Selective Service Act; and

WHEREAS, Montana should do all that it can to require that those men subject to the selective service registration requirements fulfill their obligation to register with the selective service system; and

WHEREAS, it is therefore appropriate that Montana likewise require compliance with the registration requirements of the Military Selective Service Act as a prerequisite for payment of state student financial aid, enrollment in a postsecondary educational institution of a student receiving financial assistance provided by state funds, and employment with the Executive Branch of state government."

Saving Clause: Section 5, Ch. 320, L. 2001, was a saving clause.

Severability: Section 6, Ch. 320, L. 2001, was a severability clause.

Effective Date: Section 7, Ch. 320, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 21, 2001].

(2) [Sections 1(1) [2-15-130(1)] and 2(1) and (3) [20-1-225(1) and (3)]] are effective July 1, 2001."

20-1-230. Enactment — Interstate Compact on Educational Opportunity for Military Children — provisions.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 277, L. 2015, repealed sec. 4, Ch. 321, L. 2013, which terminated this section June 30, 2015. Effective April 23, 2015.

Effective Date: This section is effective October 1, 2013.

Termination: Section 4, Ch. 321, L. 2013, provided: "[This act] terminates June 30, 2015."

20-1-231. Report to legislature.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 47, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2017 Code Commissioner Correction: Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

2015 Amendment: Chapter 277 at beginning substituted "On or before September 15 of even-numbered years" for "By July 1, 2014". Amendment effective April 23, 2015.

Termination Provision Repealed: Section 2, Ch. 277, L. 2015, repealed sec. 4, Ch. 321, L. 2013, which terminated this section June 30, 2015. Effective April 23, 2015.

Effective Date: This section is effective October 1, 2013.

Termination: Section 4, Ch. 321, L. 2013, provided: "[This act] terminates June 30, 2015."

20-1-232. Student-athlete rights and protections — definitions.

Compiler's Comments

Effective Date: Section 3, Ch. 396, L. 2021, provided: "[This act] is effective June 1, 2023."

20-1-233. Certain district policies prohibited.

Compiler's Comments

Effective Date: Section 4, Ch. 256, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 25, 2023.

Part 3

School Terms and Holidays — Released Time

20-1-301. School fiscal year.

Compiler's Comments

2021 Amendment: Chapter 151 in (3) at beginning inserted exception clause and; near middle substituted "BASE aid" for "direct state aid"; and made minor changes in style. Amendment effective April 8, 2021.

Retroactive Applicability: Section 7, Ch. 151, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning on or after July 1, 2020."

2017 Amendment: Chapter 149 in (1) in second sentence substituted "required" for "defined" and inserted last sentence excluding pupils demonstrating proficiency from minimum aggregate hours"; in (3) after "in subsections (1) and (2)" inserted "to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)" and at end inserted "by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 3, Ch. 149, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

2007 Special Session Amendment: Chapter 1 in (1) in second sentence at end after "sufficient" deleted "or a minimum of 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117"; inserted (2)(a) concerning minimum hours for half-time and full-time kindergarten; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Amendment: Chapter 138 in (1) in second sentence after "least" deleted "180 school days of pupil instruction and", before "1,050" deleted "175 days and", and before "360" deleted "90 days and"; deleted former (3) that read: "(3) To calculate the number of equivalent school days of pupil instruction when providing less than the minimum number of hours of instruction provided in subsections (1) and (2), a school district shall:

(a) determine the aggregate hours of pupil instruction by grade level;

(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and

(c) round the result down to the nearest whole number"; in (3) near beginning after "least" deleted "180 school days of pupil instruction and", substituted "as listed" for "as defined", and at end after "year" substituted "by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed" for "by 1/90th for each school day less than 180 school days as calculated in subsection (3) or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

2001 Amendment: Chapter 237 in (1) near middle of second sentence after "sufficient" deleted "as provided in 20-9-313"; in (3) before "school days" inserted "equivalent" and after "instruction" inserted "when providing less than the minimum number of hours of instruction provided in subsections (1) and (2)"; in (4) near beginning inserted reference to subsection (1) and at end inserted "or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1997 Amendments — Composite Section: Chapter 22 near middle of third sentence, after "reduce the", substituted "direct state aid" for "county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 42 in third sentence, after "state equalization", inserted "aid"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 430 in second sentence in (1) and in (4), after "instruction", inserted "and the minimum aggregate hours defined in subsection (2)"; in second sentence in (1), after "175 days", inserted "and 1,050 aggregate hours" and after "20-9-313" substituted language regarding minimum pupil- instruction days and aggregate hours required for kindergarten program for "or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title"; inserted (2) outlining required minimum aggregate hours by grade; inserted (3) concerning calculation of pupil-instruction days; at end of (4), after "days", inserted "as calculated in subsection (3)"; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate text.

1983 Amendment: In last sentence, substituted "For any elementary or high school district" for "Any district" and "the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days." for "shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county."

1981 Amendment: Inserted "except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or" after "At least 180 school days of pupil instruction shall be conducted during each school fiscal year" in the first sentence.

Case Notes

Construction — Ambiguities: This section is ambiguous in that it provides that a high school district may provide 175 days of instruction for graduating seniors (see 2005 amendment) but states that if a district fails to provide at least 180 days of instruction it is not entitled to interest and income money (decided prior to 1983 amendment). Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

Construction With Other Statutes — Conflicts: This section's provision that "Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county" (quoted language amended 1983) is obviously ambiguous as to whether it applies to high school districts or only to elementary school districts. Since 20-9-805 provides that for each day short of the minimum school days required by law, for which a district is not entitled to apportionment credit, the equalization apportionment and entitlement of the district for that year shall be reduced by 1/180th, and since the interest and income funds referred to in this section are integrated with the equalization funds, the two sections are so conflicting that they require legislative review and revision; and in the meantime, since they are penal statutes, courts are powerless to apply them. Therefore, a high school that held 18 days less than the required 180-day minimum due to a teacher strike was entitled to its interest and income money regardless of the statutes. Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

20-1-302. School term, day, and week.

Compiler's Comments

2005 Amendment: Chapter 138 in (1) substituted current language requiring trustees, subject to 20-1-301, 20-1-308, and collective bargaining agreements covering employment, to set number of days in school term, length of day, and number of school days in school week and report them to superintendent of public instruction for former text that read: "Subject to 20-1-308, a school day of pupil instruction must be at least 2 hours for kindergartens, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in 1 school day may be reduced at the discretion of the trustees if the total number of pupil-instruction hours in the school year is not less than the minimum aggregate hours required in 20-1-301"; inserted (2) requiring trustees when proposing changes to school term, week, or day to negotiate changes with recognized bargaining unit, solicit input from affected employees, and solicit input from people living in school district; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in first sentence, after "kindergartens", deleted "and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education"; in second sentence, after "day", substituted language authorizing reduction in hours by trustees if hours not less than minimum aggregate hours for "for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education"; and made minor changes in style. Amendment effective July 1, 1997.

Attorney General's Opinions

Pupil Instruction Day Not to Include Teachers' Meetings: A school district which holds teachers' meetings while the pupils are excused for one-half day may not count that day as a pupil instruction day unless the requisite hours of pupil instruction required by 20-1-302 are provided. 34 A.G. Op. 56 (1972). (Opinion rendered prior to 1974 amendment.)

20-1-303. Conduct of school on Saturday or Sunday prohibited — exceptions.

Compiler's Comments

2021 Amendment: Chapter 151 in (2) added clause concerning 20-9-806 and at end after "school district" deleted "in accordance with the policies adopted by the board of public education"; in (3) after "Pupil instruction may" inserted "also" and near end inserted "beyond the minimum aggregate hours of instruction required in"; deleted former (3)(a) that read: "(a) Saturday school is not a pupil-instruction day and does not count toward minimum aggregate hours of pupil instruction provided for in 20-1-301"; and made minor changes in style. Amendment effective April 8, 2021.

Retroactive Applicability: Section 7, Ch. 151, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning on or after July 1, 2020."

2011 Amendment: Chapter 193 in (1) substituted "subsections (2) and (3)" for "this section"; inserted (3) regarding discretionary Saturday instruction; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 21 at beginning after "Except as provided" inserted "in this section" and near middle after "approved by the" substituted "trustees of the school district" for "superintendent of public instruction"; and made minor changes in style. Amendment effective February 13, 2003.

20-1-304. Pupil-instruction-related day.

Compiler's Comments

2005 Amendment: Chapter 138 in fourth sentence after "part of the" deleted "required minimum of 180 days or the". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in third sentence, after "training", substituted "if the days are planned" for "provided that the days are approved by the superintendent of public instruction"; in fourth sentence after "180 days", inserted "or the required minimum aggregate hours"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In middle of third sentence inserted "with a minimum of 3 of the days for instructional and professional development meetings or other appropriate in-service training"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Administrative Rules

Title 10, chapter 65, subchapter 1, ARM Pupil-instruction-related days.

Attorney General's Opinions

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

20-1-305. School holidays.

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978), overruling 37 A.G. Op. 96 (1977).

Nonteaching School Employees — Public Employees: Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in 1-1-216 just as are all other public employees. They are not entitled to the school holidays enumerated in 20-1-305. 37 A.G. Op. 96 (1977), overruling, in part, 36 A.G. Op. 105 (1976).

20-1-306. Commemorative exercises on certain days.

Compiler's Comments

1997 Amendment: Chapter 202 inserted (1)(f) designating American Indian Heritage Day; and made minor changes in style. Amendment effective April 4, 1997.

Preamble: The preamble attached to Ch. 202, L. 1997, provided: "WHEREAS, Article X, section 1(2), of the Montana Constitution recognizes the distinct and unique cultural heritage of American Indians and commits the state in its educational goals to the preservation of their cultural integrity; and

WHEREAS, the 1975 Legislature enacted House Joint Resolution No. 57, designating the fourth Friday in September of each year as "Native American Indian Day"; and

WHEREAS, despite the resolution, the knowledge of this important history and culture is gradually being lost to citizens of the State of Montana, to the detriment of both the American Indian and non-Indian citizens of the State of Montana; and

WHEREAS, the history and culture of American Indians are an integral part of the history of the nation and the State of Montana; and

WHEREAS, the Legislature recognizes that all Montanans have an invaluable opportunity for cultural enrichment through contact with the culture and philosophy of American Indians."

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving

Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978).

20-1-307. Provisions of school code excepted.

Attorney General's Opinions

"School Holidays" and "Legal Holidays": School district employees, nonteaching and teaching alike, throughout the state of Montana, are entitled to days off on those holidays enumerated in 20-1-305, rather than the holidays of 1-1-216. School district employees are therefore entitled only to days off on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and state and national election days when the school building is a polling place and school functions will interfere with the election process. 37 A.G. Op. 150 (1978).

20-1-308. Religious instruction released time program.

Compiler's Comments

2001 Amendment: Chapter 84 in (1) in first sentence near middle after "attendance" deleted "for a period not to exceed 2 hours per week" and inserted second sentence authorizing trustees to determine amount of time students may be released for religious instruction; and made minor changes in style. Amendment effective October 1, 2001.

Part 4
Disaster Drills

20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 348, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 248 in (3) near end of first sentence inserted "or regional". Amendment effective May 2, 2019.

2015 Amendment: Chapter 323 in (2) and (3) in three places inserted "or emergency operations plan"; in (3) in first sentence after "school safety plan" and in second sentence after "office of public instruction" deleted "on or before July 1, 2014" and inserted last sentence concerning transfer of funds for school safety and security; and made minor changes in style. Amendment effective April 27, 2015.

2013 Amendment: Chapter 364 in (1) after "disaster" substituted "means the occurrence or imminent threat of damage, injury, or loss of life or property" for "has the same meaning as in 10-3-103"; in (2) substituted "and incorporate drills in its school safety plan" for "drills"; and inserted (3) concerning adoption, certification, and review of school safety plan. Amendment effective July 1, 2013.

1997 Amendment: Chapter 423 in (1) inserted first sentence relating to the definition of disaster and at beginning of second sentence substituted "Disaster drills" for "Fire exit drills"; inserted (2) relating to local hazards; and made minor changes in style.

Administrative Rules

ARM 10.55.721 Hazard and emergency plans.

20-1-402. Number of disaster drills required — time of drills to vary.

Compiler's Comments

2013 Amendment: Chapter 364 deleted former second sentence that read: "At least four of the drills must be fire exit drills." Amendment effective July 1, 2013.

1997 Amendment: Chapter 423 in first sentence substituted "disaster drills" for "fire exit drills", inserted second sentence relating to fire exit drills, deleted former second sentence that read: "In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils", and inserted last sentence relating to holding drills at different hours; and made minor changes in style.

20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal.

Compiler's Comments

1997 Amendment: Chapter 423 in (1), at beginning, substituted "If a disaster drill is signaled, the signal must be sounded on the disaster alarm" for "All fire exit drill alarms shall be sounded on the fire alarm system"; and inserted (2) relating to the recall signal.

20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills.

Compiler's Comments

1997 Amendment: Chapter 423 in last sentence substituted "local authorities having jurisdiction in conducting disaster drills" for "local fire department authorities in conducting disaster drills"; and made minor changes in style.

Part 5
Indian Education for All

Part Compiler's Comments

Preamble: The preamble attached to Ch. 527, L. 1999, provided: "WHEREAS, as part of the state's educational guarantees, the people of Montana in 1972 included Article X, section 1(2), in the state constitution, recognizing the distinct and unique cultural heritage of American Indians and expressing the state's commitment to preserve that cultural integrity through education; and

WHEREAS, the Legislature recognizes that Article X, section 9(2), of the Montana Constitution provides the Board of Regents with full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System; and

WHEREAS, the Legislature also recognizes that Article X, section 9(3), of the Montana Constitution provides the Board of Public Education with general supervision over the public school system and that Article X, section 8, of the Montana Constitution vests the supervision and control of the schools in each school district to the local board of trustees; and

WHEREAS, a 1995 study conducted by the Committee on Indian Affairs [now Law and Justice Interim Committee], pursuant to Senate Joint Resolution No. 11, revealed that despite the constitution's educational guarantees, many school districts and schools, including those adjacent to Montana's seven Indian reservations, had no policy or information in their school curricula recognizing the cultural heritage of American Indians and that the small number of Indian teachers and administrators in public schools resulted in Indian students with no role models and in a lack of cultural awareness and sensitivity among non-Indian students; and

WHEREAS, the Legislature recognizes that the history of Montana and the current problems of the state cannot be adequately understood and the problems cannot be addressed unless both Indians and non-Indians have an understanding of the history, culture, and contemporary contributions of Montana's Indian people."

Effective Date: Section 7, Ch. 527, L. 1999, provided: "[This act] [20-1-501 through 20-1-503] is effective on passage and approval." Approved April 29, 1999.

Part Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

American Indian Studies Law Applicable to Tenured Teachers: The provisions of the Indian studies law are applicable to tenured teachers. 37 A.G. Op. 75 (1977).

Part Law Review Articles

Indian Education for All: Montana's Constitution at Work in Our Schools, Juneau & Juneau, 72 Mont. L. Rev. 111 (2011).

The Challenge of "Differentiated Citizenship": Can State Constitutions Protect Tribal Rights? (analyzing in part Montana Indian education provisions), Tsosie, 64 Mont. L. Rev. 199 (2003).

20-1-501. Recognition of American Indian cultural heritage — legislative intent.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 718, L. 2023. Amendment effective July 1 2023.

Applicability: Section 7, Ch. 718, L. 2023, provided: "The new reporting requirements under [section 4(4)] [20-9-329(4)] apply to Indian education for all funds distributed in fiscal years starting on or after July 1, 2023."

Case Notes

Complaint of School Use of Indian Mascots — Montana Commission for Human Rights Proper Forum for Claim of Unlawful Discrimination: Dupuis brought a discrimination claim against a reservation school district for using mascots allegedly degrading to Indian students. Without ruling on whether the use of the mascots was degrading, the Supreme Court held that Dupuis's remedy for a human dignity and racial discrimination case was to bring a claim before the Montana Commission for Human Rights before bringing an action in District Court. Failure to exhaust administrative remedies precluded the Supreme Court's consideration of the discrimination claims. Dupuis v. Ronan School District No. 30, 2006 MT 3, 330 M 232, 128 P3d 1010 (2006).

No Right to Appeal School District Policy to County Superintendent Absent Contested Case: A parent did not agree with a school board's decision to retain images of Indian mascots in a reservation middle school gymnasium and appealed the decision to the County Superintendent. The District Court held that the superintendent did not have authority to hear the matter, and on appeal, the Supreme Court affirmed. Disagreement with a school board's decision does not automatically rise to the level of a contested case, and nothing in this section creates a privately enforceable right or confers jurisdiction on a County Superintendent to hear a matter absent a constitutional or statutory right to a hearing. Dupuis v. Ronan School District No. 30, 2006 MT 3, 330 M 232, 128 P3d 1010 (2006), following Roos v. Kircher Pub. School Bd. of Trustees, School District No. 3, 2004 MT 48, 320 M 128, 86 P3d 39 (2004).

20-1-502. American Indian studies — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 718, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 718, L. 2023, provided: "The new reporting requirements under [section 4(4)] [20-9-329(4)] apply to Indian education for all funds distributed in fiscal years starting on or after July 1, 2023."

20-1-503. Indian education for all.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 718, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 718, L. 2023, provided: "The new reporting requirements under [section 4(4)] [20-9-329(4)] apply to Indian education for all funds distributed in fiscal years starting on or after July 1, 2023."

Part 6

Montana Military Service Higher Education Act

Part Compiler's Comments

Effective Date: Section 8, Ch. 270, L. 2015, provided that this part is effective August 1, 2015.

Codification: Section 7, Ch. 270, L. 2015, provided that this part was to be codified as an integral part of Title 20, chapter 25. The code commissioner has codified this part in Title 20, chapter 1, to more closely reflect the subject matter because chapter 25 doesn't encompass all higher education institutions under the board of regents.

CHAPTER 2
STATE BOARDS AND COMMISSIONS

Chapter Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

Part 1
State Board of Education — Board of Public Education — Board of Regents

Part Administrative Rules

Title 10, chapter 51, through Title 10, chapter 68, ARM Rules of the Board of Public Education.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 112, L. 2023. Amendment effective April 18, 2023.

1985 Amendment: At end of (6) deleted "on any two of the dates specified in 20-2-112(1)".

20-2-111. Officers of boards — quorum.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Near beginning of (2) and (4) changed "professional assistant" to "executive secretary".

Administrative Rules

ARM 10.51.105 Board staff.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: In (1) after "shall meet", substituted "at least quarterly" for "quarterly at the same location on the second Monday of April, July, September, and December".

20-2-113. Per diem of board members — expenses.

Compiler's Comments

1985 Amendment: After "board of regents" substituted "shall be compensated and receive travel expenses as provided for in 2-15-124" for "are entitled to $25 per day and travel expenses, as provided for in 2-18-501 through 2-18-503".

20-2-114. Adoption of rules — seal — record of proceedings.

Compiler's Comments

Sections Not Codified: Section 75-5617, R.C.M. 1947, reassigning certain duties of various education boards to the Board of Public Education and to the Board of Regents, and section 75-5618, R.C.M. 1947, providing for the transition of power from the Board of Education to the Board of Public Education and the Board of Regents, have not been codified in the MCA because both sections were of a temporary nature and the names of boards affected have since been changed by the Code Commissioner to reflect the new educational boards created by the 1972 Constitution. However, these sections have not been repealed and are still valid law. Citation may be made to sec. 9, Ch. 344, L. 1973, as amended by Ch. 434, L. 1975, and sec. 10, Ch. 344, L. 1973, respectively.

Grandfather Clause for Rules: Section 27, Ch. 285, L. 1977, read: "Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) [R.C.M. 1947, now 2-4-305] on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1) [R.C.M. 1947, now 2-4-302 and 2-4-305]." That section has not been codified in the MCA because action under that section is now complete. Citation may be made to Ch. 285, L. 1977.

Administrative Rules

Title 10, chapter 54, ARM Content standards and performance descriptors.
ARM 10.55.909 Student records.
Title 10, chapter 57, ARM Educator licensure.
Title 10, chapter 58, ARM Professional educator preparation program standards.
Title 10, chapter 61, ARM Montana School for the Deaf and Blind.
Title 10, chapter 66, ARM Adult secondary education credentials.
Title 10, chapter 67, ARM State aid distribution policy.

20-2-121. Board of public education — powers and duties.

Compiler's Comments

2005 Amendment: Chapter 138 deleted former (5) that read: "(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1993 Amendment: Chapter 633 in (3) substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 385, L. 1991, provided: "WHEREAS, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

WHEREAS, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

WHEREAS, a rule may not conflict with a statute and is invalid if it does; and

WHEREAS, section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them" and Rule 10.55.804, Administrative Rules of Montana, mandates a gifted and talented children program in each school, thereby directly and clearly conflicting with the statute; and

WHEREAS, the Legislature has made a gifted and talented children program discretionary, at the choice of each local school board, the Legislature nonetheless affirms its support of gifted and talented education and encourages local school districts to identify gifted and talented students and design and implement programs that meet the needs of those students."

1991 Repeal of Administrative Rule: Section 1, Ch. 385, L. 1991, repealed Rule 10.55.804, ARM, requiring each school to have a gifted and talented children program. Effective July 1, 1991. Chapter 385, L. 1991, was declared unconstitutional in Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

1987 Amendment: Inserted (12) relating to student assessment in public schools.

1987 Statement of Intent: Chapter 377, L. 1987, which amended this section, contained the following statement of intent: "A statement of intent is required for this bill because section 1 [20-2-121] provides that the board of public education shall adopt rules for student assessment in the public schools of Montana. The legislature intends for the board to adopt rules regarding:

(1) the types of student assessment tests that may be used;
(2) the grade levels to be tested;
(3) the time of testing;
(4) procurement of testing data;
(5) provisions for confidentiality of test results;
(6) responsibilities for the office of the superintendent of public instruction; and
(7) other provisions that the board considers vital to the student assessment program."

Exemption From Fiscal Note Process: Section 3, Ch. 377, L. 1987, provided: "For the purposes of this act, the board of public education is exempt from the fiscal note provisions of 20-2-115 [now repealed]." Chapter 377, L. 1987, authorized the Board to adopt student assessment rules.

Preamble: Chapter 377, L. 1987, which amended this section, contained the following preamble: "WHEREAS, the Legislature recognizes that the Board of Public Education has the duty, as provided in Article X, section 9, of the Montana Constitution to exercise general supervision over the public school system in Montana; and

WHEREAS, the Legislature recognizes the value of measuring the academic performance of Montana schools and of assessing student performance in comparison to: education costs per student; student performance levels in other states and the nation; and, most importantly, Montana education achievement goals."

1983 Amendments: Chapter 94 inserted (10) relating to issuance of documents certifying equivalency of completion of secondary education.

Chapter 312 inserted (11) relating to programs for the gifted and talented.

Gifted and Talented — 1983 Statement of Intent: The statement of intent attached to HB 196 (Ch. 312, L. 1983) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Public Education to adopt policies for programs serving gifted and talented children.

It is contemplated that the rules will address the following:

(a) a policy statement fostering development of programs serving the gifted and talented;

(b) acknowledgment of the provisions in 20-7-904, MCA, regarding review of programs by the Superintendent of Public Instruction; and

(c) an annual review of services to gifted and talented children by the Board of Public Education."

Administrative Rules

ARM 10.51.104 Responsibility assigned by statute.

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

Title 10, chapter 53, ARM Content standards.

Title 10, chapter 54, ARM Content standards and performance descriptors.

Title 10, chapter 55, ARM Standards of accreditation.

Title 10, chapter 56, ARM Student assessment.

Title 10, chapters 57 and 58, ARM Educator licensure and standards for teacher education programs.

Title 10, chapter 60, ARM Special education.

Title 10, chapter 64, ARM Transportation.

Title 10, chapter 65, ARM Hours and days of instruction.

Title 10, chapter 66, ARM Adult secondary education credentials.

Title 10, chapter 67, ARM State aid distribution policy.

ARM 10.68.101 Educational media library.

Case Notes

Accreditation Standard Mandating Gifted and Talented Program Within Board's Constitutional Powers of "General Supervision": After the Board of Public Education refused to amend its rule requiring all districts to identify and provide programs for gifted and talented students, the Legislature, claiming the rule conflicted with 20-7-902, which authorized rather than mandated gifted and talented programs, enacted House Bill No. 116 (1991) at the request of the Administrative Code Committee (now appropriate administrative rule review committee) to repeal the rule. In invalidating House Bill No. 116, the District Court held that the Board, pursuant to its exercise of general supervision powers under Art. X, sec. 9(3), of the Montana Constitution, is vested with constitutional rulemaking authority that is self-executing and independent of any power delegated to the Board by the Legislature. Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

Clarification of Findings Regarding Statewide Accreditation Standards: The Supreme Court amended certain District Court findings and conclusions regarding statewide accreditation standards adopted by the Board of Public Education to clarify that: (1) the minimum standards do not fully define a quality education; (2) the Montana school accreditation standards are minimum standards upon which quality education must be built; and (3) the standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the state for funding its public and elementary schools. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in 20-10-101, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

Rule Requiring Every School District to Provide Educational Services to Gifted and Talented Children Invalid: The adoption of this section did not provide a statutory grant of authority to the Board of Public Education to require the creation of gifted and talented children programs. Rather, 20-7-902 makes the creation of gifted and talented children programs optional for individual school districts. Therefore, ARM 10.55.804, promulgated pursuant to the Board's statutory authority to adopt accreditation standards and making the creation of such programs mandatory, conflicts with 20-7-902 and is thus invalid. 44 A.G. Op. 4 (1991). (See case note Bd. of Pub. Educ. v. Administrative Code Comm. at this section.)

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

20-2-122. Executive secretary to board of public education — staff.

Compiler's Comments

1983 Amendment: In (1), substituted "appoint an executive secretary" for "employ a professional assistant" and substituted final clause relating to employment of other persons for "a secretary to perform the duties required of it"; in (2) changed "professional assistant" to "executive secretary"; in (3) changed "professional assistant" to "staff" and "his" to "its".

Administrative Rules

ARM 10.51.105 Board staff.
ARM 10.51.106 Agency functional chart.

20-2-131. Commissioner of higher education — duties — compensation — staff.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Compact for Education

Part Compiler's Comments

Effective Date: Section 7, Ch. 273, L. 2001, provided: "[This act] is effective July 1, 2001."

CHAPTER 3
ELECTED OFFICIALS

Part 1
Superintendent of Public Instruction

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-3-101. Election and qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 168, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-102. Term, oath, and vacancy.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-103. Deputy superintendent — staff.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 168, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 133 in (2)(b) substituted language regarding professional staff membership for "a professional staff for the state supervision and administration of K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1991 Amendment: In (1), in first sentence, substituted "superintendent" for "principal"; in (2)(c) substituted "persons with disabilities" for "the mentally retarded or physically handicapped"; and made minor changes in style. Amendment effective July 1, 1991.

1987 Amendments: Chapter 436 in second sentence of (2) substituted "shall" for "may".

Chapter 658 in (2)(b) inserted "K-12".

Administrative Rules

ARM 10.1.101 Organizational rule.

20-3-104. Discretionary staff.

Compiler's Comments

2001 Amendment: Chapter 133 at end of (1) substituted "K-12 career and vocational/technical education" for "vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Administrative Rules

ARM 10.1.101 Organizational rule.

20-3-105. Administrative powers and duties.

Compiler's Comments

2013 Amendment: Chapter 118 deleted former (7) that read: "(7) if considered necessary, publish a biennial report of the superintendent of public instruction"; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (5), at beginning, substituted "if he deems necessary" for "whenever he deems necessary but not more than once every 4 years".

1983 Amendment: Deleted former (7), which read: "submit a written report to the governor of his activities during the immediately preceding fiscal biennium in accordance with the provisions of 2-7-102"; at end of (7), deleted "as prescribed by 2-7-102".

20-3-106. Supervision of schools — powers and duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 240, L. 2023. Amendment effective April 25, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2015 Amendment: Chapter 379 in (17) inserted "in accordance with the provisions of 20-7-101"; in (18) before "standards" inserted "accreditation" and before "20-7-102" deleted "20-7-101 and"; and made minor changes in style. Amendment effective April 30, 2015.

2003 Amendments — Composite Section: Chapter 21 deleted former (17) that read: "(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303"; and made minor changes in style. Amendment effective February 13, 2003.

Chapter 374 deleted former (27) that read: "(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 133 in (22) substituted "K-12 career and vocational/technical education" for "K-12 vocational education". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

K-12 Public School Funding Study: Section 1, Ch. 580, L. 2001, provided: "Section 1. K-12 public school funding study — duties — hearings. (1) The governor and the superintendent of public instruction shall, within the provisions of the Montana constitution, conduct a study of funding for K-12 public schools, including but not limited to:

(a) analyzing the factors currently in law that are used to compute budget authority for schools to determine if additional factors or changes in those factors are necessary to equitably provide budget authority to public schools;

(b) determining the appropriate allocation of funding to adequately fund elementary, middle school, seventh and eighth grade, and high school programs;

(c) determining if a statewide salary schedule for school staff is possible under the constitutional provision for trustee management of school districts;

(d) determining if the current budget computations are prohibiting or discouraging local decisions to consolidate school districts;

(e) determining the adequacy and equity of the current statutory authority for public schools to access the funds necessary to provide facilities for school districts and state support for school facility costs;

(f) determining the adequacy and equity of current funding for pupil transportation;

(g) determining if appropriate disparity exists in the current local tax effort necessary to fund school districts;

(h) analyzing the current allocation of state funds to public schools to determine its equity;

(i) analyzing the relationship between increasing staffing levels in the classroom in the face of declining enrollment and the resulting financial impacts to school districts and the state;

(j) analyzing appropriate means for school districts to calculate ANB regarding nontraditional, part-time, or distance-learning students;

(k) determining if issues not listed in this section are affecting the equity of school funding in Montana and analyzing those issues;

(l) analyzing the school district structure that currently exists and determining if reducing the number of districts could provide efficiency in the operations of the districts and make existing resources available for classroom activities; and

(m) determining if the existence of 25 budgeted and nonbudgeted funds unreasonably restricts local decisionmakers.

(2) The governor, after consultation with the superintendent of public instruction, shall prepare and submit a preliminary report by December 31, 2001, on the findings and recommendations of the study to the education interim committee.

(3) (a) The education interim committee shall hold hearings and take public comment on the preliminary report prepared and submitted by the governor. The hearings may be held at various locations around the state to facilitate public comment on the governor's report.

(b) by August 1, 2002, the education interim committee shall provide to the governor for the governor's consideration a summary of the hearings and recommendations for changes to the report.

(c) The education interim committee may make any other recommendations on school funding that the committee considers appropriate. The education interim committee shall submit its recommendations and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(4) Upon receipt of the summary and recommendations from the education interim committee, the governor shall issue a final report and, if appropriate, prepare legislation for consideration by the 2003 legislature.

(5) The governor may:

(a) appoint one or more advisory councils pursuant to 2-15-122 to assist in conducting the study;

(b) coordinate with any other legislative interim committee, as appropriate;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for purposes of the study required in this section."

1999 Amendment: Chapter 343 in (10) substituted "20-9-213(6)" for "20-9-213(5)"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendments: Chapter 219 deleted former (5) that read: "approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 311 inserted (29) providing: "upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for any test required by the board of public education"; and made minor changes in style.

Chapter 388 deleted former (4) that read: "serve on the teachers' retirement board in accordance with the provisions of 2-15-1010"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 430 deleted former (16) that required Superintendent of Public Instruction to "approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705"; in (17), after "Saturday", deleted "or on pupil-instruction-related days" and after "20-1-303" deleted "and 20-1-304"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1993 Amendments: Chapter 325 deleted former (15) that read: "distribute state impact aid in accordance with the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 633 in (10), before "state", inserted "direct"; in (14) substituted "BASE aid and special education allowable cost payments in support of the BASE funding program" for "state equalization aid in support of the foundation program and guaranteed tax base aid"; in (32), after "aid", deleted "for county retirement levy obligations"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (10), in two places, substituted reference to budget amendment for reference to emergency budget and near middle, before "rules", substituted "adopt" for "publish". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (14), after "foundation program", inserted "and guaranteed tax base aid" and inserted references to 20-9-331, 20-9-333, and 20-9-366 through 20-9-369; in (33) substituted "guaranteed tax base aid for county retirement levy obligations in accordance with 20-9-366 through 20-9-369" for "state retirement equalization aid in accordance with 20-9-532"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendments: Chapter 377 inserted (32) relating to compliance with assessment rules.

Chapter 635 inserted (33) relating to distribution of retirement equalization aid.

Chapter 658 in (26), relating to vocational education, inserted "K-12"; and deleted former (27) and (28) requiring Superintendent to consider applications for designation of a postsecondary vocational-technical center and to establish a fund for a center's fees.

Exemption From Fiscal Note Process: Section 3, Ch. 377, L. 1987, provided: "For the purposes of this act, the board of public education is exempt from the fiscal note provisions of 20-2-115 [now repealed]." Chapter 377, L. 1987, authorized the Board to adopt student assessment rules.

1985 Amendment: Deleted former (15) that read: "estimate the statewide equalization level for the foundation program in accordance with the provisions of 20-9-348".

Transition: Section 404, Ch. 571, L. 1979, was a transition section.

Administrative Rules

Title 10, chapter 7, subchapter 1, ARM Pupil transportation.

Title 10, chapter 13, subchapter 3, ARM Program standards and course requirements for traffic education.

Title 10, chapter 30, subchapter 1, ARM Isolation classification.

ARM 10.30.101 Application information.

Title 10, chapter 30, subchapter 4, ARM K-12 districts.

Title 10, chapter 55, ARM Standards of accreditation.
ARM 10.64.701 Criteria for establishing transportation areas.

20-3-107. Controversy appeal.

Compiler's Comments

1997 Amendment: Chapter 438 at end of (1)(a) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

Administrative Rules

Title 10, chapter 6, ARM Rules of procedure for all school controversy contested cases before county superintendents.

Case Notes

Teaching Contract Precluding Property Interest in Employment: Talley contended that he had a property right in his position as a part-time instructor at Flathead Valley Community College and that the property interest required that he be given notice and a hearing before termination. The Supreme Court has recognized that a property interest in one's position must be created by existing rules and regulations, state laws, or understandings between employer and employee, but in Talley's case, the employment contract specifically precluded any property right by stating that acceptance of the contract conferred no right to or credit toward tenure or other permanent faculty status. Talley's subjective belief that he had a property interest in his job did not create such an interest because a subjective expectancy can create no constitutionally protected interest. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

"At-Will" Employee — Notice Not Necessary — Due Process Protections Not Necessary: Plaintiff, a school janitor, provided no evidence that his employment had any specified term. Therefore, he was an "at-will" employee, had no property interest in his job, and was not entitled to notice prior to termination under 39-2-503 (now repealed) or under school policy. Medicine Horse v. Trustees, Big Horn County School District No. 27, 251 M 65, 823 P2d 230, 48 St. Rep. 1074 (1991), overruled, to the extent that the Wrongful Discharge From Employment Act has superseded and impliedly repealed the at-will employment provisions for nonprobationary employees, in Whidden v. John S. Nerison, Inc., 1999 MT 110, 294 M 346, 981 P2d 271, 56 St. Rep. 456 (1999), and distinguished in Boreen v. Christensen, 267 M 405, 884 P2d 761, 51 St. Rep. 1014 (1994).

School Controversy — MAPA Statute of Limitations Not Applicable: After the Superintendent of Public Instruction issued an order to reinstate plaintiff to her teaching position, trustees filed a petition for judicial review after expiration of the 30-day period allowed under 2-4-702 for judicial review following a final agency decision but prior to expiration of the 60-day period allowed for judicial review of a decision to terminate a tenured teacher made pursuant to subsection (2) of this section. The Supreme Court reversed and remanded the District Court's order granting a motion to dismiss plaintiff's petition for judicial review, holding that MAPA did not expressly or impliedly repeal the statute of limitations provided pursuant to this section and that the 60-day rule applied to a school controversy. Carbon County School District Trustees v. Spivey, 247 M 33, 805 P2d 61, 48 St. Rep. 79 (1991).

Failure to Request Reasons for Termination — Loss of Appeal Rights: Plaintiff was one of four nontenured teachers informed in writing in mid-April that her contract would not be renewed. The letter gave no reason for termination, but school board minutes reflected that the reason was financial, and allegedly all nontenured teachers were released in anticipation that the upcoming mill levy would not pass. Plaintiff therefore did not request reasons for termination within 10 days as required under 20-4-206. However, in June the levy did pass and all nontenured teachers were rehired except plaintiff, who appealed in July. Even in cases where financial conditions are the alleged reason for termination, nontenured teachers cannot assume this is the reason unless they request and receive written confirmation from the district trustees. Because plaintiff did not request confirmation, her chance for appeal passed while she waited to be rehired after the mill levy vote. Keller v. School District, 237 M 481, 774 P2d 409, 46 St. Rep. 986 (1989).

Additional Evidence Denied: In an appeal by a school district from an administrative order reinstating and compensating a discharged school principal, the District Court did not err in denying the school district's motion to order receipt of additional evidence. The court had properly determined that the Superintendent of Public Instruction correctly used his discretion when previously denying the school district's request to submit additional evidence. The affidavits in question were not subject to cross-examination and were of questionable quality. The county-level hearing was a thorough hearing, and the evidence supports the county-level decision. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Failure to File Timely Appeal: Having failed to pursue his statutory administrative remedies within the time allowed by law, plaintiff's right to contest the termination of his employment as a tenured teacher was at an end. Gallup v. Supt. of Pub. Instruction, 172 M 400, 563 P2d 1139 (1977).

Constitutionality: This section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Decision Subject to Judicial Review: While the Superintendent of Public Instruction has the power to "decide all appeals from the decisions of the county superintendent", his decision is subject to "adjudication or proper legal remedies in the state courts". Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Undue Hardship on Parents as Basis for Appeal: Where Superintendent of Public Instruction approved County Superintendent's attachment of abandoned territory to a contiguous district rather than to another more convenient one, thus requiring children to travel 14 miles farther each way to get to more overcrowded schools and working an "undue hardship" on both parents and children, this constituted sufficient facts for appeal from Superintendent of Public Instruction's decision. Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Dismissal Decision Void for Want of Jurisdiction — Certiorari Granted: Where an order of a board of trustees dismissing a District School Superintendent for cause was void because he had not been granted a hearing (a well-defined public policy declared by decisions of the Supreme Court), which order was reversed on appeal to the County Superintendent, whereupon the board appealed to the Superintendent of Public Instruction who found in favor of the board, the action of the board and the decision of the Superintendent were void for want of jurisdiction and certiorari would be granted. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Exhaustion of Administrative Remedy Required: Where plaintiff teacher was dismissed by the board of school trustees and appealed the action of the board to the County Superintendent but failed to appeal the County Superintendent's unfavorable decision to the Superintendent of Public Instruction, plaintiff failed to exhaust remedies afforded by law, and since there was nothing in the record to show abuse of discretion on the part of school authorities, plaintiff was barred from court action against the school district for breach of contract. Kelsey v. School District, 84 M 453, 276 P 26 (1929), distinguished in McBride v. School District, 88 M 110, 290 P 252 (1930), explained in State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Appeal Not Barred by Correspondence With County Superintendent: An informal letter written by the Superintendent of Public Instruction to a County Superintendent based on correspondence between them relative to an order of the latter abolishing a school district and approving his action did not bar the State Superintendent from thereafter passing upon the same question when presented upon a formal appeal from the County Superintendent's decision. State ex rel. School District v. Trumper, 69 M 468, 222 P 1064 (1924).

Jurisdiction of Superintendent Presumed: In the absence of an affirmative showing of want of jurisdiction in the Superintendent of Public Instruction on appeal from a decision of a County Superintendent, jurisdiction and regularity of the proceedings will be presumed; and so long as the former acts legally and within the powers expressly conferred, courts will not interfere by certiorari. State ex rel. School District v. Trumper, 69 M 468, 222 P 1064 (1924).

Attorney General's Opinions

Transcript Not Waivable: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

20-3-108. Division of resources and assessment funds.

Compiler's Comments

1997 Amendment: Chapter 422 deleted former first sentence that read: "There is a resources and assessment account in the state special revenue fund"; at end substituted "state general fund" for "resources and assessment account"; deleted last sentence that read: "In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendments: Chapter 370 at end of section changed "20-3-106(25)" to "20-3-106(23)" (not codified due to amendment by Ch. 470—see below).

Chapter 470 substituted first sentence establishing a resources and assessment account for "The superintendent of public instruction shall establish an enterprise fund within the office of public instruction for the division of resources and assessment", at end of second sentence substituted "account" for "enterprise fund", and at end deleted reference to subsection of 20-3-106.

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

20-3-109. Honorary high school diploma for certain veterans.

Compiler's Comments

Effective Date: Section 3, Ch. 171, L. 2003, provided: "[This act] is effective on passage and approval." Approved March 28, 2003.

20-3-110. State high school diploma — duties of superintendent of public instruction — rulemaking.

Compiler's Comments

Effective Date: Section 3, Ch. 223, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 16, 2021.

Part 2
County Superintendent of Schools

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Part Attorney General's Opinions

County Superintendent Serving as Substitute — No Additional Compensation: A County Superintendent, who is serving as a substitute superintendent is not allowed to charge hourly fees in addition to the regular salary paid by the county in which the County Superintendent is elected since serving as a substitute is part of the statutory job responsibilities. 54 A.G. Op. 1 (2011).

20-3-201. Election and qualifications — part-time office allowed.

Compiler's Comments

1993 Amendment: Chapter 146 in (2), at beginning, inserted "Upon verification by the county clerk and recorder" and after "qualified to" inserted "file for and"; in (2)(b), near beginning after "valid", substituted "current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory" for "teacher"; and inserted (4) allowing establishment of the County Superintendent's office as a part-time office. Amendment effective March 24, 1993.

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

1991 Amendment: Inserted (3)(a)(i) through (3)(a)(iii) allowing a county that consolidates the Office of County Superintendent of Schools with another office to contract for full performance of the Superintendent's duties with a person who meets certain qualifications; inserted (3)(b) providing that the contract be for at least 1 school fiscal year; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment — Transition: In (3) substituted requirement that the officeholder shall either possess the qualifications of office or contract for the services of another County Superintendent for "When the office of county superintendent of schools is consolidated with another county office within the county, the requirements of subsection (2) shall be waived. Unless the officeholder has the qualifications of subsection (2), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties required of county superintendents in counties where the office has not been consolidated."

Section 2, Ch. 550, provided that the 1985 amendment would be effective in each county in which, prior to October 1, 1985, the office of county superintendent of schools had been consolidated with another office upon:

(1) The beginning of the next term of office after October 1, 1985, of the county officer with which the office of the county superintendent of schools has been consolidated; or

(2) If a contract was entered into under the provisions of this section, as it read prior to the 1985 amendment, and the contract extends into the next term of the officer set forth in subsection (1), then upon the expiration of such contract.

Attorney General's Opinions

County Superintendent Under Contract With Another County — Entitled to Additional Compensation: Unless specifically prohibited by law, a public officer is entitled to additional compensation for the rendition of services beyond those required by the duties associated with his office. Therefore, a qualified County Superintendent who enters into a contractual agreement pursuant to subsection (3) of this section, to provide services in a county lacking a qualified County Superintendent, is entitled to additional compensation. Section 20-3-212 is limited by its terms to instances in which an otherwise qualified County Superintendent is disqualified from hearing or deciding contested matters and has no application to contracts under this section. 43 A.G. Op. 69 (1990). However, see 54 A.G. Op. 1 (2011), holding that a County Superintendent who is serving as a substitute superintendent is not allowed to charge hourly fees in addition to the regular salary paid by the county in which the County Superintendent is elected since serving as a substitute is part of the statutory job responsibilities.

Former County Superintendent Not to Conduct Hearings: A former County Superintendent of Schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards. 41 A.G. Op. 71 (1986).

Valid Teacher Certificate Required of County Superintendent Candidate: A candidate for County Superintendent of Schools may not assume office unless at the time he assumes office he holds a valid teacher certificate. 41 A.G. Op. 71 (1986).

Deputy County Superintendent — Qualifications: A Deputy County Superintendent of Schools need not possess the qualifications required by statute of a County Superintendent of Schools. 39 A.G. Op. 49 (1982).

20-3-202. Term, oath, and vacancy.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) in second sentence after "The county superintendent shall" deleted "assume office on the first Monday of January following election and shall"; inserted (1)(a) regarding taking oath of office; inserted (1)(b) regarding assuming office; in (2) after "shall" deleted "take the oath or affirmation of office and shall"; in (3) after "the next" deleted "regular"; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-203. Office costs and staff.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Deputy County Superintendent — Qualifications: A Deputy County Superintendent of Schools need not possess the qualifications required by statute of a County Superintendent of Schools. 39 A.G. Op. 49 (1982).

20-3-204. Office hours.

Compiler's Comments

1995 Amendment: Chapter 216 in (1), near middle of first sentence, inserted "during the office hours determined by the governing body", after "open" deleted "from 8 a.m. until 5 p.m.", and before "holidays" inserted "legal", in second sentence substituted "during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent" for "from 8 a.m. until 5 p.m.", and deleted last sentence that read: "The office must be kept open at all times as business may require"; and made minor changes in style.

1993 Amendment: Chapter 146 in (1), at beginning, inserted exception clause; and made minor changes in style. Amendment effective March 24, 1993.

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

20-3-205. Powers and duties.

Compiler's Comments

2011 Amendment: Chapter 152 in (1)(k) after "title" deleted "regulating school budgeting systems"; deleted former (1)(l) that read: "(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211"; and made minor changes in style. Amendment effective April 10, 2011.

2007 Special Session Amendment: Chapter 1 in (1)(n) at end substituted "20-9-313(1)(c)" for "20-9-313(3)". Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Amendments — Composite Section: Chapter 463 deleted former (4) that read: "(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 510 inserted (2) providing that when a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section and that when two or more districts in more than one county consolidate, the duties must be performed by the county superintendent designated in the same manner as other county officials; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

2003 Amendment: Chapter 151 in (7) after "transcript" deleted "and reconcile" and after "county" deleted "in accordance with the provisions of 20-6-103"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

2001 Amendments — Composite Section: Chapter 220 near beginning of (17) after "revenue and" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 11, 2001.

Chapter 237 in (14) deleted "20-9-335"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendment: Chapter 584 in (17) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 22 in (14), in list of statutory references, deleted "20-9-334" and inserted "20-9-335". Amendment effective July 1, 1997.

1993 Amendments: Chapter 563 in (4), after "tuition", substituted "and transportation obligation" for "application" and at end substituted "20-5-323 and 20-5-324" for "20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312"; and made minor changes in style.

Chapter 633 in (16), before "general fund", deleted "provisions of 20-9-348 and the other". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (12), after "final", inserted "budgets" and substituted "budget amendments" for "emergency budgets"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (14) substituted monthly apportionment for quarterly apportionment; and made minor changes in phraseology. Amendment effective July 1, 1990.

1989 Amendment: In (12), after "tax levies", deleted "give notices of the budget meetings". Amendment effective July 1, 1989.

1981 Amendment: Deleted the reference to "20-9-351" in (14).

Case Notes

Restraining or Enforcing Actions of School Boards by County Superintendent: A County Superintendent may restrain the improper exercise of ministerial powers by school boards by injunction or enforce their proper exercise through mandamus even though he is not a taxpayer within the particular district involved, and he need not, as a private citizen must, show a personal interest in the controversy. State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944).

Authority of County Superintendent to Change District Boundaries: There was no authority on the part of the County Superintendent or Board of County Commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not included therein. The County Superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 126 P2d 1101 (1942).

20-3-206. Additional positions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1997 Amendment: Chapter 219 deleted former (2) that read: "a member of the high school boundary commission of the county, as prescribed by 20-6-304"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-208. Authority to request, accept, and disburse money.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-209. Annual report.

Compiler's Comments

2011 Amendment: Chapter 152 in first sentence after "instruction" substituted "on or before September 15" for "not later than the second Monday in September". Amendment effective April 10, 2011.

2003 Amendment: Chapter 276 inserted (2) requiring that the annual report include the revenue amounts used to establish levy amounts for the county school fund supporting school district transportation schedules and elementary and high school district retirement obligations; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

1999 Amendment: Chapter 343 in first sentence of introduction substituted "the second Monday in September" for "September 1"; in (2) substituted "20-9-213(6)" for "20-9-213(5)"; deleted former (3) that read: "(3) the pupil information for each district provided the county superintendent under the provisions of 20-4-402(7)"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 22 in (3), after "provisions of", deleted "20-4-301(1)(d)"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: Deleted former (2) that read: "(2) When the superintendent of public instruction receives a complete annual report from the county superintendent, he shall immediately issue a receipt for the annual report to such county superintendent. The county superintendent shall present the receipt to the board of county commissioners, and if the county commissioners do not receive the receipt, they shall not pay the county superintendent's salary for the last 2 months of the calendar year until the receipt is presented to them"; and made minor changes in form. Amendment effective July 1, 1989.

20-3-210. Controversy appeals and hearings.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at beginning, inserted reference to collective bargaining disputes and reference to 20-4-208, inserted second sentence related to qualification required of superintendent who may hear teacher termination matters, in fifth sentence substituted "may appeal to the district court of the county in which the teacher was employed" for "may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title", and inserted sixth sentence establishing deadline for commencement of appeal; deleted former (1)(b) that read: "(b) 20-4-206(4)"; in (4), at beginning, inserted exception clause and inserted last two sentences relating to teacher termination cases and record on appeal; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 563 substituted present (1)(a) regarding approval of out-of-district attendance agreements for former language that read: "20-5-304 or 20-5-311 relating to the approval of tuition applications"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 252 in (1) inserted second sentence requiring exhaustion of administrative remedies prior to filing a District Court action concerning a decision of the trustees, except under certain circumstances; and inserted (2) establishing when exhaustion of administrative remedies is not a prerequisite.

Chapter 439 inserted (1)(b) referring to 20-4-206(4).

Applicability: Section 4, Ch. 439, L. 1991, provided: "[This act] does not apply to nontenure teachers who are considered temporary or substitute teachers."

Administrative Rules

Title 10, chapter 6, ARM Rules of procedure for all school controversy contested cases before county superintendents.

Case Notes

No Material Facts in Dispute — County Superintendent May Grant Summary Judgment Without Evidentiary Hearing: A retired school administrator sued the school district for benefits he believed were owed to him under the terms of his employment contract. Without holding an evidentiary hearing, the county superintendent granted the school district summary judgment based on the unambiguous language of the contract. After appeals to the State Superintendent of Public Instruction and the District Court, the Supreme Court held that a county superintendent has authority to grant summary judgment without holding a hearing when there are no material issues in dispute. Anaconda Public Schools v. Whealon, 2012 MT 13, 363 Mont. 344, 268 P.3d 1258.

Failure to Exhaust Administrative Remedies — Dismissal for Failure to State Proper Claim for Relief Not Error: Plaintiff objected in District Court to a Missoula school district's sale of an unused public elementary school building to a Missoula Catholic school foundation. The court ruled that because the sale of the school was closed on May 6, 2005, but plaintiff's claim was not filed until April 11, 2006, the claim was barred by the 30-day statute of limitations in 2-3-114, so the court dismissed the claim. On appeal, the Supreme Court affirmed dismissal of the claim, but not on grounds that the statute of limitations was not met. Rather, plaintiff failed to exhaust its administrative remedies by appealing the school district's action to the county superintendent, as required in 20-3-210, so dismissal for failure to state a claim for which relief could be granted was not erroneous. Good Schools Missoula, Inc. v. Missoula County Pub. School Dist. No. 1, 2008 MT 231, 344 M 374, 188 P3d 1013 (2008).

County Superintendent Review De Novo — Consideration of Other Evidence Allowed: Phillips, a tenured teacher in English and art in the Madison School District, was terminated by the trustees upon recommendation of the District Superintendent. Phillips appealed the decision to the County Superintendent and introduced evidence that the termination was based upon a personality conflict with the District Superintendent. Phillips also introduced financial evidence that the district's reserve held enough money to maintain her employment. The State Superintendent held that the financial information was improperly considered. The Supreme Court held that because the hearing before the County Superintendent was a de novo hearing, the County Superintendent could consider any relevant evidence. The Supreme Court affirmed the District Court's findings. Phillips v. Madison School District No. 7, 263 M 336, 867 P2d 1104, 51 St. Rep. 29 (1994).

Concurrent Proceedings Not Precluded: A terminated teacher filed an appeal pursuant to this section. The teacher's union filed a grievance, alleging that the termination was a violation of the collective bargaining agreement. The school superintendent refused to process the grievance pending the teacher's statutory appeal. When the teacher dismissed the statutory appeal, the union filed an action to compel arbitration of the grievance pursuant to the Uniform Arbitration Act and the collective bargaining agreement. On appeal, the Supreme Court held that nothing in the teacher's collective bargaining agreement or in the election of remedies law precludes concurrent proceedings on the termination. Frazer Educ. Ass'n v. Valley County School District No. 2, 256 M 223, 846 P2d 267, 50 St. Rep. 41 (1993).

Estoppel Barring Issue of Teacher and Union Pursuing Separate Claims in Separate Forums: A terminated tenured union teacher filed an appeal under this section at the same time the teacher's union filed a grievance alleging violation of the collective bargaining agreement. Unsatisfied with results at prior steps of the grievance procedure, the union requested arbitration, to which the school district refused to submit. Instead, the school district petitioned for an injunction to compel the union and the teacher to elect one forum in which to pursue their legal claims. The District Court denied the injunction, allowing both forums to proceed, and the school district did not appeal. Because these circumstances fulfilled the elements of the doctrine of collateral estoppel, namely that the issue had been decided in a prior adjudication, a final judgment was issued. Because the party against whom the plea was asserted was a party in the prior adjudication, the school district was estopped from further litigation on the issue of separate forums. Colstrip Faculty Ass'n, MEA/NEA v. Trustees, School District No. 19, 251 M 309, 824 P2d 1008, 49 St. Rep. 43 (1992).

Breach of Contract Disputes to Be Handled Administratively: The plaintiff brought an action in District Court alleging breach of the collective bargaining agreement. The Supreme Court ruled that the issue had to be submitted for administrative review before it could be filed in the lower court. The court overruled its holding in McBride v. School District No. 1, 88 M 110, 290 P 252 (1930). Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Consideration of Written and Videotaped Testimony at De Novo Hearing: A dismissed teacher claimed he was wrongfully deprived of his right to a de novo hearing because the County Superintendent considered transcripts and videotaped testimony taken during the school board hearing. However, the testimony was admissible under 20-4-612(2) because it expedited disposition of the issue without substantial prejudice to the teacher. Johnson v. Bd. of Trustees, 236 M 532, 771 P2d 137, 46 St. Rep. 598 (1989).

Seeking of Money Judgment Not Dispositive of Agency Jurisdiction: A County Superintendent of Schools improperly dismissed a district board of trustees' decision denying a claim for retirement benefits by a contract administrator after determining that a Superintendent did not have jurisdiction because it was a claim for breach of contract and not a controversy intended to be heard under this section. The Supreme Court remanded, holding that the seeking of a money judgment was not the dispositive factor in determining the educational agency's jurisdiction over a matter and that this section fully contemplated a hearing on the controversy. Throssell v. Bd. of Trustees, 232 M 497, 757 P2d 348, 45 St. Rep. 1228 (1988).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Constitutionality: This section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Attorney General's Opinions

Disqualification Peremptory — County Superintendent's Control of Timeliness: The affidavit of disqualification of a County School Superintendent in a school controversy is peremptory. Requirements regarding timeliness and sufficiency of the affidavit under the Montana Administrative Procedure Act do not apply to proceedings conducted by the County Superintendent of Schools under Title 20; however, the timeliness of the affidavit may be controlled by the officer presiding over the hearing. 42 A.G. Op. 86 (1988).

Former County Superintendent Not to Conduct Hearings: A former County Superintendent of Schools may not be hired by a county to conduct hearings involving disputes of teachers and school boards. 41 A.G. Op. 71 (1986).

Transcript Not Waivable: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

"Hearing" Synonymous With "Trial": An appeal before the County Superintendent of Schools is an original proceeding and de novo consideration of a controversy and not merely a review of a decision by a school board. 35 A.G. Op. 42 (1973).

20-3-211. Disqualification of county superintendent.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4) at end the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

1987 Amendment: Inserted (4) relating to a handicapped child.

Attorney General's Opinions

Disqualification Peremptory — County Superintendent's Control of Timeliness: The affidavit of disqualification of a County School Superintendent in a school controversy is peremptory. Requirements regarding timeliness and sufficiency of the affidavit under the Montana Administrative Procedure Act do not apply to proceedings conducted by the County Superintendent of Schools under Title 20; however, the timeliness of the affidavit may be controlled by the officer presiding over the hearing. 42 A.G. Op. 86 (1988).

20-3-212. The county superintendent to appoint another county superintendent.

Attorney General's Opinions

County Superintendent Under Contract With Another County — Entitled to Additional Compensation: Unless specifically prohibited by law, a public officer is entitled to additional compensation for the rendition of services beyond those required by the duties associated with his office. Therefore, a qualified County Superintendent who enters into a contractual agreement pursuant to 20-3-201(3), to provide services in a county lacking a qualified County Superintendent, is entitled to additional compensation. This section is limited by its terms to instances in which an otherwise qualified County Superintendent is disqualified from hearing or deciding contested matters and has no application to contracts under 20-3-201. 43 A.G. Op. 69 (1990). However, see 54 A.G. Op. 1 (2011), holding that a County Superintendent who is serving as a substitute superintendent is not allowed to charge hourly fees in addition to the regular salary paid by the county in which the County Superintendent is elected since serving as a substitute is part of the statutory job responsibilities.

20-3-213. Part-time office — establishment — restrictions.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 146, L. 1993, provided: "[This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act]." Effective March 24, 1993.

Part 3

School District Trustees

Part Compiler's Comments

Student Representation on Board of Trustees: HJR 26 of the 49th Legislature provided: "WHEREAS, the Legislature and the Montana education community recognize that the most valuable resource for achieving "excellence in education" in Montana is the student; and

WHEREAS, student representation on local school boards has never been implemented on a statewide basis, although the Board of Public Education and the Board of Regents currently have active student members on their respective boards; and

WHEREAS, the educational process dominates a large part of the life of a school-age person, and as a citizen, that person should be allowed representation in the major decisions governing the educational process; and

WHEREAS, when students feel that they have influence over their environment and that their opinions are respected, the result is an atmosphere of greater trust, civility, and mutual respect; and

WHEREAS, through involvement in the decisionmaking process of a school district, the student is not only contributing valuable input not otherwise available, but is also receiving first-hand knowledge of the governmental process and the educational process; and

WHEREAS, students are deeply concerned about the education they are receiving and wish to present their views on educational reform.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature stands strongly in favor of student representation on each school district board of trustees.

(2) That the Legislature urges each school district board of trustees in the state to appoint a nonvoting student member to the board to represent the student body of the school district.

(3) That the executive secretary of the Board of Public Education, the executive secretary of the Montana Association of Student Councils, and a member of the Office of Public Instruction meet and confer to define the role of the student member by using as a guideline the existing policy set by the Board of Public Education regarding student representation.

(4) That copies of this resolution be sent by the Secretary of State to:

(a) each local school board chairman in the State of Montana;

(b) each accredited public high school in the State of Montana; and

(c) the Montana Congressional Delegation."

Part Attorney General's Opinions

Office of County Commissioner Incompatible With Office of School Trustee: The current nature and duties of the offices of County Commissioner and county high school trustee could give rise to possible conflicts of governmental interest if one person were to retain both offices simultaneously. The Attorney General affirmed the decision in 8 A.G. Op. at 402 (1920), holding that the offices are incompatible in light of the fact that under state law a County Commissioner has certain supervisory powers over a school trustee. However, nothing in state law prohibits an individual from holding one of these offices while seeking the other. 42 A.G. Op. 94 (1988).

Part Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

20-3-301. Election and term of office.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) inserted last sentence concerning the day of an annual school election; in (3) at beginning inserted "board of"; and made minor changes in style. Amendment effective November 4, 2015.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees. Unless the state constitution provides otherwise, the Legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Attorney General's Opinions

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

20-3-302. Legislative intent to elect less than majority of trustees.

Compiler's Comments

2005 Amendment: Chapter 510 in (2)(a) at beginning after "consolidation" inserted "under the provisions of 20-6-423", after "elementary district" deleted "under the provisions of 20-6-203 or the consolidation", and at end after "high school district" substituted "or of two or more K-12 districts to form a K-12 district" for "under the provisions of 20-6-315"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 219 in (1), at beginning of fourth sentence, deleted "high school districts operating a" and after "county high school" inserted "districts"; in (2) deleted former (a) that read: "the creation of a new elementary district under the provisions of 20-6-217"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1993 Amendment: Chapter 137 in (2) substituted introductory clause concerning newly created trustee positions for former language that read: "While it is the intention of the legislature that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time"; in (2)(b), after "20-6-203", inserted "or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315"; in (2)(d) substituted "or" for "and"; deleted former (2)(e) that read: "(e) the filling of a trustee position that has become vacant under the provisions of 20-3-308 or any other provision of law"; substituted (2)(f) concerning establishment of additional positions under 20-6-313 for former subsection that read: "(g) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election"; inserted (3) requiring the elimination of positions to comply with subsection (1); inserted (4) clarifying legislative intent; and made minor changes in style.

1991 Amendment: At end of (2)(c), after "20-3-354", inserted "or new trustee positions under the provisions of 20-3-352(3)"; and made minor changes in style.

Case Notes

Conflicting Provisions: Section 1001, Revised Codes of 1921 (now repealed), apparently in conflict with section 998, Revised Codes of 1921 (now repealed), providing for appointment of trustee to fill vacancy, was intended to adjust the terms of school trustees so that the terms of a majority thereof should not expire at the same time, after which it had no further application to such district. State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

Ballot for Transitional Election Held Misleading: In a school district of the third class, the members of the board of trustees had been holding over for many years for failure to hold elections to choose their successors. An election was called, and the board, instead of pursuing the method of procedure under such circumstances prescribed by this section, i.e., selecting by lot one of its members to hold over for 1 year and one for 2 years and providing for the election of the third for the term of 3 years, furnished ballots providing for the election of three trustees for terms of 1, 2, and 3 years, respectively. Since there was only one trustee to be elected, the ballots furnished were so misleading as to render the election void. Jersey v. Peacock, 70 M 46, 223 P 903 (1924), distinguished in State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

20-3-303. Term of vacated trustee position after election.

Case Notes

Writ of Mandate Properly Issued to Compel Certification of Elected Trustees: Under this section, a school trustee appointed to fill a vacancy shall hold office only until the next annual school election at which a trustee shall be elected for the unexpired term. Two of three trustees for a district of the third class elected for 3-year terms expiring in 1934 and 1935 resigned. The board of trustees declined to call an election in the spring of 1933 to choose successors to the appointees on the theory that they held over for the respective terms. However, by the use of stickers, successors were elected at such election. The District Court properly granted a Writ of Mandate compelling the board of trustees to issue certificates of election to the persons elected to succeed the appointees. State ex rel. Kuhl v. Kaiser, 95 M 550, 27 P2d 1113 (1933).

20-3-305. Candidate qualification, filing deadline, and withdrawal.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) deleted former first sentence that read: "Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election"; in (2)(a) substituted "Except as provided in subsection (2)(b), a declaration of intent to be a candidate" for "The name of each person nominated for candidacy", after "the term for" inserted "the position for", and substituted "is filing" for "is nominated"; inserted (2)(b) regarding deadline for filing as a write-in candidate; in (3)(a) at end of second sentence substituted "filed" for "was nominated"; in (3)(b) substituted "after 5 p.m. the day before the ballot certification deadline in 20-20-401" for "less than 38 days before a school election"; deleted former (3)(c) that read: "(c) Filing fees paid by the candidate may not be refunded"; and made minor changes in style. Amendment effective November 4, 2015.

2011 Amendment: Chapter 271 inserted (3) regarding candidate withdrawal from election. Amendment effective April 23, 2011.

1999 Purported Amendment: Although sec. 3, Ch. 514, L. 1999, purported to amend this section, the final version of the text remained unamended except for minor style changes.

1987 Amendments: Chapter 372 in (2) increased time for submission of a nomination from 20 days to 40 days.

Chapter 539 in (1) and (2), at beginning, inserted exception clause referencing 20-3-338.

Attorney General's Opinions

Voter Registration Required of Elector Nominating School Trustee: An elector nominating a candidate for a school trustee position under subsection (2) of this section must be registered to vote at the time the nominating petition is filed. 43 A.G. Op. 24 (1989).

Office of County Commissioner Incompatible With Office of School Trustee: The current nature and duties of the offices of County Commissioner and county high school trustee could give rise to possible conflicts of governmental interest if one person were to retain both offices simultaneously. The Attorney General affirmed the decision in 8 A.G. Op. at 402 (1920), holding that the offices are incompatible in light of the fact that under state law a County Commissioner has certain supervisory powers over a school trustee. However, nothing in state law prohibits an individual from holding one of these offices while seeking the other. 42 A.G. Op. 94 (1988).

Eligibility as Trustee — Registered Voter: A person must be registered to vote in the school district to be eligible for the office of school trustee. "Eligibility", as used in 20-3-305, refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected. 37 A.G. Op. 145 (1978). See also 35 A.G. Op. 91 (1974).

20-3-306. Conduct of election.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) after "20-3-313" deleted "and 20-3-344". Amendment effective November 4, 2015.

1999 Amendment: Chapter 132 in (1) inserted reference to 20-3-313; and made minor changes in style. Amendment effective March 23, 1999.

Case Notes

Sticker With Premarked "X" Not a Legal Marked Ballot: District Court erred in finding ballots valid where electors marked ballot with a printed sticker containing name of write-in candidate and premarked "x", without elector marking an "x" before the name of the printed sticker, as the statute calls for the voter to make his mark. An affirmative act is called for to signify his selection, not a premarked ballot mark of a printer. The provisions of Montana's election laws as to the marking of the ballot and use of stickers are mandatory and not directory. State ex rel. Browne v. District Court, 167 M 477, 539 P2d 1182 (1975).

Attorney General's Opinions

Marking of Ballot by Elector: The ballot of a qualified elector who writes in a name on the ballot but neglects to mark an "X" before that name must not be counted toward the election of the person whose name is written in. An elector may write in the blank spaces of a ballot the name of any person for whom he wishes to vote, but he only votes for that person by actually marking the square before that person's name. A mark other than an "X" within the square before a candidate's name, or an election issue, may be used to express an elector's choice on an election ballot if his intention is clear to the election officers. 35 A.G. Op. 87 (1974).

20-3-307. Qualification and oath.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) near end before "election" inserted "school". Amendment effective November 4, 2015.

2011 Amendment: Chapter 271 in (1) substituted "taking an oath of office administered by the county superintendent, the superintendent's designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed" for "completing and filing an oath of office". Amendment effective April 23, 2011.

1999 Amendment: Chapter 132 in (1) in first sentence inserted reference to 20-3-313; and made minor changes in style. Amendment effective March 23, 1999.

20-3-308. Vacancy of trustee position.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Tie Vote — Special Election Required: When an election for school trustee results in a tie vote, the school district board of trustees should conduct a special school election to fill the trustee position. 35 A.G. Op. 81 (1974).

20-3-309. Filling vacated trustee position — appointee qualification and term of office.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-310. Trustee removal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-312. Trustees of district affected by boundary change.

Compiler's Comments

2009 Amendment: Chapter 60 in first sentence near middle after "consolidation of" deleted "elementary" and in second sentence in two places before "district" deleted "elementary". Amendment effective July 1, 2009.

Applicability: Section 7, Ch. 60, L. 2009, provided: "[This act] applies to school district budgets for the school year beginning July 1, 2009."

2005 Amendment: Chapter 510 in first sentence near beginning after "abandonment" deleted "joint district dissolution" and in second sentence at and substituted "20-6-423" for "20-6-203"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 219 in first sentence, after "elementary districts", and in second sentence, after "district consolidation", deleted references to creation of new elementary district; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-313. Election by acclamation — notice.

Compiler's Comments

2017 Amendment: Chapter 242 in (1) at end inserted "cancel the election"; in (2) at beginning inserted "If the election is canceled, the trustees shall"; and made minor changes in style. Amendment effective May 3, 2017.

2015 Amendment: Chapter 49 in (1) substituted "20-3-305(2)(b)" for "13-10-211" and substituted "30 days" for "25 days". Amendment effective November 4, 2015.

2011 Amendment: Chapter 271 inserted (3) regarding separate trustee elections. Amendment effective April 23, 2011.

2009 Amendment: Chapter 132 in (1) in first sentence substituted "vacant positions" for "a position", after "equal to" inserted "or less than", after "elected" deleted "and there is no other reason for the election", and before "election" inserted "trustee"; in (2) near beginning before "election" inserted "trustee"; and made minor changes in style. Amendment effective April 1, 2009.

2001 Amendment: Chapter 15 in middle of second sentence of (1) increased notice period from 14 days to 25 days. Amendment effective February 14, 2001.

Effective Date: Section 6, Ch. 132, L. 1999, provided that this section is effective on passage and approval. Approved March 23, 1999.

20-3-314. School district trustee information.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

20-3-321. Organization and officers.

Compiler's Comments

2019 Amendment: Chapter 154 in (1) near end of first sentence substituted "25 days" for "15 days". Amendment effective July 1, 2019.

Applicability: Section 4, Ch. 154, L. 2019, provided: "[This act] applies to school years beginning on or after July 1, 2019."

2015 Amendment: Chapter 49 in (1) in first sentence before "election day" inserted "school". Amendment effective November 4, 2015.

2011 Amendments — Composite Section: Chapter 14 inserted (3) regarding service and voting of presiding officer of board of trustees. Amendment effective October 1, 2011.

Chapter 271 in (1) at end of first sentence substituted "15 days after the election" for "the third Saturday of May". Amendment effective April 23, 2011.

Preamble: The preamble attached to Ch. 14, L. 2011, provided: "WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district."

1999 Amendment: Chapter 514 at end of first sentence in (1) substituted "third Saturday of May" for "third Saturday of April"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

20-3-322. Meetings and quorum.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 396, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 444 in (2)(a) in second sentence following "emergency" inserted "or as provided in subsection (2)(b)"; inserted (2)(b) allowing the trustees to meet outside the school district boundaries under certain circumstances; in (3) at end inserted "or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation"; in (5) near beginning following "purposes of" substituted "this section" for "subsection (3)"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 438 in (2) in second sentence inserted "upon the unanimous vote of the trustees" and substituted "accessible" for "owned". Amendment effective October 1, 2005.

2003 Amendment: Chapter 86 at end of (1)(d) substituted "at least quarterly" for "during the months of April, August, October, and January". Amendment effective July 1, 2003.

1999 Amendment: Chapter 467 in (1)(d) substituted "August" for "July". Amendment effective April 26, 1999.

1997 Amendment: Chapter 211 in (1)(b), at beginning, substituted "final budget" for "preliminary budget" and at end substituted "20-9-131" for "20-9-113"; and made minor changes in style. Amendment effective April 7, 1997.

1993 Amendment: Chapter 50 in (2), near end of second sentence, substituted "in a publicly owned building located within the district" for "on other property belonging to the district"; and made minor changes in style. Amendment effective February 18, 1993.

1991 Amendment: In (2), at beginning of second sentence, inserted exception clause; at end of (3) inserted exception clause; inserted (5) defining unforeseen emergency; and made minor changes in style. Amendment effective March 25, 1991.

Case Notes

Member's Mere Presence or Participation as Public Citizen Not Sufficient to Constitute Quorum: A school budget subcommittee with three school board members met, and the meeting was noticed. A fourth school board member attended and sat in the audience but participated in the discussion. A newspaper filed suit, arguing that the meeting was improperly noticed as a subcommittee meeting when a full committee quorum was present and that the committee had taken actions authorized only for a full school board meeting. The Supreme Court held that the District Court had improperly granted summary judgment to the newspaper, noting that certain facts were in dispute. The Supreme Court further held that Montana statutes do not prohibit a member of a public body from observing or asking questions during a subcommittee meeting and that doing so does not constitute the convening of a quorum for purposes of the larger committee. Boulder Monitor v. Jefferson High School District No. 1, 2014 MT 5, 373 Mont. 212, 316 P.3d 848.

Open Meeting Law Applied — Collective Bargaining Exception Construed: Plaintiff was negotiating his salary with the school board. The board closed its meeting to discuss plaintiff's salary request. Plaintiff contacted counsel and began proceedings against the board for violating the open meeting law. The board met at another closed meeting and withdrew its offer of employment. The board contended it closed the meetings to discuss collective bargaining strategy under 2-3-203(3). In construing the term "collective bargaining", the court relied on the identical technical and legal definitions of the phrase. Collective bargaining is an activity involving the settling of disputes by negotiation between the employer and the representative of the employees. The board improperly closed the meetings since plaintiff was not acting on behalf of anyone else and the board's decision would not affect anyone else. Plaintiff had the right to be present at deliberations regarding his future. Jarussi v. Bd. of Trustees, 204 M 131, 664 P2d 316, 40 St. Rep. 720 (1983). The collective bargaining exception was declared unconstitutional in Great Falls Tribune Co., Inc. v. Great Falls Public Schools, 255 M 125, 841 P2d 502 (1992). See 1993 amendment to 2-3-203.

Special Meeting — Publication Not Mandated Under Open Meeting Law: At their regular meeting on March 10, 1981, the trustees announced that they had until April 1 to issue tenure contracts but that they had not yet made their final decisions. On March 12, the chairman contacted the clerk to tell her there would be a special meeting at 9 a.m. on March 14. The clerk contacted the local radio stations, which announced the meeting. The Board met and went into executive session. When plaintiff's contract was not renewed, she claimed the Board had violated the notice provisions of the open meeting law. The court held that the Montana open meeting law does not specifically mandate notice by publication. Publication is a method of proving notice. The obligation of the Montana open meeting law is to ensure that the public has ample opportunity to participate in decisions before final action is taken. The evidence in this case indicated that the opportunity was given. Sonstelie v. Bd. of Trustees, 202 M 414, 658 P2d 413, 40 St. Rep. 179 (1983).

Unlawful Rescission of Contract: The school board did not succeed in its attempt to rescind a consulting contract entered into with a retiring administrator because there was no regularly scheduled or special meeting held to discharge him. School District v. Driscoll, 173 M 492, 568 P2d 149 (1977).

Amendment of Letter of Dismissal: A letter amending a letter of dismissal need not be transacted at a meeting of the trustees but may instead be ratified and adopted at a meeting. Lindgren v. Bd. of Trustees, 171 M 360, 558 P2d 468 (1976).

Failure to Meet — Teacher's Discharge Unlawful: Where no meeting of the school board, either special or regular, was held prior to summary discharge of schoolteacher on ground of incompetency, board's dismissal was void for want of jurisdiction. Wyatt v. School District, 148 M 83, 417 P2d 221 (1966).

Dismissal of Teacher Based Upon Informal Meeting Held Unlawful: The notice of dismissal which must be given a tenured teacher is one based upon action by a majority of the board of trustees taken at a meeting thereof. Hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. To give validity to the business of the board it must be transacted at a regular or special meeting, and the trustees must then act as a board. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Attorney General's Opinions

Right to Know Salaries: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

20-3-323. District policy and record of acts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 305, L. 2023. Amendment effective July 1, 2023.

Case Notes

No School District Immunity for Entering Exclusive Commercial Contract for Sale of Products in School Facilities: The Great Falls school district adopted policies to enhance revenue from nontax sources and subsequently entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district, Coke, and Pepsi. The school district claimed immunity from suit pursuant to 2-9-111, asserting that adopting exclusive contracts constituted legislative actions resulting in the adoption of school board policies under this section. The Supreme Court agreed that 2-9-111 insulated the school district from legal challenge for its decision to enhance revenue from nontax sources by way of commercial engagements because the adoption of policies is a legislative act. However, administrative acts undertaken in the execution of the policies are not immunized under 2-9-111, so the school district was not immune from suit for entering the exclusive contracts. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

General Powers — Prescription of Books for District: Where the Legislature failed to make provision for a uniform series of textbooks throughout the state or to devolve the duty of doing so upon some officer or board, the trustees of a school district, under the general powers vested in them, and particularly the statutory power of the board "to prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction, for their own government of schools under their supervision", could prescribe books for the schools of the district. Campana v. Calderhead, 17 M 548, 44 P 83 (1896).

Attorney General's Opinions

Right to Know Salaries: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

20-3-324. Powers and duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 640, L. 2023. Amendment effective July 1, 2023.

2021 Amendments — Composite Section: Chapter 247 in introductory clause near middle inserted provision regarding supervision and control of the schools pursuant to Article X, section 8, of the Montana constitution; in (18) near beginning of first sentence substituted "educational program" for "instructional services" and inserted second sentence regarding board of trustees duties; inserted (18)(a) regarding waiver of specific course requirement in consultation with the pupil's parents or guardians; inserted (18)(b) regarding credit for a course satisfactorily completed or through content proficiency gained through alternative means and acceptance of units of credit taken appearing on the student's official school transcript; in (30) near beginning substituted "governance of the schools pursuant to the constitutional power of supervision and control of schools vested in elected school boards pursuant to Article X, section 8, of the Montana constitution as" for "government of the schools"; and made minor changes in style. Amendment effective April 19, 2021.

Chapter 253 in (23) near middle after "American flag" inserted "representing the United States and manufactured in the United States" and at end substituted "not less than 3 feet by 5 feet" for "not less than 4 feet by 6 feet"; and in (24) near beginning of first sentence after "American flag" inserted "representing the United States and", near middle of first sentence substituted "at least

16 inches by 24 inches" for "approximately 3 feet by 5 feet", and in second sentence in two places inserted references to military organizations. Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

2019 Amendment: Chapter 75 in (24) and (25) near middle after "school year" deleted "starting after July 1, 2014"; deleted former (30) that read "(30) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 266 in (24) in first sentence after "American flag" inserted "manufactured in the United States", after "approximately" substituted "3 feet by 5 feet" for "12 inches by 18 inches", inserted "no later than the beginning of the school year starting after July 1, 2014", deleted former second sentence that read: "This requirement is waived if the flags are not provided by a local civic group", and inserted second sentence encouraging districts to work with civic groups; inserted (25) regarding provision of copies of constitutions; and made minor changes in style. Amendment effective April 22, 2013.

2007 Amendment: Chapter 44 in (10) at beginning deleted "subject to 15-10-420"; in (13) near end after "cooperative" deleted "agreement"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 138 inserted (17) requiring trustees to set length of school term, school day, and school week; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

2003 Amendments — Composite Section: Chapter 21 inserted (27) allowing the district trustees to approve or disapprove the conduct of school on a Saturday in accordance with 20-1-303; and made minor changes in style. Amendment effective February 13, 2003.

Chapter 340 inserted (28) authorizing establishment of student financial institution; and made minor changes in style. Amendment effective July 1, 2003.

Effective Date — Applicability: Section 7, Ch. 340, L. 2003, provided: "[This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003."

2001 Amendments — Composite Section: Chapter 133 in (17) substituted "K-12 career and vocational/technical education" for "K-12 vocational education". Amendment effective July 1, 2001.

Chapter 377 inserted (26) authorizing interlocal agreements with postsecondary institutions for classes for 11th and 12th graders; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Section 5, Ch. 377, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to interlocal agreements entered into on or after July 1, 2001."

1999 Amendment: Chapter 584 in (10) inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (13), near middle after "miscellaneous", deleted "federal" and after "cooperative agreement fund" inserted "and other funds as authorized by the state superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 311 inserted (25) providing: "upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education"; and made minor changes in style.

1993 Amendments: Chapter 402 in (22), after "weather", inserted "on school days"; inserted (23) requiring an American flag provided by a civic group to be displayed in each classroom except a room in which the flag may get soiled; and made minor changes in style.

Chapter 633 in (10), after "ANB", substituted "BASE budget levy, over-BASE budget levy" for "foundation program, permissive"; in (13), near end, inserted "impact aid fund"; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 402, L. 1993, provided: "WHEREAS, the Board of Public Education, on January 26, 1989, passed and approved a resolution encouraging teachers to begin the school day with the Pledge of Allegiance; and

WHEREAS, the Board of Public Education stated in the resolution that it believes that Montana schools should increase their efforts to educate students in the American values of patriotism and love of country; and

WHEREAS, this Legislature supports the resolution of the Board of Public Education and recognizes that an American flag needs to be displayed in each classroom in order for students to give the Pledge of Allegiance; and

WHEREAS, veteran groups in Montana have demonstrated a willingness to donate flags to any school requesting flags."

1991 Amendment: In (8) substituted reference to budget amendment for reference to emergency budget; in (10), after "program", inserted "permissive" and before "reserve" substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (10) deleted reference to permissive levy. Amendment effective July 1, 1990.

1989 Amendment: Inserted (23) relating to assessment for placement of child from nonpublic, nonaccredited schools; and made minor changes in grammar, style, and phraseology.

1987 Amendments: Chapter 135 in (13) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 145 at end of (21) inserted exception clause.

1981 Amendment: Substituted "Title 20, chapter 4" for "the school personnel part of this title" at the end of (1).

Case Notes

Lack of Standing of Person Who Fails to Allege Personal Interest or Injury: Fleenor brought an action for violation of her right to know and right to participate in a school district's decision to hire a new superintendent on grounds that she was not properly notified of votes. The suit was brought by Fleenor as a citizen of Montana and resident of the county and the school district. The District Court dismissed the suit for lack of standing, and Fleenor appealed, asserting that standing existed by virtue of her status as an interested party and that a liberal interpretation of the constitution regarding a citizen's right to know and participate included anyone with an interest in enforcing the broad constitutional policies and protections. The Supreme Court disagreed. To establish standing, a complaining party must clearly allege a past, present, or threatened injury to a property right or a civil right and allege that the injury is personal to the claimant and distinguishable from injury to the public generally. Additionally, the challenged action must result in a concrete adverseness personal to the party staking a claim in the outcome. However, simply being an informed and interested citizen is insufficient to confer standing. Fleenor made no assertion of injury and did not establish a personal, concrete adverseness that would result from the school district's action and thus failed to meet the threshold for establishing standing. The District Court was affirmed. Fleenor v. Darby School District, 2006 MT 31, 331 M 124, 128 P3d 1048 (2006), following Flesh v. Bd. of Trustees, 241 M 158, 786 P2d 4 (1990), Carter v. Dept. of Transportation, 274 M 39, 905 P2d 1102 (1995), and Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002), followed in Lohmeier v. Gallatin County, 2006 MT 88, 332 M 39, 135 P3d 775 (2006), and followed, with regard to criteria to establish standing, in Bd. of Trustees, Cut Bank Pub. Schools v. Cut Bank Pioneer Press, 2007 MT 115, 337 M 229, 160 P3d 482 (2007). Fleenor was overruled in Schoof v. Nesbit, 2014 MT 6, 373 Mont. 226, 316 P.3d 831, to the extent Fleenor requires a plaintiff in a right to know or right to participate case to allege an injury beyond failure to receive notice or to allege a personal stake in a particular governmental decision for purposes of establishing standing to pursue a claim.

No School District Immunity for Entering Exclusive Commercial Contract for Sale of Products in School Facilities: The Great Falls school district adopted policies to enhance revenue from nontax sources and subsequently entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district, Coke, and Pepsi. The school district claimed immunity from suit pursuant to 2-9-111, asserting that adopting exclusive contracts constituted legislative actions resulting in the adoption of school board policies under 20-3-323. The Supreme Court agreed that 2-9-111 insulated the school district from legal challenge for its decision to enhance revenue from nontax sources by way of commercial engagements because the adoption of policies is a legislative act. However, administrative acts undertaken in the execution of the policies are not immunized under 2-9-111, so the school district was not immune from suit for entering the exclusive contracts. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

Dissemination of Incomplete Document Used to Make Decision — Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

School District Advisory Group as Public or Governmental Body: A school district assembled a group of people to research and advise the district on the closure of schools. The Legislature has given a school district the power to close schools. Therefore, the advisory group assumed the identity of the district with respect to the closure question and performed a legislatively designated governmental function that served a clear public and governmental purpose, and the advisory group was a public or governmental body subject to Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Standing of Parent When Information on Proposed School Closure Requested by Another: School district parents, including Bryan, worked in concert to rebut a school closure recommendation, delegating duties among themselves. Schroeder, but not Bryan, requested information from the school authorities, which was not received. Bryan sued as a result of the school closure. That Bryan did not personally request the information did not prevent her from having standing to claim a violation of Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002), distinguished in Fleenor v. Darby School District, 2006 MT 31, 331 M 124, 128 P3d 1048 (2006). Fleenor was overruled in Schoof v. Nesbit, 2014 MT 6, 373 Mont. 226, 316 P.3d 831, to the extent Fleenor requires a plaintiff in a right to know or right to participate case to allege an injury beyond failure to receive notice or to allege a personal stake in a particular governmental decision for purposes of establishing standing to pursue a claim.

Voluntary Membership in High School Athletic Association Not Unconstitutional Delegation of Trustee Authority: A Livingston high school student, after being informed by the Montana High School Association (MHSA) that he could not participate in basketball because of the MHSA's rule limiting student participation in MHSA events to eight consecutive semesters, filed an action alleging that the board of trustees' consent to be bound by the MHSA rules violated Art. X, sec. 8, Mont. Const., which vests school board trustees with power to supervise and control schools in their district. The Supreme Court held that the MHSA is merely acting as a neutral arbiter to fill the breach caused by the nonexistence of legislative authority and that becoming a member of the MHSA is not an unconstitutional delegation of the district's authority because membership is voluntary. The court noted that although a district's decision to withdraw from membership in the MHSA would undoubtedly cause the district to have a difficult time in finding other schools against which to compete, membership remains voluntary, and by participating, each district is electing to make the rules of the MHSA its own. Grabow v. Mont. High School Ass'n, 2002 MT 242, 312 M 92, 59 P3d 14 (2002).

Wrongful Firing of Tenured Teacher as Violation of Rights — Not Breach of Contract: The school district fired a tenured teacher on the grounds of incompetence. Subsequently, the Supreme Court ruled that the firing was not legal and the district entered into a money settlement with the teacher. The district's insurer refused to cover the settlement on the basis that the policy contained an exclusion for damages due to breaches of contract. The Supreme Court ruled that coverage under the policy was based upon the act giving rise to the claim and not the language of the complaint. The court held that tenure was a right, that the wrongful discharge was negligence, that the fact that the statute required damages based on contracted salary did not change the fact that the district's negligent conduct was not a breach of contract, and that therefore the wrongful discharge was covered under the policy. Missoula County School District No. 1 v. Pac. Employer's Ins. Co., 263 M 121, 866 P2d 1118, 50 St. Rep. 1741 (1993).

Spending Disparities Not Allowed: Article X, sec. 8, Mont. Const., does not require that spending disparities between the school districts of the state be allowed to exist because the disparities cannot be described as the result of local control. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Arbitrator's Award Granting Reinstatement to Teachers Upheld: The Supreme Court rejected school district's contention that the arbitrator of a teacher termination case exceeded his authority by determining that the remedy for firing, in violation of union contract procedures, was to offer full reinstatement, which would thereby confer tenured status to the teachers. The school district, contrary to its assertion, had the statutory and constitutional authority to enter into collective bargaining agreements, and the provisions at issue were proper subjects of bargaining. The trustees, having entered into the agreement in good faith, were bound by it. When parties agree to binding arbitration, the role of a court in reviewing the arbitrator's findings is a narrow one. Savage Educ. Ass'n v. Trustees, 214 M 289, 692 P2d 1237, 41 St. Rep. 2479 (1984).

Reassignment From Administrator to Teacher Within Financial Management Power of School Board — Tenure Laws Not Violated: Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983), followed in King v. Hays/Lodge Pole Pub. School District No. 50, 2011 MT 200, 361 Mont. 415, 259 P.3d 772, which held that a teacher position and a principal position are comparable positions under 20-4-203, even when one of the positions has not been eliminated for financial reasons.

Power of School District Trustees to Terminate Tenured Teachers: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion, and displayed fetuses in the classroom. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. The Supreme Court found that a board of trustees has wide discretion. The Supreme Court said that trustees have the power and duty to both employ a teacher and terminate him under the appropriate circumstances. In doing this the rights of the teacher must also be kept in mind. The tenure of a teacher is clearly both a valuable and substantial right that cannot be taken away except for good cause. In addition, the conduct of a teacher, including a characterization of immorality, must be such as to directly affect the performance by the teacher of his duties as a teacher. Good cause was found in this instance. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Photographing Students — Contracts: The school board's jurisdiction clearly covers the photographing of students on school grounds during school hours. Knox v. School District, 171 M 521, 559 P2d 1179, 34 St. Rep. 11 (1977).

Athletics — Regulation of Married Student Unauthorized and Unconstitutional: Where a married high school student had been held ineligible for varsity athletics on the basis of a school district policy prohibiting participation by married students, a temporary injunction was issued to prevent the school district from enforcing the policy, which was not authorized by statute and was also discriminatory as a violation of the student's right to equal protection of the law. Moran v. School District, 350 F. Supp. 1180 (D.C. Mont. 1972), distinguished in State ex rel. Bartmess v. Bd. of Trustees, 223 M 269, 726 P2d 801, 43 St. Rep. 1713 (1986).

Athletic Training and Facilities: Since the board of trustees had provided for athletic training under provision of 1921 Revised Codes (now repealed) authorizing additions to prescribed courses of study, outdoor gymnasium and athletic field were a necessary part of school plant, and bond issue therefor would not be enjoined. McNair v. School District, 87 M 423, 288 P 188 (1930).

Trustees Not Electors to Select Building Site: Under predecessor to subsection (15) of this section, the selection and purchase of a site for a school building in districts of the first and second classes were not entrusted to the electors of the districts but lodged in the trustees under directions of the electors. Nichols v. School District, 87 M 181, 287 P 624 (1930).

Mandamus to Force Location of Schoolhouse: Mandamus is the proper remedy to require the trustees of a school district to redetermine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors. A resident and taxpayer of the school district is a party beneficially interested and entitled in such case to make the application. State ex rel. Bean v. Lyons, 37 M 354, 96 P 922 (1908).

Statute as Grant and Limitation of Power: The provision of section 1719 of the Political Code of 1895, in regard to the removal of schoolhouse and the purchase or sale of school lots when directed by vote of the district, was not only a grant of power to school boards but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they could not do any of the acts referred to without first obtaining the consent of the electors. State ex rel. Bean v. Lyons, 37 M 354, 96 P 922 (1908).

"Schoolhouse" as Including Equipment and Personnel: The term "schoolhouse" as used in somewhat similar provision in the Compiled Statutes of 1887 (Comp. Stat. 1887, div. 5, sec. 1885) did not mean simply the house but referred to the school plant, including the general equipment, pupils, and teachers, so that the board had no authority to remove the school properties and equipment to another district without being directed to do so by a vote of the people. State ex rel. Jay v. Marshall, 13 M 136, 32 P 648 (1893).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

District Residency Requirements of School Employees: A school board may, as a condition of employment, require that school district employees be residents of the school district. Nothing in the U.S. or Montana Constitution prohibits the establishment of a continuous residency requirement as long as the policy has a rational basis. 43 A.G. Op. 54 (1990).

State Nepotism Law Applicable to School Districts on Reservations — Prosecution of Tribal Members — Contracts Voidable: Montana's nepotism statutes apply to members of public school boards for districts lying wholly or partially within an Indian reservation. Criminal prosecution of Indian members for nepotism law violations with respect to decisions made and implemented wholly on-reservation may be initiated only in federal court by the United States pursuant to

18 U.S.C. 13, except for violations occurring on the Flathead Indian Reservation. Furthermore, contracts entered into in contravention of the nepotism statutes are voidable. 43 A.G. Op. 23 (1989).

Disclosure of Merit Pay of School District Administrators: The administrators of a school district do not have a constitutionally protected right to privacy regarding the amount of merit pay awarded to them pursuant to the district's Leadership Evaluation and Compensation Plan. Therefore, the amounts should be disclosed to the public. 41 A.G. Op. 35 (1985).

School Boards — Employment of Principals: A school district board of trustees may not delegate its duty to employ or dismiss principals and vice-principals to the school district Superintendent. 37 A.G. Op. 133 (1978).

Severance Pay: Provision for severance pay in a collective bargaining agreement between a school district and its employees, based on number of years' service of employees, is deferred compensation and is considered wages earned throughout the period of employment. 37 A.G. Op. 113 (1978). This rationale was applied to compensatory advances of the annual premium for tax-sheltered annuities in 44 A.G. Op. 26 (1992). See 34 A.G. Op. 29 (1971).

District School Board — Nonprofit Corporation: School board trustees have only those powers expressed or implied by law, and since the general powers and duties of school board trustees neither expressly nor impliedly give school trustees the authority to incorporate, a district school board may not incorporate under the Montana Nonprofit Corporation Act. 35 A.G. Op. 47 (1973).

20-3-325. Clerk of district.

Compiler's Comments

2005 Amendment: Chapter 196 inserted (2) requiring at least 30 hours' notice in advance of cash demands by a clerk of the district to meet certain transactions in excess of $50,000 and requiring assessment of a late fee for failure to meet the notice requirement; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

Minutes Held Accurate: School bond election was not invalid for failure of clerk to set out resolution in full in minute books, in absence of showing that resolution itself was defective, since minute books need not reflect exact contents of resolution. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Nature of Position — Quo Warranto Not Available: The clerk of a school district board of trustees does not perform any of the sovereign functions of government. Consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P2d 483 (1962).

Collateral Action Attaching Title Prohibited: Title of acting clerk to office could not be tried in collateral suit on contract with school district. Mintener Lumber Co. v. School District, 84 M 461, 277 P 9 (1929).

Presentation of Claims to Clerk Ineffective: The presentation of a claim to a clerk of a district is nugatory, and his assurance that the same would be paid does not bind the board. Kenyon-Noble Lumber Co. v. School District, 40 M 123, 105 P 551 (1909).

20-3-326. Information on educational opportunities — duties of trustees.

Compiler's Comments

Effective Date: Section 8, Ch. 693, L. 2023, provided that this section is effective July 1, 2023.

2023 Enactment — Coordination: The enactment of this section by sec. 3, Ch. 693, L. 2023, was amended by sec. 7, Ch. 693, L. 2023, a coordination section.

20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan.

Compiler's Comments

Effective Date — Applicability: Section 3, Ch. 324, L. 2007, provided: "[This act] is effective on passage and approval and applies to health benefit claims filed or self-insured health plans dissolved on or after [the effective date of this act]." Effective April 27, 2007.

20-3-331. Purchase of insurance — self-insurance plan.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 770, L. 2023. Amendment effective July 1, 2023.

1991 Amendment: In (1), in first sentence after "coverage", inserted "or establish a self-insurance plan" and after "liability" substituted "as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702" for "for the death, injury, or disability of any person or damage to property" and at end of second sentence, after "district", inserted "and as authorized for the district transportation program in 20-10-143(1)(d)"; inserted (2) requiring trustees establishing a self-insurance plan to provide an internal service fund to account for activities of plan; and made minor changes in style. Amendment effective April 23, 1991.

1989 Special Session Amendment: Inserted last sentence requiring inclusion of insurance cost in general fund budget. Amendment effective July 1, 1990.

1985 Amendments: Chapter 15 deleted last sentence (see below).

Chapter 299 deleted last two sentences that read: "If such insurance is purchased, the trustees shall pay the insurance premium cost from the general fund. The provisions of 2-9-104 shall apply to the provisions of this section."

1981 Amendment: Deleted "33-23-102 and" before "2-9-104" in the last sentence.

Attorney General's Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

20-3-332. Personal immunity of trustees.

Compiler's Comments

2011 Amendment: Chapter 14 inserted (3) regarding immunity and defenses of additional trustee. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 14, L. 2011, provided: "WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district."

2007 Amendment: Chapter 343 in (1) at end after "immune" substituted "from suit for damages, as provided in 2-9-305" for "from exemplary and punitive damages"; and in (2) deleted former third sentence that read: "The liability of trustees for violations of this section must be determined in accordance with the provisions of 2-9-305." Amendment effective April 28, 2007.

1999 Amendment: Chapter 310 in (2) in substituted third sentence regarding determination of liability of trustees for violations for former language that read: "Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails"; and made minor changes in style. Amendment effective April 15, 1999.

1983 Amendment: Inserted (1) relating to individual immunity when acting in official capacity.

Case Notes

Injunction to Prevent Unlawful Payment: Under section 1205, Rev. Codes 1921 (now repealed), authorizing suit by taxpayers against school trustees for restitution of illegally expended funds, injunction did not lie to restrain payment of an alleged illegal claim unless the trustees were insolvent, in which event the complaint was to allege their insolvency. Peterson v. Fugle, 96 M 537, 31 P2d 1030 (1934).

Law Review Articles

Educational Malpractice—Does the Cause of Action Exist?, Magone, 49 Mont. L. Rev. 140 (1988).

20-3-336. Single-member trustee districts — legislative intent — minority defined.

Compiler's Comments

2021 Amendment: Chapter 14 in (2) substituted "52 U.S.C. 10301" for "42 U.S.C. 1973"; and made minor changes in style. Amendment effective October 1, 2021.

2001 Amendment: Chapter 548 inserted (1)(b)(ii) concerning petition for single-member districts; and made minor changes in style. Amendment effective May 1, 2001.

20-3-337. Plan for creating single-member trustee districts — petition election.

Compiler's Comments

2015 Amendment: Chapter 49 in (7) after "election" deleted "day as provided in 20-3-304"; and made minor changes in style. Amendment effective November 4, 2015.

2001 Amendment: Chapter 548 in (1) at beginning inserted exception clause; inserted (8) concerning requirements for petition; inserted (9) concerning calling election upon receipt of proper petition; inserted (10) concerning results of election; inserted (11) concerning filling of vacancies; and made minor changes in style. Amendment effective May 1, 2001.

20-3-338. Trustees elected by single-member district.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) substituted "regular school election" for "annual election provided for in 20-3-304"; deleted former (2) that read: "(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district"; and made minor changes in style. Amendment effective November 4, 2015.

20-3-341. Number of trustee positions in elementary districts — transition.

Compiler's Comments

2015 Amendment: Chapter 49 in (4)(a) in two places before "school election" inserted "regular"; and made minor changes in style. Amendment effective November 4, 2015.

1993 Amendment: Chapter 45 in (2), near beginning after "district", inserted remainder of subsection regarding increase and decrease in board membership; and inserted (4)(a) regarding timing of reductions in board membership if number of trustee positions is decreased.

1989 Amendment: Inserted last sentence of (3) regarding reduction in number of trustee positions; and made minor changes in phraseology. Section 2, Ch. 591, L. 1989, enacted (4) relating to transition of trustee positions when number of positions is reduced.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees; unless the constitution provides otherwise, the Legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

20-3-342. Determination of terms after consolidation of elementary districts.

Compiler's Comments

1997 Amendment: Chapter 219 in first sentence, after "described in", substituted "20-3-302(2)(a)" for "subsections (2)(a) and (2)(b) of 20-3-302"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-343. Determination of terms after change of district classification.

Compiler's Comments

1997 Amendment: Chapter 219 near middle substituted "20-3-302(2)(c)" for "20-3-302(2)(d)"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-351. Number of trustee positions in high school districts.

Compiler's Comments

2011 Amendment: Chapter 14 inserted (3) regarding election of additional trustee and service as presiding officer. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 14, L. 2011, provided: "WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district."

2005 Amendment: Chapter 91 in (1)(a) near middle after "in which" inserted "the operating" and at end after "district" substituted "in which the operating high school building that was first constructed is located" for "designated by the high school boundary commission". Amendment effective March 24, 2005.

The amendment to this section made by sec. 26, Ch. 130, L. 2005, was rendered void by sec. 3, Ch. 91, L. 2005, a coordination section.

1997 Amendment: Chapter 219 in (1) inserted reference to subsection (2) and after "school district" deleted "except a high school district operating a county high school"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: At beginning of (1) inserted exception clause; at end of (1)(b) inserted reference to subsection (2) of 20-3-352; and made minor changes in style.

Case Notes

Constitutionality of Designation of Trustees: Section designating trustees of districts established under act relating to participation in public works programs by high school districts was not a denial of due process for failure to provide for election of trustees; unless the state constitution provides otherwise, the Legislature may provide for the choosing of the board of trustees of a school district as it sees fit. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.

Compiler's Comments

2011 Amendment: Chapter 14 inserted (2)(e) regarding service of additional trustee as presiding officer. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 14, L. 2011, provided: "WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district."

2001 Amendment: Chapter 151 inserted (3)(a)(ii) providing an alternative method of electing members to a high school district board of trustees when more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located and requiring elementary trustees to serve on both boards; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 219 in (1), near beginning after "except a", inserted "county" and after "high school district" deleted "operating a county high school". Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: Near middle of (1), before "representation", inserted "equitable" and at end, after "positions", inserted language concerning establishment of additional trustee positions by request of elementary district trustees under provisions of subsection (2) or by electors under provisions of subsection (3); at end of (2)(c), after "number", inserted exception for establishment of at least one nonvoting trustee position when the quotient is less than 0.5; at beginning of (2)(d) inserted exception clause concerning nonvoting trustee position; inserted (3) concerning number of electors needed on petition for alternative method of electing trustees, specifying makeup of board of trustees under alternative method of election, establishing action to be taken by County Superintendent upon receiving petition and upon approval of alternative election method by electors, determining terms for trustees, and restricting frequency for submission of petition to one time in each 5-year period; and made minor changes in style.

20-3-353. Establishment and purpose of trustee nominating districts.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.

Compiler's Comments

1997 Amendment: Chapter 219 in (1) substituted "20-3-302(2)(b)" for "20-3-302(2)(c)"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-356. Membership of elected trustees of county high school district and nomination of candidates.

Compiler's Comments

1997 Amendment: Chapter 219 in (1), after "trustees of a", substituted "county high school district" for "high school district operating a county high school" and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-3-361. Joint board of trustees organization and voting membership.

Compiler's Comments

2019 Amendment: Chapter 9 inserted (7) concerning participation in a joint board for special education purposes. Amendment effective October 1, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: At beginning of (1) substituted language relating to trustees of two or more districts for former language that read: "Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they" and near end of first sentence, after "program", inserted "or support service"; at end of (1) inserted second sentence relating to which programs and services may be coordinated; in (4)(a) substituted "board of trustees of the smallest class of district" for "elementary district trustees" and after "district" inserted "according to 20-6-201 or 20-6-301"; in (4)(b) substituted "board of trustees of the other district or districts" for "high school district trustees", after "voting members of the" substituted "district" for "elementary district trustees", changed reference to subsection (3)(a) to subsection (4)(a), in second sentence, before "trustees shall", deleted "high school", and at end deleted "high school" before "trustees"; inserted (6) relating to existence and dissolution of a joint Board of Trustees; and made minor changes in phraseology.

20-3-362. Powers of joint board of trustees.

Compiler's Comments

2019 Amendment: Chapter 9 in (1)(e) after "special education services" deleted "as provided in 20-7-457". Amendment effective October 1, 2019.

1989 Amendment: At end of (1)(e) inserted "including any joint provision of special education services as provided in 20-7-457". Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

1987 Amendment: At end of (1)(c), after "20-6-505", inserted last clause relating to a joint Board of Trustees; inserted (1)(e) relating to joint provision of programs or services; in (1)(f), before "school districts", deleted "elementary and high"; and made minor changes in phraseology.

20-3-363. Multidistrict agreements — fund transfers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 580, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 580, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2013 Amendments — Composite Section: Chapter 127 in (1) inserted second sentence concerning dissolution of cooperatives. Amendment effective October 1, 2013.

Chapter 329 in (1) substituted "and must include a provision specifying terms upon which a district may exit the multidistrict cooperative. The agreement may be for a period of up to 3 years" for "by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies"; and in (2) substituted "the district's general fund, budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund" for "the general fund or any other budgeted fund of the district" and substituted last two sentences concerning transfers for "All transfers must be completed by April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies." Amendment effective July 1, 2013.

Applicability: Section 10, Ch. 329, L. 2013, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2013."

2011 Amendment: Chapter 418 in (1) substituted "The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and" for "The trustees of any two school districts that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district may enter into an interdistrict agreement", in two places substituted "all participating districts" for "both districts", and near end substituted "April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies" for "February 1 of the current fiscal year"; in (2) in first sentence substituted "multidistrict" for "interdistrict", in second sentence inserted "participating", "of the multidistrict cooperative", and "or any other budgeted fund", in third sentence inserted "participating" and "general fund", and in fourth sentence substituted "April 1 of the year in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies" for "February 1 of the current fiscal year"; in (3) substituted "budgeted" for "general"; inserted (4) and (5) relating to intent and defining terms; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

Effective Date: Section 24(2), Ch. 462, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

20-3-366. Qualifying district health insurance trusts — qualifications — definitions — rulemaking.

Compiler's Comments

Effective Date: Section 10, Ch. 770, L. 2023, provided: "[This act] is effective July 1, 2023."

20-3-367. District withdrawal — procedures.

Compiler's Comments

Effective Date: Section 10, Ch. 770, L. 2023, provided: "[This act] is effective July 1, 2023."

20-3-368. Dissolution — disqualification.

Compiler's Comments

Effective Date: Section 10, Ch. 770, L. 2023, provided: "[This act] is effective July 1, 2023."

20-3-369. State school health trust operating reserve account — distribution and uses.

Compiler's Comments

Effective Date: Section 10, Ch. 770, L. 2023, provided: "[This act] is effective July 1, 2023."

20-3-370. Repayment of initial reserve from state from excess reserves.

Compiler's Comments

Effective Date: Section 10, Ch. 770, L. 2023, provided: "[This act] is effective July 1, 2023."

CHAPTER 4
TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

Part 1
Certification of Teaching and Supervisory Personnel

Part Administrative Rules

Title 10, chapter 57, ARM Educator licensure.

Part Attorney General's Opinions

State Nepotism Law Applicable to School Districts on Reservations — Prosecution of Tribal Members — Contracts Voidable: Montana's nepotism statutes apply to members of public school boards for districts lying wholly or partially within an Indian reservation. Criminal prosecution of Indian members for nepotism law violations with respect to decisions made and implemented wholly on-reservation may be initiated only in federal court by the United States pursuant to 18 U.S.C. 13, except for violations occurring on the Flathead Indian Reservation. Furthermore, contracts entered into in contravention of the nepotism statutes are voidable. 43 A.G. Op. 23 (1989).

Part Law Review Articles

An Alternative Avenue to Teacher Certification: A Cost Analysis of the Pathways to Teaching Careers Program, Rice & Brent, 27 J. Educ. Fin. 1029 (2002).

The Use of Competency Testing in the Evaluation of Public School Teachers, Parkinson, 39 U. Kan. L. Rev. 845 (1991).

Legal Challenges to Testing for Teacher Certification: History, Impact and Future Trends, Cohen, 18 J.L. & Educ. 229 (1989).

20-4-101. System and definitions of teacher and specialist certification — student teacher exception.

Compiler's Comments

2021 Amendment: Chapter 247 inserted (3)(b) regarding instructor of the Montana university system when teaching any advanced course for college credit; in (4) at beginning substituted "An individual to whom the certification requirement does not apply under subsection (3) must be" for "A student teacher, while serving a nonsalaried internship under the supervision of a certificated teacher, must be" and near middle substituted "while performing functions authorized under subsection (3), comply" for "while acting as a student teacher, comply"; and made minor changes in style. Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Inserted (2) defining teacher or specialist certificate.

Administrative Rules

Title 10, chapters 57 and 58, ARM Educator licensure and standards for teacher education programs.

Case Notes

Statutory Tenure Inapplicable to Community College Instructor: Under the rationale of Rippey v. Flathead Valley Community College, 210 M 396, 682 P2d 1363 (1984), and the plain wording of this section, 20-4-203 does not control tenure for instructors at any community college in Montana. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

Attorney General's Opinions

Teaching Certificates Not Required at Private Institutions: Teachers at private institutions need not hold Montana teaching certificates. The statute requiring certification for teachers applies exclusively to persons wishing to teach in public schools. 38 A.G. Op. 95 (1980).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

20-4-102. Board of public education policies.

Administrative Rules

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

ARM 10.55.716 Substitute teachers.

Title 10, chapters 57 and 58, ARM Educator licensure and standards for teacher education programs.

ARM 10.57.102 Definitions.

Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

20-4-103. Issuance of teacher or specialist certificates.

Administrative Rules

ARM 10.57.204 Experience verification.

ARM 10.57.301 Endorsement information.

ARM 10.57.436 Class 7 American Indian language and culture specialist.

20-4-104. Qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 470, L. 2023. Amendment effective May 8, 2023.

2021 Amendment: Chapter 247 inserted (1)(c)(ii) regarding current certification from national board for professional teaching standards; inserted (1)(c)(iii) regarding current educator license from another state or country and successful experience; and made minor changes in style. Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (1)(a), after "older", deleted "but is not more than 70 years of age"; deleted former (1)(b) that read: "(b) He has a certificate of a licensed physician attesting to his satisfactory health"; in (2) changed internal reference; and made minor changes in style.

1983 Amendment: In (1)(e), deleted from the end of the oath "and the laws of the United States and the state of Montana and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order, and undivided allegiance to the government of the United States of America".

1981 Amendment: Deleted the requirement that a person must be a citizen of the United States to be a certified teacher from (1); made minor changes in phraseology.

Case Notes

Admissibility of Expert Testimony in Administrative Proceeding Regarding Sexual Conduct by Teacher: Allegations were made to a school board regarding sexual conduct by a teacher toward students and former students, triggering criminal charges that were later dismissed. The District Court found that conclusions by a hearings examiner denying renewal of the teacher's certificate were based on inadmissible testimony by a drug and alcohol counselor who testified as an expert on sexual abuse. The Supreme Court, examining the issue of expert testimony in administrative proceedings, noted that agencies are bound by common law and statutory rules of evidence and that while the rules of evidence are generally more relaxed in an administrative proceeding than they are in a court of law, they are not to be relaxed to the point of disregarding due process of law and fundamental individual rights. In a criminal case, the question of whether a child is a victim of sexual abuse is a question that may be clarified by expert testimony. However, expert testimony evaluating the credibility of witnesses is generally not admissible, except when the witness is a child victim who testifies at trial and credibility is brought into question. In this case, neither victim was a child, nothing in the record established that any of the witnesses were incompetent or were under any form of mental or physical disability, and the expert's general statements that the victims' conduct was consistent with that of sexually abused children prejudiced the accused because the trier of fact deferred to the expertise of the expert and inferred that the expert believed the witness to be credible. Failure to establish a foundation for the use of any of the expert testimony constituted reversible error. In re Renewal of Teaching Certificate of Thompson, 270 M 419, 893 P2d 301, 52 St. Rep. 200 (1995).

Court Review and Reversal of School Board Decision Revoking Teacher's Certificate Proper: The District Court reviewed the entire record of proceedings by a hearings examiner that was relied on by a school board to revoke the certificate of a teacher accused of sexual misconduct and properly reversed the certificate revocation because: (1) the hearings examiner improperly allowed testimony of an expert concerning general statements about the behavior of victims of sexual abuse; (2) the hearings examiner's findings of sexual abuse were not supported by substantial evidence; (3) when the expert's testimony was properly disregarded, other findings by the hearings examiner did not support a conclusion that the teacher was not of good moral and professional character; and (4) the hearings examiner's findings and conclusions contained sufficient independent statements from which the court could reverse the school board's decision without requiring new findings and conclusions from the record. In re Renewal of Teaching Certificate of Thompson, 270 M 419, 893 P2d 301, 52 St. Rep. 200 (1995).

Attorney General's Opinions

Responsibility for Cost of Required Medical Certificate: The medical certificate for teachers mandated by this section (see 1991 amendment) is a requirement of certification established by the Legislature rather than a requirement for employment imposed by the employer school district. Therefore, under 39-2-301, school districts are not responsible for paying the cost of the physician's certificate required for certification of teachers; rather, the cost is the responsibility of the teacher. 41 A.G. Op. 69 (1986).

Age Limitation for Certification Repealed by Implication: The age limitation established in 20-4-104(1)(a) as a qualification for certification to teach is repealed by implication by 49-2-308 and 49-3-204. Age alone is not reasonable grounds to deny a teaching certificate to an otherwise qualified teacher. Based on the holding in Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), 20-4-104(1)(a) is impliedly repealed by the human rights statutes, Title 49 (see 1991 amendment). 39 A.G. Op. 54 (1982).

20-4-106. Classifications of teacher and specialist certificates.

Compiler's Comments

2021 Amendment: Chapter 247 in (1)(c) in middle of first sentence substituted "eligible for a teacher or specialist certificate in the school" for "eligible for a teacher certificate endorsed for teaching in the school" and inserted third sentence regarding applicant for a class 3 administrative and supervisory certificate licensed in another state; inserted (1)(d)(ii)(A) regarding class 4C license issued to individuals who hold at least a high school diploma or high school equivalency diploma and work experience as determined by the superintendent of public instruction consistent with rules of the board of public education; inserted (1)(d)(ii)(B) regarding various trades in which a class 4C licensed individual can teach; and made minor changes in style. Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (1)(c), substituted "eligible for a teacher certificate" for "the holder of a teacher certificate".

Statement of Intent: The statement of intent adopted with HB 864 (Ch. 511, L. 1979) provided: "A statement of intent is required for House Bill No. 864 in that it delegates rulemaking and licensing authority to the Board of Public Education in Section 9.

The intent of this bill is to establish a certification category for non-teaching school personnel. It is not intended to restrict or authorize the practice of any profession outside of the public school system.

Specialist certificates may be developed in areas such as school psychology or school nursing.

Experience requirements for certification should range from 0 to 3 years depending upon the profession involved and the needs of the public schools. Education and training equivalencies may be considered for purposes of compliance with experience requirements.

Education and training standards should require no less than a bachelor's degree with some additional specialized training. Specialized training may include an appropriate internship or college-based training program.

The standards should require some degree of training or experience that is directly related to the practice of the profession in a school setting.

A state licensing board license may be made a Board of Education requirement for specialist certification."

Administrative Rules

Title 10, chapter 57, ARM Educator licensure.

Case Notes

School Psychologist a "Teacher" for Purposes of Tenure Laws: The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

20-4-107. Outstanding teacher certificates.

Attorney General's Opinions

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

20-4-108. Term of teacher and specialist certificates — renewal.

Compiler's Comments

1995 Amendment: Chapter 58 in (1), in second sentence, substituted January 1 for March 1 as the date on which a teacher or specialist may begin applying for certification; and made minor changes in style. Amendment effective February 13, 1995.

1983 Amendment: At end of (1), inserted "except that a teacher or specialist who applies for certification after March 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application".

Administrative Rules

Title 10, chapter 57, ARM Educator licensure.

Attorney General's Opinions

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

20-4-109. Fees for teacher and specialist certificates.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 1, Ch. 721, L. 2023. Amendment effective July 1, 2023.

The amendment to this section made by sec. 1, Ch. 40, L. 2023, was rendered void by sec. 3, Ch. 370, L. 2023, and sec. 3, Ch. 721, L. 2023, coordination sections.

The amendment to this section made by sec. 1, Ch. 370, L. 2023, was rendered void by sec. 3, Ch. 721, L. 2023, a coordination section.

Transition: Section 2, Ch. 721, L. 2023, provided: "The superintendent of public instruction shall make recommendations for annual and filing fees to the board of public education no later than September 30, 2023. The board of public education shall adopt annual and filing fees no later than December 1, 2023. The annual and filing fees adopted by the board of public education are effective January 1, 2024. Prior to January 1, 2024, the annual and filing fees for teacher and specialist certificates are $6."

2003 Amendment: Chapter 173 in (2)(b) after "education" substituted "and" for "to be used by", after "council" substituted "for activities in support of the constitutional and statutory duties" for "for research in accordance with the duties", near end before "council" inserted "board of public education and the certification standards and practices advisory", and at end after "council" deleted "provided for in 20-4-133". Amendment effective October 1, 2003.

1999 Amendment: Chapter 165 in (1)(a) at beginning substituted "$4" for "$3"; and in (1)(b) at beginning substituted "$2" for "$3". Amendment effective July 1, 1999.

1995 Amendment: Chapter 509 in (2) deleted second sentence that read: "The money in the account to be used for the purposes of subsection (1)(b) is statutorily appropriated, as provided in 17-7-502, to the board of public education for use by the certification standards and practices advisory council." Amendment effective July 1, 1995.

1991 Amendment: In (1), in introductory clause, increased maximum fee for certificate from $5 to $6, increased filing fee from $5 to $6, and near end, after "treasurer", inserted "to the credit of the state special revenue fund account, created in subsection (2), to be used"; substituted present (1)(a) allocating $3 for expenses of Certification Standards and Practices Advisory Council for former $3 allocation to the state special revenue fund; substituted (1)(b) allocating $3 to Board of Public Education for former $2 allocation to the general fund; in (2), in second sentence after "account", inserted requirement for statutory appropriation to Board of Public Education and at end deleted reference to 2-15-1522; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 103 in (1), in first and second sentences, increased fee from $4 to $5; and in (1)(a) increased amount credited to special revenue fund from $2 to $3. Amendment effective July 1, 1989.

Chapter 628 in (2), after "The money in the account", deleted "is statutorily appropriated, as provided in 17-7-502, to the board of public education" and inserted "must be used"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In (1) in first sentence, following "fee", substituted "not to exceed $4" for "of $2", at end of second sentence substituted "$4" for "$2", and in third sentence, after "state treasurer", inserted "in the following manner"; in (1)(a) and (1)(b) allocated fee; and inserted (2) establishing and statutorily appropriating the account.

20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.

Compiler's Comments

1995 Amendment: Chapter 486 in (1), near beginning after "education may", inserted "issue a letter of reprimand or may"; in (4), in first sentence after "consider", inserted "a letter of reprimand or" and inserted second sentence regarding service of notice; in (6), in first sentence after "may", inserted "place a written reprimand in the person's certification file or may" and after "teacher" inserted "administrator" and inserted second sentence allowing the Board to make known the existence of a letter of reprimand but not provide a copy of the letter without consideration of the right to know and the right to privacy; in (7), after "teacher", inserted "administrator"; and made minor changes in style. Amendment effective April 15, 1995.

1993 Amendment: Chapter 382 throughout section, after "teacher", inserted "administrator"; in (1)(g) and near middle of (2)(a) substituted "school or school district" for "district"; near beginning of (3)(a), after "renewed", inserted "or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal" and at end substituted "or resignation" for "of the employment relationship"; in first sentence of (3)(b), after "report", inserted "and any supporting evidence included in the report" and at end of second sentence substituted "subsection (1)" for "subsection (2)(b)"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1) substituted "may" for "shall have the power and authority to"; in (1)(e), after "conviction", deleted "in this state or any other state or country", inserted "entry of a guilty verdict, a plea of guilty, or a plea of no contest to", and after "turpitude" inserted "in this state or any other state or country"; inserted (1)(f) concerning immoral conduct related to the teaching profession; near beginning of (2) substituted "may" for "shall"; at end of (2)(b) deleted "as to a teacher or specialist not employed by any district within the 12 months immediately preceding receipt of the request by the board"; inserted (3) relating to termination based upon conduct proscribed in subsection (1) and the procedures relating to such termination; near beginning of (5), before "hearing", deleted "full investigation and proper"; and made minor changes in phraseology.

Special Vote Requirement — 1987 Amendment: Section 4, Ch. 227, L. 1987, provided: "Because proposed subsection (3)(d) of 20-4-110 grants immunity to the superintendent of public instruction and school district trustees, a vote of two-thirds of the members of each house is required for the enactment of proposed subsection (3)(d). If the bill passes but fails to receive a vote of two-thirds of the members of each house, then proposed subsection (3)(d) of 20-4-110 is deleted and the remaining parts of this act are valid." Chapter 227 was passed by a vote of 94-0 in the House of Representatives and 48-2 in the Senate.

Composite Section: This section was amended by Ch. 240 and Ch. 511, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Since Ch. 240 and Ch. 511 did not conflict conceptually, additions were made to incorporate the concepts of both chapters.

Administrative Rules

ARM 10.52.101 Model procedural rules.

ARM 10.52.102 Additions for cases involving requests for revocation or suspension of teacher certificates.

ARM 10.52.103 Model rules.

Title 10, chapter 57, subchapter 6, ARM Educator licensure disciplinary procedures.

20-4-111. Emergency authorization of employment.

Compiler's Comments

2021 Amendment: Chapter 247 in (1) near middle of first sentence after "holder of a" substituted "valid Montana teacher or specialist certificate and a required endorsement as an instructor" for "valid teacher or specialist certificate as an instructor", near end of first sentence after "holding a valid" substituted "Montana certificate and a required endorsement" for "certificate", and near middle of second sentence substituted "from Montana or another state or shall provide acceptable evidence of academic qualifications or significant experience related to the area for which the emergency authorization of employment is being sought as" for "or shall meet the standards of preparation". Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

1991 Amendment: In (2), in second sentence, increased maximum fee for emergency authorization from $5 to $6 and increased filing fee from $5 to $6; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendments: Chapter 83 in (2), at beginning of second sentence, substituted "A fee not to exceed $4" for "A fee of $2" and near end substituted "a filing fee of $4" for "a filing fee of $2".

Chapter 103 in (2), at beginning of second sentence, substituted "A fee of $5" for "A fee of $2" and near end substituted "a filing fee of $5" for "a filing fee of $2". Amendment effective July 1, 1989.

Administrative Rules

ARM 10.57.107 Emergency authorization of employment.

ARM 10.57.611 Substantial and material nonperformance.

Attorney General's Opinions

Indian Studies Requirement for Teachers a Local Matter: Prior to the 1979 amendments, 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies. 39 A.G. Op. 11 (1981).

20-4-112. Access to materials — superintendent of public instruction.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-113. Access to criminal justice information.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-114. Penalty for failure to report.

Compiler's Comments

Effective Date: Section 6, Ch. 382, L. 1993, provided: "[This act] is effective July 1, 1993."

20-4-120. Alternative teacher credentialing.

Compiler's Comments

Effective Date: Section 4, Ch. 470, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 8, 2023.

20-4-121. Interstate agreement on qualification of educational personnel.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

Title 10, chapter 58, ARM Professional educator preparation program standards.

20-4-127. Certification reciprocity for military members, military spouses, and veterans — requirements.

Compiler's Comments

Effective Date: Section 7, Ch. 390, L. 2023, provided: "[This act] is effective July 1, 2024."

20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.

Compiler's Comments

2021 Amendment: Chapter 339 in (1)(c)(iv) before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 347 in (2)(b) substituted "an impacted school as defined in 20-4-502" for "a school impacted by a critical quality educator shortage pursuant to 20-4-503". Amendment effective July 1, 2019.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2017 Amendment: Chapter 150 in (1) substituted "Pursuant to subsection (5), an annual stipend of up to $1,500 must be provided to each teacher who holds a current certificate" for "Pursuant to subsection (4), a one-time stipend of $3,000 must be provided to each teacher who obtains certification"; inserted (2) requiring annual stipend of up to $2,500 for a qualified teacher who teaches in a school in a high-poverty area or a school impacted by a critical quality educator shortage; in (3) near beginning substituted "becomes" for "is", after "eligible for the stipend" inserted "in subsection (1)", and after "obtains certification" inserted "or recertification"; in (4) substituted "any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher" for "each eligible teacher"; in (5) in first sentence near beginning inserted "a portion of", in second sentence substituted "its matching portion of a stipend" for "a stipend", and substituted current last sentence for former text that read: "If the funding for professional stipends is less than the total amount for which Montana teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that provides the same amount of stipend to each qualifying teacher"; inserted (6) providing for initial state contributions; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 4, Ch. 150, L. 2017, provided: "[This act] applies to teachers who obtain certification or recertification from the national board for professional teaching standards on or after July 1, 2017."

Effective Date: Section 3, Ch. 555, L. 2001, provided: "[This act] is effective July 1, 2001."

Part 2
Teacher Employment — Tenure

20-4-201. Employment of teachers and specialists by contract.

Compiler's Comments

2001 Amendment: Chapter 318 in (3) in first sentence inserted references to use of an interlocal agreement by the boards of trustees of two or more school districts to employ a teacher or specialist; and made minor changes in style. Amendment effective April 21, 2001.

1987 Amendment: Near beginning of (3), before "trustees", inserted "board of" and after "of" substituted "two or more school district" for "a county high school and the trustees of the elementary district where the county high school is located"; and made minor changes in phraseology.

Case Notes

Arbitration of Teacher's Grievance Under Collective Bargaining Agreement Upheld — No Error by District Court: A tenured teacher's employment was terminated after he inadvertently failed to renew his teaching certificate. Following his termination, the teacher obtained a retroactive certificate and sought to file a grievance pursuant to a collective bargaining agreement that was in effect when he was hired. The school district refused to participate, arguing the teacher's contract was void because he did not hold a current certificate. The District Court granted a petition to compel arbitration, and the Supreme Court affirmed. A presumption of arbitrability is to be applied if an arbitration agreement is ambiguous, and sufficient questions existed regarding the validity of the contract and the application of the collective bargaining agreement after the teacher's certificate expired. Kalispell Educ. Ass'n v. Bd. of Trustees, 2011 MT 154, 361 Mont. 115, 255 P.3d 199.

Good Cause for Reduction in Teaching Force Because of Financial Necessity — Termination of Tenured Teacher Based on Multiple Endorsement Criteria — No Violation of Teacher Tenure Law: Tenured social studies teacher Radakovich was terminated in a reduction in force when a school district chose to address its financial shortfall by cutting multiple full-time teachers. The district assigned three teachers who had endorsements in multiple subjects to teach Radakovich's courses, including a junior tenured teacher and a nontenured teacher. Radakovich appealed on grounds that the termination violated the teacher tenure law and the collective bargaining agreement and that the multiple endorsement criteria applied by the district was not fairly applied. The District Court reversed the termination, and the district appealed. The Supreme Court held that the financial circumstances facing the district constituted good cause for the reduction in force and that dismissal of Radakovich as a tenured teacher did not violate 20-4-203 or the tenure protections in Montana law. Additionally, the multiple endorsement criteria were objective and fairly applied. The teachers who were retained possessed multiple endorsements and could teach multiple classes in conformity with the district's method of addressing the financial situation; Radakovich did not possess multiple endorsements. The District Court was reversed. Scobey School District v. Radakovich, 2006 MT 83, 332 M 9, 135 P3d 778 (2006), distinguishing Massey v. Argenbright, 211 M 331, 683 P2d 1332 (1984), Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10 (1990), and Harris v. Bailey, 244 M 279, 798 P2d 96 (1990).

Liquidated Damages Clause in Personal Services Contract — Conscionability of Liquidated Damages Clause in Teacher's Form Contract: In determining the enforceability of a 20% liquidated damages clause in defendant's teaching contract, the Supreme Court examined the conscionability of the clause. The court first held that the clause constituted a contract of adhesion because defendant, as the weaker bargaining party, had no meaningful choice regarding acceptance of the contract provisions. The court also noted that the contract was a form contract that provided no negotiation between the parties. However, the court held that unconscionability does not render all form contracts unacceptable and that form contracts are only unconscionable if the terms are not within the reasonable expectation of the party who had no opportunity to negotiate. Although the liquidated damages clause in defendant's contract was harsher than most, as a teacher, defendant knew that teachers are typically employed for an entire year and how difficult it is to replace equivalent services at small rural schools, so it was within defendant's reasonable expectations to agree to a contract with a 20% liquidated damages provision for departing so close to the start of the school year, even though defendant had no meaningful choice regarding the provision. The enforceability of the liquidated damages clause was affirmed. Arrowhead School District No. 75 v. Klyap, 2003 MT 294, 318 M 103, 79 P3d 250 (2003).

Use of Individual Contracts as Leverage to End Strike: The board of trustees' contention that this section authorizes the issuance of individual contracts after negotiations on a master contract have reached an impasse misses the point. The decision here does not concern that authority in and of itself but only the board's use of individual contracts as leverage to end its teachers' participation in a lawful strike. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2311 (1979).

Union Membership — Salary Discrimination Unlawful: School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union. Therefore, a union security clause in a contract offered schoolteachers was void and mandamus, not suit in contract, was appropriate form of relief for teachers. Benson v. School District, 136 M 77, 344 P2d 117 (1959).

Ratification of Informal Contract: Where teacher had taught school in same district for 3 consecutive years under an informal contract, although statute required such contracts to be in writing, the board of trustees, by accepting the benefits of the teacher's services and issuing warrants to her in payment thereof, ratified the contract. Ratification was equivalent to full compliance with the necessary formalities, and the contract was considered as valid from its inception. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Twelve-Month Compensation Held Unlawful: A school board had no power to allow compensation to a teacher for the full period of 12 months, during 2½ months of which time no schoolwork was required and she was left free to engage in other pursuits, a donation of public funds under the pretext of compensation being unlawful. Finley v. School District, 51 M 411, 153 P 1010 (1915), distinguished in State ex rel. Priestly v. Croff, 95 M 498, 27 P2d 540 (1933).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

Severance Pay as Wages: Provision for severance pay in a collective bargaining agreement between a school district and its employees, based on number of years' service of employees, is deferred compensation and is considered wages earned throughout the period of employment. 37 A.G. Op. 113 (1978). This rationale was applied to compensatory advances of the annual premium for tax-sheltered annuities in 44 A.G. Op. 26 (1992). See 34 A.G. Op. 29 (1971).

Life Certificates Not Revoked or Invalidated for Tenure Purposes by Statutory Changes: A public school teacher who holds a "life certificate" has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

20-4-202. Teacher and specialist certification registration.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (2) inserted second sentence relating to special education cooperatives.

20-4-203. Teacher tenure.

Compiler's Comments

1997 Amendments: Chapter 259 inserted (3) defining same salary for purposes of teacher tenure; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 438 inserted (4) allowing termination of teacher employment after tenure for good cause; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 2, Ch. 259, L. 1997, was a saving clause.

Section 9, Ch. 438, L. 1997, was a saving clause.

Effective Date — Applicability: Section 3, Ch. 259, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to contracts executed for the school fiscal year beginning July 1, 1998."

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

1991 Amendment: At beginning of (1) inserted exception clause.

Applicability: Section 4, Ch. 204, L. 1991, provided: "[This act] does not apply to a person who was employed in an administrative position before October 1, 1991."

1989 Amendment: Inserted (2) providing tenure of teacher is not impaired upon termination of teacher's services if teacher terminated because district's financial condition requires reduction and if continued employment rights are provided in collectively bargained contract; and made minor changes in form and phraseology.

1983 Amendment: Deleted former (2), which read: "the teacher will attain the age of 65 years before the ensuing September 1 and the trustees have notified the teacher in writing by April 1 that his services will not be needed in the ensuing school fiscal year, except that the trustees may continue to employ such a teacher from year to year until the school fiscal year following his 70th birthday."

Study Resolution: House Joint Resolution 43, 1983, requested a legislative interim subcommittee study of public school teacher tenure laws in Montana. The study was conducted by Joint Interim Subcommittee No. 4. The subcommittee's report to the 49th Legislature is entitled "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

Case Notes

Good Cause for Reduction in Teaching Force Because of Financial Necessity — Termination of Tenured Teacher Based on Multiple Endorsement Criteria — No Violation of Teacher Tenure Law: Tenured social studies teacher Radakovich was terminated in a reduction in force when a school district chose to address its financial shortfall by cutting multiple full-time teachers. The district assigned three teachers who had endorsements in multiple subjects to teach Radakovich's courses, including a junior tenured teacher and a nontenured teacher. Radakovich appealed on grounds that the termination violated the teacher tenure law and the collective bargaining agreement and that the multiple endorsement criteria applied by the district was not fairly applied. The District Court reversed the termination, and the district appealed. The Supreme Court held that the financial circumstances facing the district constituted good cause for the reduction in force and that dismissal of Radakovich as a tenured teacher did not violate this section or the tenure protections in Montana law. Additionally, the multiple endorsement criteria were objective and fairly applied. The teachers who were retained possessed multiple endorsements and could teach multiple classes in conformity with the district's method of addressing the financial situation; Radakovich did not possess multiple endorsements. The District Court was reversed. Scobey School District v. Radakovich, 2006 MT 83, 332 M 9, 135 P3d 778 (2006), distinguishing Massey v. Argenbright, 211 M 331, 683 P2d 1332 (1984), Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10 (1990), and Harris v. Bailey, 244 M 279, 798 P2d 96 (1990).

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Statutory Tenure Inapplicable to Community College Instructor: Under the rationale of Rippey v. Flathead Valley Community College, 210 M 396, 682 P2d 1363 (1984), and the plain wording of 20-4-101, this section does not control tenure for instructors at any community college in Montana. Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

Tenured and Qualified Principal Allowed to "Bump" Nontenured Teacher Upon Elimination of Position: A school board voted to eliminate the position of high school principal and combine it with the position of district superintendent, based on declining enrollment and economic considerations. The principal had been employed in that capacity for 7 years and had over 14 years of previous classroom experience in subject areas in which nontenured teachers held positions. Under the rationale of Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984), and in accordance with this section, the district was obligated to offer the principal a comparable teaching position by allowing him to "bump" a nontenured teacher. The fact that he did not hold any teaching endorsements at the time of his termination did not affect his tenure rights because certification only memorialized the qualifications he was known to possess. Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10, 47 St. Rep. 914 (1990).

Right of Terminated Teacher to Part-Time Position: The school trustees eliminated a tenured teacher's full-time position due to economic reasons and subsequently hired another teacher for a half-time position teaching the same subject. The Supreme Court held that eliminating a full-time position and then creating a part-time position identical in every respect except for hours could not be used as a method to circumvent the protection afforded tenured teachers. The court ruled that the trustees were required to hire the terminated teacher for the part-time position. Harris v. Trustees, 241 M 274, 786 P2d 1164, 47 St. Rep. 260 (1990).

District-Union Contract for Tenure: Given the public policy of providing for teacher tenure, a school district may contract with a teachers' union to allow retention of tenure without violating this section. Beck v. Bd. of Trustees, 233 M 319, 760 P2d 83, 45 St. Rep. 1520 (1988).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Tenure Acquired in All Areas in Which Teacher Certified: For purposes of tenure, teaching business education is comparable to teaching physical education. Thus, failure to renew a business education teacher's contract because of a reduction in that department's student enrollment was a violation of this section when the teacher was also certified to teach physical education and there were nontenured teachers retained to teach physical education. A teacher acquires tenure in all areas in which he is certified, even though he has teaching experience within the district in only one certification area. To the extent that Smith v. School District, 115 M 102, 139 P2d 518 (1943), contradicts the holding in this case, it is expressly overruled. Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984), followed in King v. Hays/Lodge Pole Pub. School District No. 50, 2011 MT 200, 361 Mont. 415, 259 P.3d 772.

School Psychologist a "Teacher" for Purposes of Tenure Laws: The plaintiff was employed as a member of a school's administrative staff as a school psychologist from 1975 to 1981 under a "teacher contract" that required him to hold a valid teacher certificate. He was terminated from his job and subsequently appealed to the District Court a decision of the Office of Public Instruction (OPI) that he was not a tenured teacher at the time of his termination. The Supreme Court held that the District Court did not err in reversing the decision of the OPI. The distinction made by the Legislature, in the 1979 amendment of 20-4-203, between teachers and specialists for the purposes of tenure, did not retroactively affect tenure earned by the plaintiff prior to that amendment. By 1976, the plaintiff had met all three requirements for tenure under the old statute and was therefore a tenured teacher within the meaning of the law. Harris v. Bauer, 206 M 480, 672 P2d 26, 40 St. Rep. 1793 (1983).

Reassignment From Administrator to Teacher — Tenure Laws Not Violated: Sorlie was an elementary teacher for 20 years prior to assuming an administrative position. In 1980, because a mill levy failed, the school board eliminated Sorlie's position and offered her a job as an elementary schoolteacher. Sorlie argued that she was demoted in violation of Montana's tenure laws. The Supreme Court found the two positions to be comparable positions for purpose of tenure although they are functionally dissimilar. The court concluded that the reassignment, without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws. Sorlie was removed from her administrative position pursuant to the board's power to financially manage the school district, and this action was in accordance with 39-31-303. Sorlie v. School District, 205 M 22, 667 P2d 400, 40 St. Rep. 1070 (1983), followed in King v. Hays/Lodge Pole Pub. School District No. 50, 2011 MT 200, 361 Mont. 415, 259 P.3d 772, which held that a teacher position and a principal position are comparable positions under 20-4-203, even when one of the positions has not been eliminated for financial reasons.

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that 20-4-207 contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, that section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that 20-4-207 is not applicable to the termination of the services of a tenured teacher under this section and 20-4-204. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Mandatory Teacher Retirement Impliedly Repealed: Plaintiff was a tenured elementary school principal who received notification that because she was 65 years of age her contract would not be renewed. This termination was accomplished by a majority vote of the board of trustees for the school district in accordance with 20-4-203(2) (deleted by 1983 amendment) and board policy. Plaintiff filed a discrimination complaint with the Commission for Human Rights. The Commission found 20-4-203(2) to be a statutory exception to the antidiscrimination provisions of Title 49, ch. 2 and 3. The District Court held that 20-4-203(2) was impliedly repealed by the adoption of 49-2-303(1) and 49-3-201. The Supreme Court affirmed, saying that the manner in which the Legislature enacted Title 49 clearly depicted the legislative intent that there be no discrimination in the lives of Montana citizens in certain areas, including employment. Section 20-4-203(2) permitted discrimination based solely on age with no qualifications or justifications bringing it within the limited exceptions of Title 49. Because the mandatory retirement provision bore no relationship to job performance, it was held impliedly repealed. Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), followed in Kenny v. Bd. of Trustees, 543 F. Supp. 1194, 39 St. Rep. 1377 (D.C. Mont. 1982).

Administrative Tenure Not Contemplated: A community college may not grant continuing contract status (tenure) except to those persons specifically authorized to receive such status. Tenure for teachers is unique in public contracts of employment; its basis is academic freedom. It does not apply to an administrative position not requiring teacher certification. Sibert v. Community College, 179 M 188, 587 P2d 26, 35 St. Rep. 1780 (1978).

Nature of Right: A teacher's tenure is a substantial, valuable, and beneficial right that cannot be taken away except for good cause, and the number of hours a teacher may teach in a day is not a factor in determining her right to tenure. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P2d 209 (1954).

Tenure Law Applicable to Demotion of Teacher: Where teacher after 7 years of teaching in town school was assigned to a rural ungraded school having five pupils and plaintiff refused assignment, the new assignment in effect was a demotion which required the same procedure as a removal or dismissal under this section, and plaintiff properly refused to accept it, the purpose of the teacher tenure law being not merely to insure teaching employment but also security to teachers in the position, rank, grade, or status they have attained. Smith v. School District, 115 M 102, 139 P2d 518 (1943), partially overruled in Massey v. Argenbright, 211 M 331, 683 P2d 1332, 41 St. Rep. 1393 (1984).

Conditions of Automatic Reemployment: The term "automatic reemployment" used by section 1075, 1935 Rev. Codes of Montana (now repealed), meant reemployment under the same terms and conditions as the preceding year's employment. Moses v. School District, 107 M 300, 86 P2d 407 (1938).

Retroactivity of General School Code of 1913: The General School Code of 1913 was not retroactive, and a schoolteacher was not entitled to take advantage of the provisions of the tenure law where her complaint was based on a contract made prior to the passage of the Code of 1913. Falligan v. School District, 54 M 177, 169 P 803 (1917).

Attorney General's Opinions

Employment "at the Same Salary"— Fringe Benefits Not Included: Employment "at the same salary" provided to tenured teachers by this section means employment at the same basic pay, but does not include fringe benefits (see 1997 amendment). However, provision of fringe benefits by a collective bargaining agreement is not affected by this opinion. 42 A.G. Op. 49 (1987).

American Indian Studies Law Applicable to Tenured Teachers: The provisions of the Indian studies law are applicable to tenured teachers. 37 A.G. Op. 75 (1977).

Teachers Paid by Federally Funded Programs: Teachers who are employed by a school district in federally funded programs are eligible for tenure upon satisfying the provisions of this section but are subject to dismissal in cases of genuine economic necessity, as where federal funds are terminated by the United States government. 36 A.G. Op. 77 (1976).

Tenure of Teacher Holding "Life Certificate": A public school teacher who holds a "life certificate" (as provided under prior law) has tenure after being elected to the fourth consecutive year of employment, regardless of when that teacher received a college degree. 35 A.G. Op. 60 (1974).

Law Review Articles

Baldridge v. Board of Trustees: A Case for Reform of Montana's Tenured Teacher Dismissal Process, Bryan, 61 Mont. L. Rev. 251 (2000).

20-4-204. Termination of tenure teacher services.

Compiler's Comments

1997 Amendment: Chapter 438 in (2), in first sentence, substituted "shall notify" for "shall, before May 1 of the current school fiscal year, notify"; in (5), near beginning of first sentence after "terminate", inserted "an employment contract" and near middle, after "county superintendent", inserted "if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31" and inserted second, third, and fourth sentences relating to termination of employment of teacher covered by collective bargaining agreement; inserted (6) allowing appeal to District Court of county in which teacher was employed and establishing deadline for commencement of appeal; deleted former (6) that read: "(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title"; inserted (7) establishing deadline for request for arbitration; inserted (8) making arbitrator's decision final and allocating payment of arbitrator's charges; inserted (9) allowing reinstatement and compensation and providing for calculation of award for lost wages; inserted (10) prohibiting award for certain forms of damages; inserted (11) prohibiting lawsuit against district after submission of termination decision to arbitrator; inserted (12) defining fringe benefits and lost wages; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1987 Amendment: In (2) changed "April 1" to "May 1".

1985 Amendment: Substituted (1) through (4) (see 1985 Session Law for text) for former (1), (2), and part of (3) that read: "(1) Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of 20-4-203, they shall, before April 1, notify such teacher of such termination in writing by certified or registered letter or by personal notification for which a signed receipt is returned. Such notification shall include a printed copy of this section for the teacher's information.

(2) Any tenure teacher who receives a notice of termination may request, in writing 10 days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within 10 days after the request.

(3) Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the"; renumbered remainder of former (3) as (5) (relating to appeal to the County Superintendent); and in (5) after "decision", inserted "to terminate".

Interim Committee Bill: Senate Bill No. 18 (Ch. 56, L. 1985) was introduced at the request of Joint Interim Subcommittee No. 4. See "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

1983 Amendment: Near beginning of (1), deleted reference to subsection (1) of 20-4-203.

Case Notes

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Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

District Court Error in Substituting Its Judgment for That of Factfinder in Nonrenewal of Principal's Contract: The contract of a tenured assistant high school principal was not renewed by the school board of trustees. Appeal was made to the County Superintendent of Schools, who affirmed the trustees' decision. The County Superintendent's decision was affirmed by the State Superintendent of Schools, whose decision was in turn appealed to District Court. The court reviewed the County Superintendent's decision and determined that the findings were supported by reliable, probative, substantial evidence and that none of the County Superintendent's conclusions were in error, but then reversed the agency decision and ordered the principal to be reinstated and paid back wages and benefits on grounds that the County Superintendent failed to consider the principal's due process and first amendment rights pursuant to Pickering v. Bd. of Educ., 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731 (1968). The Supreme Court reversed, noting that the policy used in determining that the principal's due process rights were violated was inapplicable and that a Pickering analysis was not necessary because the principal was not terminated because of the exercise of free speech, but rather for other good causes. It was error for the court to substitute its judgment for that of the factfinder regarding the weight of the evidence. Quick v. Bozeman School District No. 7, 1999 MT 175, 295 M 240, 983 P2d 402, 56 St. Rep. 682 (1999).

Notice of Administrator Termination Sufficiently Clear to Satisfy Statutory Notice Requirements: The contract of a tenured assistant high school principal was not renewed by the school board of trustees. The principal contended that the termination letter, which also served as notice as to why termination was being recommended, was not sufficiently clear and explicit to satisfy this section. Several paragraphs had been stricken from the letter during the hearing before the County Superintendent of Schools. The District Court found that most of the remaining paragraphs did not provide sufficient detail to satisfy the statute, but that because the first two paragraphs set forth reasons for termination with sufficient clarity, any error in allowing the remaining paragraphs was harmless. On appeal, the Supreme Court noted that there are no formal requirements for what information must be included in a termination letter, only that it be sufficiently detailed to inform the administrator of the charges so that a defense may be reasonably formulated. Although the letter did not set forth specific instances of conduct, the remaining paragraphs provided the principal with information that the superintendent and several administrators had lost faith in their ability to work with the principal, based on a perceived lack of credibility, and were sufficient to enable the formulation of a defense. Quick v. Bozeman School District No. 7, 1999 MT 175, 295 M 240, 983 P2d 402, 56 St. Rep. 682 (1999), following Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976).

Right of Terminated Teacher to Part-Time Position: The school trustees eliminated a tenured teacher's full-time position due to economic reasons and subsequently hired another teacher for a half-time position teaching the same subject. The Supreme Court held that eliminating a full-time position and then creating a part-time position identical in every respect except for hours could not be used as a method to circumvent the protection afforded tenured teachers. The court ruled that the trustees were required to hire the terminated teacher for the part-time position. Harris v. Trustees, 241 M 274, 786 P2d 1164, 47 St. Rep. 260 (1990).

Termination Procedures Not Followed — Termination Upheld on Other Grounds: The school trustees decided, prior to any hearing, to terminate a tenured teacher due to lack of funds. The Supreme Court agreed that the termination violated the statutory procedures but upheld the trustees' action because the firing was for economic reasons and did not reflect on the personal qualifications of the teacher. Birrer v. Trustees, 241 M 262, 786 P2d 1161, 47 St. Rep. 247 (1990).

Breach of Sabbatical Leave Agreement — Tenured Teacher's Contract Not Renewed: When a tenured teacher did not fulfill the provisions of a sabbatical leave agreement, breach of the agreement constituted good cause for nonrenewal of the teacher's contract. Stansberry v. Argenbright, 227 M 123, 738 P2d 478, 44 St. Rep. 935 (1987), citing Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that 20-4-207 contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, that section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that 20-4-207 is not applicable to the termination of the services of a tenured teacher under 20-4-203 and this section. (See 1985 amendment to this section and 20-4-207.) Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Nonrenewal of Tenured Teacher's Contract — Scope of Review: A tenured teacher's contract was not renewed. A hearing was held by the board of trustees, which affirmed its decision not to renew the contract. The teacher appealed to the County Superintendent where he was given a trial de novo with witnesses and record evidence. The teacher then appealed to the State Superintendent based upon the record, and the State Superintendent upheld the decision. The teacher appealed to District Court based upon the record. The District Court reversed the administrative decision, and an appeal to the Supreme Court was made upon the record. The Supreme Court reversed the District Court, saying that the procedure to be used in this instance was identical to that for any other District Court decision involving an administrative decision. The District Court was not a trier of fact. The Supreme Court should not substitute its judgment for that of the County Superintendent as to the weight of the evidence on questions of fact. The Supreme Court may reverse or modify if the substantial rights of the appellant have been prejudiced because the administrative findings and conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982), followed in Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

Termination of Tenured Teacher — Standard of Review: A tenured teacher was not offered a new contract. The decision of the board of trustees not to rehire was upheld by the County Superintendent and State Superintendent. The board of trustees based its decision on findings that defendant demonstrated a lack of fitness for teaching in statements made to his junior high class to the effect that his "girlfriend" had to move out of his house because some people did not like his living arrangements. The trustees also concluded that defendant demonstrated a lack of moral values by cohabiting in Polson with a female teacher, not his wife, which adversely affected his performance as a teacher. The County Superintendent found that although the discussion of abortion and display of fetuses to his class were not in themselves sufficient grounds for dismissal, together with the resultant controversy, they were indicative of the adverse impact defendant's living arrangements were having on his teaching. The State Superintendent did not discuss the abortion or fetus findings. The Supreme Court found that the County Superintendent's findings allowed it to consider the issues. The District Court held that the finding that the cohabitation was a matter of public knowledge was clearly erroneous. The Supreme Court held that the County Superintendent was in the position of the trier of fact and so was able to hear and evaluate the evidence of the various witnesses. Where the evidence was conflicting and the County Superintendent and State Superintendent both found that the trustees' reasons were supported by the evidence, the Supreme Court, applying the standard of 2-4-704, found the findings not clearly erroneous and reversed the District Court. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Discharge of Teacher — Board's Lack of Knowledge of Protected Union Activity: Based on the recommendation of the principal, a striking teacher was not rehired by a board of trustees. The board had no knowledge of the teacher's union activities, but the principal did. The Supreme Court held that the board had committed an unfair labor practice despite its lack of knowledge of the teacher's union activity because the board was responsible for the principal's tainted evaluation and, in accepting his recommendation, committed the prohibited act of discrimination. This is not the usual employee-employer relationship, and the Legislature did not intend to allow a school board to insulate itself by claiming lack of knowledge when a public employee's rights have been disregarded. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Dual Motivation for Teacher's Discharge — Burden of Proof — "But For" Test: Where a striking teacher was not rehired by a board of trustees based upon proper reasons related to the teacher's competence and improper reasons related to protected union activity of the teacher, the Supreme Court held that the District Court correctly affirmed the decision of the Board of Personnel Appeals, which, in essence, utilized the procedure and the "but for" test of Mt. Healthy City Board of Education v. Doyle, 429 US 274, 97 S Ct 568, 250 L Ed 2d 471 (1977). Under Mt. Healthy, the burden is first placed upon the teacher to show that the protected activity was a motivating factor in the discharge. The board of trustees then has the burden of showing that the teacher would have been discharged even in the absence of the protected activity. Bd. of Trustees v. State ex rel. Bd. Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Waiver of Time Limit by Superintendent: Because the board allowed plaintiff to believe that the Superintendent had the authority to waive the statutory time limit of 20-4-204 for a hearing request, plaintiff was entitled to a hearing before the board concerning the termination of his contract, even though his request came after expiration of the time limit. (See 1985 amendment.) Yanzick v. Bd. of Trustees, 177 M 459, 582 P2d 338, 35 St. Rep. 1085 (1978).

Notice of Dismissal by Superintendent Held Lawful: Where, after vote by the board of trustees, teacher was notified of his dismissal by Superintendent and not the board itself, there was no violation of the statute, since the Superintendent's action was a purely ministerial one performed in his capacity as chief executive officer of the trustees. (See 1985 amendment.) School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Stipulation by Counsel as Waiver to Sufficiency of Notice of Reasons for Termination: Where counsel stipulated, in order to limit issues to be considered at hearing before Superintendent, that proper procedural steps were taken for notice of termination, according to this section, he is estopped from thereafter asserting that the case was tried or submitted on wrong theory, since, unlike a stipulation which merely eliminates a single issue, a stipulation of this nature amounts to a binding waiver or elimination of all procedural issues not included. School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Trustees' Delegation of Authority to District Superintendent to Supply Statement of Reasons for Termination: District Court erred in holding that this section was not complied with when Superintendent and not school board supplied statement of reasons for termination, as notification of a decision already reached by the school board and sent by the Superintendent does not constitute an improper delegation of authority when the Superintendent's action was purely a ministerial one by the chief executive officer of the trustees. (See 1985 amendment.) School District v. Colburg, 169 M 368, 547 P2d 84 (1976).

Dismissal Based on Drop in Enrollment: Certified letter from chairman of school board to tenured teacher which informed teacher that termination of her services was deemed necessary due to a drop in enrollment of her class was legally sufficient as a notice; this section (prior to amendment) did not require that the notice contain a statement of appeal procedure. Schweigert v. Bd. of Trustees, 163 M 29, 515 P2d 85 (1973).

Teacher's Petition for Reconsideration of Termination Not Timely Filed: Teacher who failed to file petition for a formal hearing to reconsider termination until more than 45 days after receiving notice of termination failed to file request in a timely manner, and the right to a hearing under this section had expired. The fact that the board reaffirmed its decision 40 days after receipt of original notification did not revive expired rights. Schweigert v. Bd. of Trustees, 163 M 29, 515 P2d 85 (1973). (Decided prior to 1985 amendment.)

Nepotism — Effect on Tenure: Where the father, mother, and uncle of the only pupils attending school were the sole persons eligible to serve as trustees, the employment of the mother, who though elected as trustee preferred to act as teacher and did not qualify as trustee, was illegal under 2-2-302, condemning nepotism. This section presupposing capacity to hold the position both legally and in fact, she therefore could not be deemed reelected thereunder in the absence of notice that her services would be no longer required. State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944).

Closing of School — Contract Void: Where a teacher who was not notified that her services would not be required for next succeeding year brought an action to recover the amount she would have received if reemployed, having taught for 3 consecutive years, entitling her (prior to amendment) to automatic reemployment under this section because school was closed on the enrollment having fallen to two pupils, the board under section 1044, R.C.M. 1935 (since repealed), had the power to close the school and void the contract, as well as under a clause of her contract providing that if school closed for lack of attendance the contract should be considered at an end. Moses v. School District, 107 M 300, 86 P2d 407 (1938).

Notice Based on Informal Meeting Held Insufficient: The notice of dismissal that must be given a teacher entitled to the benefits of the tenure act is one based upon action by a majority of the board of trustees taken at a meeting thereof. Hence, where two of the three members of the board decided in casual conversations at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. Day v. School District, 98 M 207, 38 P2d 595 (1934).

Statute Part of Contract: Provision requiring notice of termination became a part of the contract of employment, binding upon both the teacher and the board of trustees. The notice of dismissal must be clear and explicit. McBride v. School District, 88 M 110, 290 P 252 (1930), explained in State ex rel. Hoagland v. School District, 116 M 294, 151 P2d 168 (1944), and overruled in Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

Grave Economic Necessity — Grounds for Dismissal: Tenured teachers are subject to dismissal in situations of genuine economic necessity, such as when federal funds are terminated. 36 A.G. Op. 77 (1976).

20-4-205. Notification of teacher reelection — acceptance.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), in first sentence, substituted "June 1" for "May 1" and substituted "all teachers" for "all tenure teachers" and at beginning of second sentence substituted "Any teacher" for "Any tenure teacher"; at beginning of (2) substituted "Any teacher" for "Any tenure teacher"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: In (1) changed "April 1" to "May 1". Amendment effective April 20, 1989.

Applicability: Section 2, Ch. 574, L. 1989, provided: "[This act] applies to teacher contracts issued for the school fiscal year 1990 and thereafter."

Case Notes

Termination of Employment: When a nontenured teacher contends that her contract was not renewed due to exercise of first amendment rights, the court found that the school board would have reached the same decision as to plaintiff's reemployment in the absence of the constitutionally protected conduct. Defendants provided the reasons for failure to renew as requested by the plaintiff, and it is incidental whether they constituted good cause. Branch v. School District, 432 F. Supp. 608, 34 St. Rep. 572 (D.C. Mont. 1977).

20-4-206. Notification of nontenure teacher reelection — acceptance — termination.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at end of first sentence, substituted "by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year" for "by May 1 to all nontenure teachers who have been reelected" and at beginning of second sentence substituted "A teacher" for "A nontenure teacher"; in (2), in middle of second sentence, substituted "constitutes conclusive evidence of the nontenure teacher's nonacceptance" for "may be considered nonacceptance"; inserted (3) concerning nonrenewal of employment of nontenure teacher; deleted former (3) through (6) that read: "When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.

(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.

(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1991 Amendment: In (1), in second sentence before "notice", inserted "written"; in (3), in last sentence, substituted "a true statement of reasons for termination" for "such statement"; inserted (4) concerning hearing procedures and burden of proof; inserted (5) concerning County Superintendent ordering trustees to offer teacher a contract after hearing; and made minor changes in style.

Applicability: Section 4, Ch. 439, L. 1991, provided: "[This act] does not apply to nontenure teachers who are considered temporary or substitute teachers."

1987 Amendment: In (1) changed "April 15" to "May 1".

Case Notes

Timely Written Notice of Contract Nonrenewal Not Received — Oral Notice to Teacher Insufficient — Issuance of Writ of Mandamus on Remand: A nontenured teacher attended a school board meeting at which the board voted to not renew her contract with the school district for the following school year. The next day, the school district mailed a letter to the teacher to her former address and the letter was returned as undeliverable. The teacher received the letter in person on June 7, after the June 1 deadline established under this section. The plaintiff then filed a writ of mandamus to renew her employment contract for the school year. The District Court denied her petition, reasoning that the teacher had avoided the receipt of written notice by not providing the school district her current mailing address. On appeal, the Supreme Court reversed, holding that the school district had failed in its clear legal duty to provide the teacher written notice by June 1, and directed the District Court to grant her writ on remand. Victor Fed'n of Teachers Local 3494 v. Victor School District No. 7, 2018 MT 72, 391 Mont. 139, 414 P.3d 1284.

Nonrenewal of Teacher Contract — No Constitutionally Protected Interest or Right to Administrative Hearing: Roos's teaching contract was not renewed, and the school district's motion to dismiss for lack of jurisdiction was upheld by the state superintendent and the District Court. On appeal, the Supreme Court affirmed. The basis for Roos's complaint was that the school district violated its own policy that nonrenewed teachers be notified of the decision by May 1, even though this section requires notification by June 1, and that because the school policy granted greater protection than state law, an administrative hearing on the issue was appropriate. Nevertheless, the appeal failed. Roos did not allege any violation of state statute that grants an administrative hearing or constitutionally protected interest. Thus, the District Court properly held that the County Superintendent of Schools did not have jurisdiction to hear Roos's claims as a contested complaint. Roos v. Kircher Pub. School Bd. of Trustees, School District No. 3, 2004 MT 48, 320 M 128, 86 P3d 39 (2004), followed, with respect to a County Superintendent's lack of jurisdiction over a matter absent a constitutional or statutory right to a hearing, in Dupuis v. Ronan School District No. 30, 2006 MT 3, 330 M 232, 128 P3d 1010 (2006). See also Irving v. School District No. 1-1A, 248 M 460, 813 P2d 417 (1991).

Scope of Written Statement of Reasons for Termination of Employment of Nontenure Teacher: Under this section, timely notice of termination of a nontenure teacher is sufficient even in the absence of a statement of reasons. Upon request of the teacher, a reasonably detailed statement of reasons for termination is required; however, there is no statutory standard that the reasons must be somehow sufficient to merit a refusal to enter into a contract. This section does not contain any requirements regarding the extent or nature of the statement reasons, but the inadequacy of a statement in no way affects the termination when timely notice is given. (See 1997 amendment.) Birgenheier v. Bd. of Trustees, 242 M 513, 791 P2d 1388, 47 St. Rep. 941 (1990), overruling the statement in Bridger Educ. Ass'n v. Bd. of Trustees, 209 M 31, 678 P2d 659 (1984), that a nontenure teacher is entitled to notice stating what undesirable qualities merit a refusal to enter into a further contract.

Breach of Contract Disputes to Be Handled Administratively: The plaintiff brought an action in District Court alleging breach of the collective bargaining agreement. The Supreme Court ruled that the issue had to be submitted for administrative review before it could be filed in the lower court. The court overruled its holding in McBride v. School District No. 1, 88 M 110, 290 P 252 (1930). Canyon Creek Educ. Ass'n v. Bd. of Trustees, 241 M 73, 785 P2d 201, 47 St. Rep. 93 (1990).

Failure to Follow Contract Grievance Procedure — Loss of Right to Final Administrative Determination: Plaintiff's teaching contract outlined three levels of grievance adjustment. The first level provided that the written grievance be presented to the responsible administrator, level two allowed appeal to the County Superintendent of Schools, and level three provided for binding arbitration. Plaintiff's grievance claimed inaccuracy in an evaluation and requested a new contract but did not suggest that insufficient reasons were given in the notice of nonrenewal. The grievance was denied at the first two levels, but rather than proceeding to binding arbitration, plaintiff went to District Court seeking damages based on insufficiency of notice. The Supreme Court found that the grievance procedure under the union contract was binding and that plaintiff could not have proceeded into District Court on the same issues raised in the grievance. By failing to follow the administrative procedures set out in Throssell v. Bd. of Trustees, 232 M 498, 757 P2d 348, 45 St. Rep. 1228 (1988), and Yanzick v. School District, 196 M 375, 641 P2d 431 (1982), plaintiff gave up his right to a final determination under the administrative procedure required in Montana. He therefore had no claim for nonrenewal of his contract, and there were no further remedies available in District Court. Thompson v. Bd. of Trustees, 237 M 498, 774 P2d 412, 46 St. Rep. 1000 (1989).

Failure to Request Reasons for Termination — Loss of Appeal Rights: Plaintiff was one of four nontenured teachers informed in writing in mid-April that her contract would not be renewed. The letter gave no reason for termination, but school board minutes reflected that the reason was financial, and allegedly all nontenured teachers were released in anticipation that the upcoming mill levy would not pass. Plaintiff therefore did not request reasons for termination within 10 days as required under this section (see 1997 amendment). However, in June the levy did pass and all nontenured teachers were rehired except plaintiff, who appealed in July. Even in cases where financial conditions are the alleged reason for termination, nontenured teachers cannot assume this is the reason unless they request and receive written confirmation from the district trustees. Because plaintiff did not request confirmation, her chance for appeal passed while she waited to be rehired after the mill levy vote. Keller v. School District, 237 M 481, 774 P2d 409, 46 St. Rep. 986 (1989).

"Superintendent/Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Award Properly Limited to Year of Termination: In an appeal by the school district from an administrative order reinstating and compensating a nontenured school principal who had been discharged, the District Court properly limited the principal's award to the school year of his termination. The proper award is codified in 20-4-207 but is affected by 20-4-206, which applies to nontenured teachers. It was clear the trustees elected to terminate the contract of the nontenured principal and he would not have been reelected for subsequent years. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Dismissal of Nontenured Teacher — Notice of Reasons to State Undesirable Qualities: A nontenured teacher was given as a reason for his termination that the school district believed it "could find a better teacher". Such a reason contravenes the intention of this section. A nontenured teacher is entitled to notice that states what undesirable qualities merit refusal to enter into a further contract; this enables a teacher to know about his deficiencies and inadequacies and enables him to improve, thereby elevating the teaching profession and education in Montana. (See 1997 amendment.) Bridger Educ. Ass'n v. Bd. of Trustees, 209 M 31, 678 P2d 659, 41 St. Rep. 533 (1984), overruled in Birgenheier v. Bd. of Trustees, 242 M 513, 791 P2d 1388, 47 St. Rep. 941 (1990).

Collective Bargaining — Teachers' Procedural Rights — School District's Management Rights: A provision of a collective bargaining agreement between a school district and teachers incorporated the requirements of this section that provide nontenured teachers access to the grievance procedure for alleged noncompliance by the school district. The provision did not affect any of the statutorily or contractually reserved management rights of the school district. Savage Pub. Schools v. Savage Educ. Ass'n, 199 M 39, 647 P2d 833, 39 St. Rep. 1192 (1982).

Arbitration of Teacher Contract Nonrenewal: Nonrenewal of nontenured teacher's contract was not a "grievance" within a collective bargaining agreement with the school board and subject to arbitration provisions of the agreement when not allowed under former law regarding negotiations for teachers. Wibaux Educ. Ass'n v. Wibaux County High School, 175 M 331, 573 P2d 1162 (1978).

Termination of Employment: Where a nontenured teacher contended that her contract was not renewed due to exercise of first amendment rights, the court found that the school board would have reached the same decision as to plaintiff's reemployment in the absence of the constitutionally protected conduct. Defendants provided the reasons for failure to renew as requested by the plaintiff, and it is incidental whether they constituted good cause. Branch v. School District, 432 F. Supp. 608, 34 St. Rep. 572 (D.C. Mont. 1977).

Termination of Employment — Retaliation for Exercise of Rights: When the refusal to grant a contract to a nontenured teacher was based in whole or in substantial part upon the teacher's exercise of protected rights, the refusal is unlawful and the teacher has a remedy. Morrison v. School District, 32 St. Rep. 467 (D.C. Mont. 1975) (apparently not reported in Federal Supplement).

20-4-207. Dismissal of teacher under contract.

Compiler's Comments

1999 Amendment: Chapter 514 in (2)(c) inserted "clearly and explicitly" and after "specific" substituted "reason or reasons" for "instances of behavior or acts"; in third sentence in (3)(a) substituted "not less than 10 days" for "not less than 5 days"; and in first sentence in (5) substituted "within 20 days" for "within 10 days". Amendment effective April 28, 1999.

1997 Amendment: Chapter 438 at end of (1) substituted "for good cause" for "for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees"; in (5), at end of first sentence after "dismissal", substituted "under the guidelines set forth in 20-4-204" for "to the county superintendent", deleted former second and third sentences that read: "Following such appeal, a hearing must be scheduled within 10 days and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal", and inserted second and third sentences designating to whom appeal is made based on whether employment of teacher is covered by collective bargaining agreement; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1989 Amendment: In second sentence of (5) inserted language clarifying that a hearing be scheduled within 10 days and held within 30 days after appeal unless extended by agreement; and made minor changes in grammar.

1985 Amendment: Inserted (2) relating to who may make a recommendation for dismissal; inserted (3) requiring notice to teacher; and inserted (4) relating to suspension of teacher.

Interim Committee Bill: Senate Bill No. 18 (Ch. 56, L. 1985) was introduced at the request of Joint Interim Subcommittee No. 4. See "Teacher Tenure in Montana: An Investigation of the Laws and Issues". Mont. Leg. Council (Dec. 1984).

Case Notes

Good Cause for Reduction in Teaching Force Because of Financial Necessity — Termination of Tenured Teacher Based on Multiple Endorsement Criteria — No Violation of Teacher Tenure Law: Tenured social studies teacher Radakovich was terminated in a reduction in force when a school district chose to address its financial shortfall by cutting multiple full-time teachers. The district assigned three teachers who had endorsements in multiple subjects to teach Radakovich's courses, including a junior tenured teacher and a nontenured teacher. Radakovich appealed on grounds that the termination violated the teacher tenure law and the collective bargaining agreement and that the multiple endorsement criteria applied by the district was not fairly applied. The District Court reversed the termination, and the district appealed. The Supreme Court held that the financial circumstances facing the district constituted good cause for the reduction in force and that dismissal of Radakovich as a tenured teacher did not violate 20-4-203 or the tenure protections in Montana law. Additionally, the multiple endorsement criteria were objective and fairly applied. The teachers who were retained possessed multiple endorsements and could teach multiple classes in conformity with the district's method of addressing the financial situation; Radakovich did not possess multiple endorsements. The District Court was reversed. Scobey School District v. Radakovich, 2006 MT 83, 332 M 9, 135 P3d 778 (2006), distinguishing Massey v. Argenbright, 211 M 331, 683 P2d 1332 (1984), Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10 (1990), and Harris v. Bailey, 244 M 279, 798 P2d 96 (1990).

Teacher Tenure Statute Not Ambiguous — Assistant Superintendent Considered Tenured Teacher: The school district board voted to terminate Small's employment as assistant superintendent at the end of the employment contract without a hearing or determination of good cause. Small appealed the board's determination on grounds that he had been continuously employed by the school district for 10 years in a position requiring teacher certification and thus was a tenured teacher whose employment could be terminated only after a hearing and a finding of good cause. The District Court agreed that Small was a tenured teacher and remanded to the board with instructions to provide Small with the appropriate termination process, but found that the issue of damages was premature. The school district appealed the decision that Small was a tenured teacher, and Small appealed the decision that damages were premature. The Supreme Court affirmed, finding that the teacher tenure statute is not ambiguous. The statute clearly grants tenure to teachers and denies tenure to District Superintendents. By definition in 20-1-101, a teacher is a person, except a District Superintendent, who holds a valid Montana teacher certificate and who is employed by a district as a member of its instructional, supervisory, or administrative staff. Small held a valid teacher certificate, was not a District Superintendent, and was employed by the district as a member of its supervisory and administrative staff and was thus entitled to tenure. The court also remanded to the County Superintendent for an evidentiary hearing on damages. Small v. Bd. of Trustees, Glacier County School District No. 9, 2001 MT 181, 306 M 199, 31 P3d 358 (2001).

Numerous Sex-Based Jokes and Comments as Rendering High School Teacher Unfit to Teach: A high school teacher who jokes about testes and a student's menstrual period, flips off his students and views the gesture as "the highest form of respect", and makes gender-based remarks and innuendoes in his classroom is unfit to continue teaching as a matter of law. In this case, the County Superintendent received evidence of nine instances of such sex-based conduct but concluded, erroneously, that the conduct did not constitute unfitness under this section. Unfitness in this context means inappropriate, and the conduct was inappropriate. The conduct was unrelated to the purpose of teaching, and the teacher showed an inherent lack of judgment regarding a teacher's role and relationship with students that relates directly to fitness to teach. The County Superintendent's findings, based on substantial evidence, that the teacher did not mean to offend and that the students were not offended is irrelevant. Baldridge v. Bd. of Trustees, 287 M 53, 951 P2d 1343, 54 St. Rep. 1495 (1997).

Wrongful Firing of Tenured Teacher as Violation of Rights — Not Breach of Contract: The school district fired a tenured teacher on the grounds of incompetence. Subsequently, the Supreme Court ruled that the firing was not legal and the district entered into a money settlement with the teacher. The district's insurer refused to cover the settlement on the basis that the policy contained an exclusion for damages due to breaches of contract. The Supreme Court ruled that coverage under the policy was based upon the act giving rise to the claim and not the language of the complaint. The court held that tenure was a right, that the wrongful discharge was negligence, that the fact that the statute required damages based on contracted salary did not change the fact that the district's negligent conduct was not a breach of contract, and that therefore the wrongful discharge was covered under the policy. Missoula County School District No. 1 v. Pac. Employer's Ins. Co., 263 M 121, 866 P2d 1118, 50 St. Rep. 1741 (1993).

Temporary Suspension of Teachers Not Subject to Dismissal Statute: Three teachers temporarily suspended for disciplinary reasons sued for wages not paid during the period of suspension. The Supreme Court ruled that temporary suspensions were not subject to the statute covering the dismissal of teachers. The court further held that disputes over temporary suspensions were subject to contract arbitration provisions and that therefore the lower court had no jurisdiction to resolve the dispute. DeBar v. Yellowstone County School District, 244 M 297, 796 P2d 1081, 47 St. Rep. 1639 (1990).

School Psychologist Subject to Teacher Dismissal Statute: The plaintiff argued that his dismissal under the state statute providing for dismissal of teachers was improper because he was employed as a school psychologist. The Supreme Court held that the statute did apply to school specialists and pointed out that in a previous case, the plaintiff had successfully argued that he was entitled to the rights of a tenured teacher. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Statute Specific to Teachers Controls: The plaintiff argued that his firing should be set aside on the basis that he was not given a statement for his discharge as required by 39-2-801. The Supreme Court ruled that the section of law relied on by the plaintiff applied generally to employees in general commerce and that the specific statute relating to termination of teachers was controlling. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Sufficient Evidence of School Psychologist's Incompetence: The Supreme Court found that the school district had produced sufficient evidence of incompetence to discharge the plaintiff and further that there was no merit to the plaintiff's argument that since he was not trained as a psychologist, he should be judged by a lower standard. Harris v. Bailey, 244 M 279, 798 P2d 96, 47 St. Rep. 1622 (1990).

Dismissal for Sexual Conduct With Students: Evidence of a teacher's numerous sexual contacts with students indicated a failure to provide proper moral and civic instruction and was sufficient good cause to warrant dismissal for immorality, unfitness, and failure to fulfill the duties of a teacher. (See 1997 amendment.) Johnson v. Bd. of Trustees, 236 M 532, 771 P2d 137, 46 St. Rep. 598 (1989).

Structured Interviews Not Sole Determination of Teacher Competence When Other Means Available: The District Court improperly substituted its judgment for a finding by the State Superintendent of Public Instruction that the school district board of trustees failed to prove a tenured teacher was incompetent. The board relied solely on the teacher's performance in four structured interviews but failed to consider 13 years of satisfactory classroom evaluations. Bd. of Trustees v. Anderson, 232 M 501, 757 P2d 1315, 45 St. Rep. 1232 (1988).

Authority of Superintendent Exceeded, but Award of Contract Amount Appropriate: A County Superintendent erred in awarding a discharged teacher the full amount due under a 1984-85 contract when the decision was made in January 1985. However, by the time the District Court considered the matter, the school year had expired, so the award of the full contract amount was appropriate and properly paid as damages. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Discussion of Progressive Discipline Nonessential to Good Cause Determination: It was not clear error to discuss the issue of progressive discipline under the heading "other due process considerations" in a County Superintendent's order because the issue was not necessary to the determination of whether a teacher was terminated for good cause. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

No Notice of Incident as Reason for Termination: A teacher was not given notice of an alleged incident as a reason for termination; therefore, the incident could not be used as a reason for his termination. The County Superintendent was limited to consideration of evidence supporting specific charges given as reasons for dismissal. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Two Incidents of Inappropriate Language Not Meriting Dismissal: A County Superintendent properly found that two incidents of sarcastic language by a teacher toward his students, although inappropriate for the classroom, were insufficient to warrant dismissal. School District Trustees v. Holden, 231 M 491, 754 P2d 506, 45 St. Rep. 786 (1988).

Award of Teacher's Backpay — Income of Second Job Not Offset: Income earned at a second job should not offset an award of backpay for a teacher unless it can be shown that the recipient of the award would have been unable to hold the second job at the same time as the job for which he is receiving backpay. Harris v. Bauer, 230 M 207, 749 P2d 1068, 45 St. Rep. 147 (1988).

Resignation of Tenured Teacher — Formal Board Acceptance Not Required: A tenured teacher was charged with misdemeanor theft and pleaded guilty. The Board of Education of District No. 1 voted to authorize the Superintendent of Schools to request the teacher's immediate resignation and grant 30 days' severance pay. The same day the teacher signed a letter of immediate resignation. The guilty plea was later withdrawn, the theft case was dismissed, and the teacher sought to withdraw her resignation. Withdrawal was denied by the Board, County and State Superintendents of Schools, and the District Court. The Supreme Court affirmed, holding that the Board did not need to formally accept a resignation which it had already decided to request and that it was not a delegation of authority for the Board to make a decision and direct an employee to carry an offer to a teacher. The resignation was effective and the district's contractual obligation was satisfied upon the teacher's acceptance of the severance pay. Booth v. Argenbright, 225 M 272, 731 P2d 1318, 44 St. Rep. 227 (1987).

"Superintendent/Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Award Properly Limited to Year of Termination: In an appeal by the school district from an administrative order reinstating and compensating a nontenured school principal who had been discharged, the District Court properly limited the principal's award to the school year of his termination. The proper award is codified in 20-4-207 but is affected by 20-4-206, which applies to nontenured teachers. It was clear the trustees elected to terminate the contract of the nontenured principal and he would not have been reelected for subsequent years. Pryor School District v. Supt. of Pub. Instruction, 218 M 73, 707 P2d 1094, 42 St. Rep. 1405 (1985).

Standards Applying to Termination of Tenured Teacher: A tenured teacher was not offered a new contract because he cohabited with a female teacher, discussed abortion in the classroom, and displayed fetuses to his class. The decision of the board of trustees not to rehire was upheld by the County Superintendent and the State Superintendent. The District Court overturned the decision, and an appeal was taken to the Supreme Court. Counsel for the teacher contended that this section contains the standards which apply in the event of termination of the services of a tenured teacher. The Supreme Court held that, by its terms, this section applies where the trustees seek to dismiss a teacher before the expiration of his employment contract, i.e., during the course of a normal school year. The court held that this section is not applicable to the termination of the services of a tenured teacher under 20-4-203 and 20-4-204. Yanzick v. School District, 196 M 375, 641 P2d 431, 39 St. Rep. 191 (1982).

Discharge of Teacher — Board's Lack of Knowledge of Protected Union Activity: Based on the recommendation of the principal, a striking teacher was not rehired by a board of trustees. The board had no knowledge of the teacher's union activities, but the principal did. The Supreme Court held that the board had committed an unfair labor practice despite its lack of knowledge of the teacher's union activity because the board was responsible for the principal's tainted evaluation and, in accepting his recommendation, committed the prohibited act of discrimination. This is not the usual employee-employer relationship, and the Legislature did not intend to allow a school board to insulate itself by claiming lack of knowledge when a public employee's rights have been disregarded. Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Dual Motivation for Teacher's Discharge — Burden of Proof — "But For" Test: Where a striking teacher was not rehired by a board of trustees based upon proper reasons related to the teacher's competence and improper reasons related to protected union activity of the teacher, the Supreme Court held that the District Court correctly affirmed the decision of the Board of Personnel Appeals, which, in essence, utilized the procedure and the "but for" test of Mt. Healthy City Board of Education v. Doyle, 429 US 274, 97 S Ct 568, 250 L Ed 2d 471 (1977). Under Mt. Healthy, the burden is first placed upon the teacher to show that the protected activity was a motivating factor in the discharge. The board of trustees then has the burden of showing that the teacher would have been discharged even in the absence of the protected activity. Bd. of Trustees v. State ex rel. Bd. Personnel Appeals, 185 M 89, 604 P2d 770, 36 St. Rep. 2289 (1979).

Amendment of Charges: Dismissal based upon charges made in an amendment attempting to remedy prior legally inadequate charges was reversed. Lindgren v. Bd. of Trustees, 171 M 360, 558 P2d 468 (1976).

Dismissal to Be Based on Specific Charge: Teacher was reinstated due to board's failure to base dismissal on specific charge. Teacher must be given proper notice of charges. Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976).

Teacher's Right to Due Process: School boards in proceedings under this section must observe the elementary and fundamental principles of judicial inquiry. When a teacher is dismissed, dismissal must be based upon evidence supporting the specific charge against the teacher and not on other grounds. Therefore, where a school board called a teacher to answer for a half-day's absence from school, then proceeded to question him not only about that specific absence but others over a 9-year period and dismissed him, he was entitled to reinstatement. Bd. of Trustees v. Supt. of Pub. Instruction, 171 M 323, 557 P2d 1048 (1976), followed in Holmes v. Bd. of Trustees, 243 M 263, 792 P2d 10, 47 St. Rep. 914 (1990).

Constitutionality: The last two sentences of this section violated neither Art. VII, sec. 4(2), nor Art. X, sec. 8, Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Constitutionality — Power of District Boards of Trustees: This section was held to be constitutional under Art. X, sec. 9(3)(a), Mont. Const., in that school district boards of trustees do not have sole control and supervision powers under that constitutional provision. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Propriety of Appeal to County Superintendent: Appeal of the dismissal of a teacher under this section to the County Superintendent was proper, and an appeal to a court was not required by Art. VII, sec. 4(2), Mont. Const. School District v. Hughes, 170 M 267, 552 P2d 328 (1976).

Dismissal Without Meeting — Want of Jurisdiction: Where no meeting of school board, either special or regular, was held prior to summary dismissal of schoolteacher on ground of incompetency, board's dismissal of teacher was void for want of jurisdiction. Wyatt v. School District, 148 M 83, 417 P2d 221 (1966).

Rules Part of Teacher Contract: Under former statute, now repealed, authorizing dismissal for "violation of rules", teacher could be discharged only for violation of trustees' rules, which rules were made part of her contract by reference, and not for violation of high school superintendent's rules. Hovland v. School District, 128 M 507, 278 P2d 211 (1954).

Appeals to County School Superintendent: Writ of Prohibition did not lie against the County Superintendent of Schools to prevent her from acting in an appeal by a teacher who had been denied reemployment by the school board since appeals from such dismissals go to the Superintendent. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P2d 209 (1954).

Section Inapplicable to Dismissal of District Superintendent: Section providing specifically for appeal to the County Superintendent from an order dismissing a teacher had no application to dismissal of a District School Superintendent, the latter order being governed by section providing generally for appeal to the County Superintendent from decisions of school officers and boards. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943), distinguished in Eastman v. School District, 120 M 63, 180 P2d 472 (1947).

Appeal Statute Part of Teacher Contract: The provision of the school law that in case of a dismissal of a teacher before the expiration of her written contract, she may appeal to the school authorities, becomes as much a condition of the contract as if expressly written therein. Kelsey v. School District, 84 M 453, 276 P 26 (1929), explained in State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. 41 A.G. Op. 57 (1986).

20-4-208. Transfer from administrative position.

Compiler's Comments

1997 Amendment: Chapter 438 in (1), at end of first sentence, substituted "when the district reduces the size of its administrative staff" for "when the economic conditions of the district require a reduction of administrative staff"; near end of (2) substituted "for seniority purposes" for "for teacher seniority purposes"; deleted (3)(b) through (7) that read: "(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

(4) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

(6) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

(7) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 9, Ch. 438, L. 1997, was a saving clause.

1993 Amendment: Chapter 114 inserted (2) providing for recognition of the seniority of a tenured teacher assigned to a teaching position after serving in an administrative position; and made minor changes in style. Amendment effective March 18, 1993.

Repealer: Section 2, Ch. 114, L. 1993, repealed sec. 4, Ch. 204, L. 1991, which provided that the 1991 act, amending 20-4-203 and enacting 20-4-208, did not apply to a person who was employed in an administrative position before October 1, 1991. Repealer effective March 18, 1993.

Applicability: Section 4, Ch. 204, L. 1991, provided: "[This act] does not apply to a person who was employed in an administrative position before October 1, 1991."

Part 3

Teachers' Powers, Duties, and Privileges

Part Law Review Articles

First Amendment Rights of Non-Tenured Teachers, Parish, 37 Mont. L. Rev. 217 (1976).

20-4-301. Duties of teacher — nonpayment for failure to comply.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 22 in (1)(c), at end, substituted "of attendance and grades" for "in the form and on the blanks prescribed by the superintendent of public instruction"; in (1)(d), in first sentence after "report", deleted "in the manner and on the forms prescribed by the superintendent of public instruction" and at end, after "register", substituted "and grades" for "that is necessary to calculate ANB"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 320 in (1)(f)(i), at end, inserted "including any curriculum related to the flag prescribed by the trustees"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate text.

Preamble: The preamble attached to Ch. 320, L. 1997, provided: "WHEREAS, the United States Supreme Court has consistently ruled that a state may require recitation of the pledge of allegiance so long as any student or teacher objecting to participation for any reason is allowed to nondisruptively refuse to participate; and

WHEREAS, courts have also ruled that a student who refuses to participate in the pledge of allegiance cannot be compelled to take any particular action, such as standing, remaining seated, or leaving the room during group recitation of the pledge; and

WHEREAS, in an effort to educate students in the American values of patriotism and love of country and to pass on the feelings of civic pride and commitment to America, the Board of Public Education, as one small step in increasing Montana students' awareness of their heritage as Americans, enacted a policy on January 26, 1989, recommending that teachers in every public school classroom begin the day with recitation of the pledge of allegiance while allowing an excuse from participation for any student or teacher who objects for any reason; and

WHEREAS, in 1980 the United States Supreme Court let stand the decision in Palmer v. Board of Education of City of Chicago, 603 F.2d 1271 (7th Cir. 1979), certiorari denied, 444 U.S. 1026 (1980), which held that while a teacher may not be required to participate in the pledge of allegiance, the teacher, despite any personal convictions, may be required to teach subjects related to the flag or other patriotic matters in the prescribed curriculum; and

WHEREAS, section 20-4-301, MCA, requires a teacher to provide moral and civic instruction by endeavoring to impress students with the principles of morality, truth, justice, and patriotism; to instruct students in the principles of free government; and to train them to comprehend the rights, responsibilities, and dignity of American citizenship."

1989 Amendment: At beginning of (1)(d) substituted "within 10 days" for "immediately", after "school" substituted "semester" for "instructional year and before July 10", and after "prepare" substituted "a" for "an annual"; near middle of (3) substituted "semester" for "annual"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense.

Compiler's Comments

1991 Amendment: In (1) deleted former second and third sentences setting parameters for infliction of corporal punishment; inserted (2) through (4) defining and disallowing corporal punishment and allowing and defining physical restraint; in (5), at end of first sentence, deleted "and to administer corporal punishment in the presence of a witness, without undue anger" and in third sentence, after "trustees", inserted "and the county superintendent"; in (6), after "trustees", inserted "or the county superintendent"; at beginning of (7) substituted "If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is" for "Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed" and at end increased penalty from not more than $100 to not less than $25 or more than $500; inserted (8) regarding affirmative defense; and made minor changes in style. Amendment effective April 4, 1991.

1981 Amendment: Substituted "Where either a district superintendent or a school principal is employed" for "Where a district superintendent or principal is employed" and "the superintendent or principal" for "he" in the second sentence of (2); deleted "and the trustees shall meet as soon as practicable to consider the suspension action of the teacher" from the end of (2).

20-4-303. Abuse of teachers.

Case Notes

Mootness Found in Six-Year-Old Case — Limited Power of Supreme Court: The defendant in a 1974 case was charged with and convicted of abuse of a school teacher under 20-4-303. The fine levied was paid in 1976, about the time the defendant's appeal to District Court on the constitutionality of the statute was dismissed. Notice of the dismissal escaped the defendant's attorney until nearly 3 years later. A year after that, the appeal was submitted to the Supreme Court. Noting the long time lapse and the lapse of power in the court to order the return of the fine, the court held the question moot because any action it could take would have no effect on the parties. St. v. Warden, 191 M 520, 625 P2d 543, 38 St. Rep. 437 (1981).

20-4-304. Attendance at instructional and professional development meetings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted first two sentences relating to closure of schools for teacher organization meetings and attendance of teachers at such meetings or other training sessions for former language that read: "When the trustees of a school district close the schools of the district for the annual session of the state teachers' association, a teacher may attend the annual session without loss of salary or work at his school and perform duties related to his position of employment, as may be prescribed by the trustees, without loss of salary"; and made minor change in phraseology. Amendment effective July 1, 1990.

Attorney General's Opinions

Contractual Leave Not to Be Used by Teacher to Avoid Training: Nothing in statutory law indicates a legislative intention to dictate to schools that the inservice training obligation be fulfilled according to any particular schedule as long as the teacher acquires the necessary training. However, pursuant to this section, a teacher must either attend the annual instructional and professional development meetings of teachers' organizations or attend other inservice training sometime during the year, as approved by the trustees. A teacher may not use contractual leave to avoid the obligation to attend one or the other kind of training. If a teacher does not attend the training, that teacher may not be paid for the 2 days during which the schools are closed. 46 A.G. Op. 2 (1995).

Part 4
District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal.

Compiler's Comments

2009 Amendment: Chapter 144 in (1) near beginning of first and second sentences after "county high school" inserted "or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3)"; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 318 in (3) inserted "or the boards of trustees of two or more districts" and at end inserted reference to entering an interlocal agreement to share a district superintendent; in (5) near beginning inserted "or the boards of trustees of two or more districts"; and made minor changes in style. Amendment effective April 21, 2001.

1989 Amendment: At end of (3) changed "20-3-361" to "20-3-362".

1987 Amendment: Inserted (3) relating to jointly employing and appointing a District Superintendent; in (5), after "superintendent", inserted "under subsection (2) or (3)" and substituted "districts" for "elementary district and the county high school".

Case Notes

Collective Bargaining Agreement Modified by Administrator's Individual Contract: A retired school administrator claimed that he was entitled to receive retirement benefits identical to those afforded teachers in the district. The district denied his claim on the basis that the collective bargaining agreement specifically denied the benefits to administrative personnel. The Supreme Court held that the administrator was eligible for the benefits because his individual contract stated that he was entitled to all benefits available to teachers and therefore his contract modified the collective bargaining agreement. The court further held that although the plaintiff could not be denied benefits on the basis of the exclusionary language in the collective bargaining agreement, he was ineligible to receive the benefits because he did not have sufficient indistrict service to qualify. Throssell v. Bd. of Trustees, 248 M 392, 812 P2d 767, 48 St. Rep. 481 (1991).

Constructive Discharge of Superintendent — School District Not Immune: Plaintiff was a Superintendent from July 1, 1983, to June 6, 1985, when he took a medical disability retirement. He then sued the school district and individual members of the school board for damages for wrongful discharge and intentional infliction of emotional distress. The District Court jury awarded plaintiff damages totaling nearly $100,000. The Supreme Court reversed and remanded for a new trial on the grounds that the District Court committed reversible error by incorrectly instructing the jury concerning the requirements of due process and the type of conduct required for liability in a case tried under 42 U.S.C. 1983. Constructive discharge is a form of wrongful discharge, and a school district is not immune for lack of "clearly established" law. Doohan v. Bigfork School District No. 38, 247 M 125, 805 P2d 1354, 48 St. Rep. 121 (1991).

Termination of Superintendent Not Breach of Contract: From 1966 to 1983, appellant was hired as an untenured superintendent under a series of written 2-year contracts. In 1983, appellant accepted a 1-year written contract for the 1983-84 school term. In 1984, the school board voted not to renew appellant's contract. Subsequently, appellant filed suit against the district, alleging breach of contract and contending that his contract was "open-ended". In affirming the trial court's dismissal of the original complaint, the Supreme Court concluded that since appellant negotiated for an express contract for 1 year, no breach of contract occurred. Nordlund v. School District, 227 M 402, 738 P2d 1299, 44 St. Rep. 1183 (1987).

"Superintendent / Principal" Entitled to Statutory Processes Regarding Nonrenewal of Contract: Appellant was hired for the 1979-80 school year as "superintendent/principal" by respondent school district for a period of 227 days but left after performing only 193 days' service. The district failed to renew his contract for 1980-81, claiming that as superintendent he was not entitled to notice under 20-4-401. Appellant claimed he also served as principal and was therefore entitled to notice under 20-4-206. The Supreme Court held that he served in both capacities and that as principal he was entitled to the statutory notice provisions regarding nonrenewal of a nontenure teacher contract outlined in 20-4-206. Since respondent did not comply with 20-4-207 regarding dismissal, the court held that appellant was entitled to damages for breach of the statutorily entered 1980-81 contract but not for damages stemming from the 1979-80 contract. The case was remanded on the issue of damages for determination in light of Wyatt v. School District, 148 M 83, 417 P2d 221 (1966). Hurtt v. School District, 222 M 415, 723 P2d 205, 43 St. Rep. 1377 (1986).

Damages for Improper Discharge: When a county high school principal was improperly discharged, the District Court was instructed to compute damages in an amount equal to the amount he would have earned in wages and benefits for 1 year under the terms of his contract at the time of his improper discharge and an amount equal to his attorney fees and costs plus interest from the date of discharge. Bd. of Trustees v. Eaton, 185 M 453, 605 P2d 1083, 36 St. Rep. 2012 (1979).

Improper Discharge of County High School Principal: The language of this statute is clear and unambiguous and clearly states the qualifications necessary for a county high school principal. Appellant's certificate did not have the proper endorsement; therefore, the board of trustees would normally be required to discharge him. However, under the facts of this case, it is clear that the board sought the convenience of this statute only after an earlier attempt to terminate the appellant went awry. The board's methodology did not conform to this section, and discharge was improper. Bd. of Trustees v. Eaton, 185 M 453, 605 P2d 1083, 36 St. Rep. 2012 (1979).

Failure to Provide Hearing — Want of Jurisdiction: Where an order of a board of trustees dismissing a District School Superintendent for cause was void because he had not been granted a hearing, which order on appeal to the County Superintendent was reversed, whereupon the board appealed to the State Superintendent of Public Instruction who found in favor of the board, the action of the board and the decision of the Superintendent of Public Instruction were void for want of jurisdiction. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Hearing on Removal Required: Dismissal of Superintendent without hearing was void as exceeding trustees' jurisdiction, notwithstanding that no statute required hearing. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Process Required for Dismissal: A hearing as to the fitness of a District School Superintendent to act as such presupposes that charges were preferred, that notice had been given the incumbent to enable him to prepare for and refute the charges, that evidence was taken at the hearing with opportunity for cross-examination of the witnesses — all for the purpose of determining in a judicial manner the truth or falsity of the charges. State ex rel. Howard v. Ireland, 114 M 488, 138 P2d 569 (1943).

Attorney General's Opinions

High School Superintendent Not "Public Officer": A high school district superintendent appointed under this section does not hold a "public office" within the scope of the Montana Recall Act. 42 A.G. Op. 50 (1988).

Early Termination and Renewal of Contract Between Trustees and Superintendent Held Proper — Automatic Renewal Improper: A board of trustees and a District Superintendent may mutually terminate a 3-year employment contract prior to the expiration of its term and enter into another 3-year contract identical to the first except for date of expiration, without violating this section. However, the trustees and Superintendent may not enter into a rolling 3-year employment contract. 41 A.G. Op. 30 (1985).

20-4-402. Duties of district superintendent or county high school principal.

Compiler's Comments

1999 Amendment: Chapter 343 in (7) substituted "pupil attendance, absence, and enrollment" for "cumulative pupil attendance and pupil absence" and at end after "district" deleted "within 10 days after the conclusion of each school semester"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Amendment: Near end of (7), after "district", substituted "within 10 days" for "immediately" and after "conclusion of" substituted "each school semester" for "the school instructional year and before July 10"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1981 Amendment: Deleted "until the trustees may consider such suspension" from the end of (6).

Case Notes

Waiver of Time Limit by Superintendent: Because the board allowed plaintiff to believe that the Superintendent had the authority to waive the statutory time limit of 20-4-204 for a hearing request, plaintiff was entitled to a hearing before the board concerning the termination of his contract, even though his request came after expiration of the time limit. Yanzick v. Bd. of Trustees, 177 M 459, 582 P2d 338, 35 St. Rep. 1085 (1978).

Attorney General's Opinions

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

20-4-403. Powers and duties of principal.

Compiler's Comments

1981 Amendment: Inserted (2) relating to student suspension.

Part 5
Quality Educator Loan Assistance Program

Part Compiler's Comments

Effective Date: Section 31, Ch. 1, Sp. L. May 2007, provided: "[This act] is effective July 1, 2007."

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-4-501. Quality educator loan assistance program — purpose.

Compiler's Comments

2019 Amendment: Chapter 347 in (1) in middle of first sentence substituted "superintendent of public instruction" for "board of regents through the office of the commissioner of higher education" and in middle of second sentence substituted "superintendent of public instruction" for "board of regents". Amendment effective July 1, 2019.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2017 Amendment: Chapter 85 inserted (2) concerning purpose and implementation of the program; and made minor changes in style. Amendment effective October 1, 2017.

20-4-502. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 232, L. 2023, deleted definition of critical quality educator shortage area (see sec. 1, Ch. 232, L. 2023, for former text); and made minor changes in style. Amendment effective April 24, 2023.

Section 15, Ch. 713, L. 2023, in definition of quality educator in (a)(ii) in list of statutory references at end substituted "37-24-301, 37-25-302, 37-39-308, 37-39-309, or 37-39-311" for "37-22-301, 37-23-201, 37-24-301, or 37-25-302". Amendment effective October 1, 2023.

2021 Amendment: Chapter 339 in definitions of impacted school in (d) and quality educator in (b)(iv) before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 347 inserted definitions of critical quality educator shortage area and impacted school; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2009 Amendment: Chapter 59 in (4)(a) near end substituted "current school year" for "previous school year". Amendment effective July 1, 2009.

20-4-503. Critical quality educator shortages — impacted schools.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 232, L. 2023. Amendment effective April 24, 2023.

2021 Amendments — Composite Section: Chapter 321 in (2) in middle of first sentence substituted "February 1" for "December 1" and deleted former last sentence that read: "For the school year beginning July 1, 2019, eligibility for the program based on the criteria under 20-4-502(1)(a) must be governed by the report adopted by the board of public education by December 1, 2019"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 503 in (3) deleted former last sentence that read: "Both state-funded and locally funded loan repayment assistance under this section is exempt from taxation as specified in 15-30-2110(14)." Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment — Code Commissioner Correction: Chapter 347 substituted current section text regarding critical quality educator shortages in impacted schools for former text (see 2019 Session Law for former text). Amendment effective July 1, 2019.

Pursuant to sec. 43, Ch. 3, L. 2019, the Code Commissioner in (3) changed "15-20-2110(14)" to "15-30-2110(14)" to correct an erroneous reference.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2017 Amendment: Chapter 85 inserted (2) concerning considerations of board of public education in identifying impacted schools; in (3) near beginning inserted "by December 1" and inserted second and third sentences concerning applicable school years and eligibility for the program; and made minor changes in style. Amendment effective October 1, 2017.

20-4-504. Loan repayment assistance.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 232, L. 2023. Amendment effective April 24, 2023.

2019 Amendment: Chapter 347 in (1)(a) substituted current text for "is employed in an identified school described in 20-4-503(1)"; inserted (2) proscribing the maximum amount of annual loan repayment assistance; inserted (3) regarding prorating repayment assistance amounts; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

20-4-505. Loan repayment assistance documentation.

Compiler's Comments

2019 Amendment: Chapter 347 throughout section substituted "superintendent of public instruction" for "board of regents"; deleted former (3) that read: "(3) A quality educator is eligible for loan repayment assistance for no more than 3 years, with the maximum annual loan repayment assistance not to exceed:

(a) $3,000 after the first complete year of teaching in an impacted school;

(b) $4,000 after the second complete year of teaching in the same impacted school or another impacted school within the same school district; and

(c) $5,000 after the third complete year of teaching in the same impacted school or another impacted school within the same school district"; inserted (4) allowing an impacted school or a school district to remit payment of a loan; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 11, Ch. 347, L. 2019, provided: "[This act] applies to tax years beginning after December 31, 2019."

2017 Amendment: Chapter 85 in (2) deleted former first and second sentences that read: "A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed $3,000"; inserted (3) concerning 3-year loan repayment assistance eligibility and maximum annual loan repayments; and made minor changes in style. Amendment effective October 1, 2017.

Part 6

Grow Your Own Grant Program

20-4-601. Grow your own grant program — administration.

Compiler's Comments

Effective Date: Section 5, Ch. 514, L. 2021, provided: "[This act] is effective July 1, 2021."

Termination: Section 6, Ch. 514, L. 2021, provided: "[This act] terminates June 30, 2027."

Preamble: The preamble attached to Ch. 514, L. 2021, provided: "WHEREAS, Montana's rural schools in general, and schools in Indian Country in particular, struggle to recruit and retain teachers; and

WHEREAS, "Grow Your Own" programs show great promise in addressing teacher shortages in rural areas; and

WHEREAS, having Indian teachers to teach Indian children will help close the achievement gap and help fulfill Montana's commitment in its educational goals for the preservation of Indian cultural integrity; and

WHEREAS, strengthening the teacher pipeline for Montana's rural reservation schools will require collaborative efforts between K-12 schools and institutions of higher education."

Part 7

Teacher Residency Program

Part Compiler's Comments

Effective Date: Section 5, Ch. 545, L. 2023, provided that this part is effective July 1, 2023.

Preamble: The preamble attached to Ch. 545, L. 2023, provided: "WHEREAS, evidence indicates a year-long undergraduate teacher residency can improve teacher recruitment, retention, workforce shortages, and diversity of the teaching profession; and

WHEREAS, teacher residencies provide a consistent pipeline of better-prepared new teachers, reduce turnover, fill chronic shortage areas, and prepare teachers who are more likely to teach in high-need schools; and

WHEREAS, year-long undergraduate teacher residencies are seen as the "gold-standard" for teacher preparation because of the in-depth, immersive experience they provide candidates; and

WHEREAS, the Office of Public Instruction has utilized temporary federal recovery dollars to address teacher recruitment and retention issues and to collaboratively create the promising Montana Teacher Residency Demonstration Project, which will require legislative authorization and support to continue."

CHAPTER 5
PUPILS

Chapter Case Notes

High School Sports Programs — Discrimination Against Female Participants: In a matter alleging gender-based inequality in high school athletics, it was not erroneous for the federal District Court to fashion the use of a creative settlement course by using a "facilitator". The settlement agreement was adopted by order, with the District Court retaining jurisdiction to monitor progress. The continued jurisdiction was proper, and even though the question of whether the court could consider the change in women's volleyball seasons was not properly before the District Court in the action preceding this appeal, the District Court has jurisdiction under the order and terms of the settlement agreement to exercise its continuing jurisdiction to consider the matter at some future date. Ridgeway v. Mont. High School Ass'n, 858 F2d 579, (9th Cir. 1988). After reviewing the final report of the Special Master and the parties' progress reports, the District Court ruled that a change in high school girls' volleyball and basketball seasons was not necessary to achieve and maintain gender equity. 749 F. Supp. 1544 (D.C. Mont. 1990).

Chapter Law Review Articles

Legal Shorts: Recent Decisions Affecting the Montana Practitioner: Griffith v. Butte School District No. 1, Molloy, 72 Mont. L. Rev. 365 (2011).

Part 1
Attendance

Part Compiler's Comments

Student Cigarette Tobacco Referendum: Section 1, Ch. 438, L. 1991, provided: "A referendum entitled the "Montana school tobacco referendum 1991", open to all Montana students enrolled in grades 7 through 12, must be held in the second week of October 1991 in a ballot form provided by the superintendent of public instruction. The referendum must be conducted as prescribed in this section.

(1) Students enrolled on the date of the referendum in grades 7 through 12 in each accredited public school and in each accredited nonpublic school whose principal notifies the superintendent of public instruction by September 20, 1991, of intent to participate may vote in the referendum.

(2) Not later than October 1, 1991, the superintendent of public instruction shall provide instructions for the referendum, as provided in this section, to each participating school that includes grades 7 through 12. The referendum must be conducted by secret ballot and be presented to students in school in the following ballot form:

☐ YES — I DO favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

☐ NO — I DO NOT favor requesting that stores REFUSE to sell cigarettes and tobacco to persons under 18 years of age.

(3) Votes must be tabulated by the student governing body and the principal of each participating school. The principal shall transmit in writing the vote count for his school to the superintendent of public instruction not later than November 1, 1991, together with a statement by the principal that the referendum was conducted fairly and the vote count is genuine to the best of his knowledge and belief.

(4) The superintendent of public instruction shall tabulate the total vote in the referendum from all participating schools not later than November 15, 1991. If the number of students voting in the referendum is at least 50% of the number of students enrolled in public school grades 7 through 12 on October 1, 1991, and if a majority of students voting voted for the referendum, the superintendent of public instruction shall certify to the director of the department of revenue that the referendum has been approved. Otherwise, the superintendent shall certify that the referendum has been rejected.

(5) Within 60 days of receiving certification from the superintendent of public instruction that the referendum has been approved, the department of revenue shall inform each retailer who sells cigarettes and tobacco that the referendum has been approved and ask retailers to post prominently a sign where cigarettes and tobacco are sold, stating: "Out of respect for the wishes of Montana junior and senior high school students as expressed in the Montana School Tobacco Referendum 1991, this store voluntarily agrees not to sell cigarettes and tobacco to persons under 18 years of age. Your cooperation with our Montana students' vote against tobacco sales to minors is appreciated."" See Title 16, ch. 11, part 3.

20-5-101. Admittance of child to school.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: (Version effective July 1, 2024) Section 5, Ch. 608, L. 2023, inserted (3)(b) providing meanings for "exceptional circumstances"; inserted (3)(c) concerning no impact on ANB calculations for admittance of individual; and made minor changes in style.

(Both versions) Section 1, Ch. 617, L. 2023, inserted (8) regarding part-time enrollment for a child enrolled in nonpublic or home school; inserted (9) providing definition of part-time enrollee; and made minor changes in style. Amendment effective July 1, 2023.

The amendment made to this section by sec. 5, Ch. 745, L. 2023, was rendered void by sec. 8, Ch. 745, L. 2023, a coordination section.

Transition: Section 9, Ch. 608, L. 2023, provided: "(1) The board of public education, the office of public instruction, and the boards of trustees of school districts shall collaborate and prepare for the full implementation of [sections 1 through 4] [Title 20, chapter 7, part 18] in the school year beginning July 1, 2024. The legislature intends that the evaluation methodology be available for administration in the spring of 2024 to determine child eligibility.

(2) The legislature intends that school districts operating multiyear kindergarten programs in the school year beginning July 1, 2023, plan for the transition to early literacy targeted intervention programs under [sections 1 through 4] [Title 20, chapter 7, part 18] for the school year beginning July 1, 2024."

Applicability: Section 4, Ch. 617, L. 2023, provided: "[This act] applies to school years beginning on or after July 1, 2023."

2021 Amendment: Chapter 20 inserted (5) concerning enrollment of children of military families relocating to Montana under military orders; and made minor changes in style. Amendment effective February 23, 2021.

2019 Amendment: Chapter 16 in (1)(a) and (3) substituted "5 years of age" for "6 years of age". Amendment effective October 1, 2019.

Preamble: The preamble attached to Ch. 16, L. 2019, provided: "WHEREAS, school districts are required to make available at least a half-day kindergarten program to all resident 5-year-olds pursuant to 20-7-117, MCA; and

WHEREAS, 5-year-old kindergarten students currently generate ANB funding pursuant to 20-9-311, MCA, and the clarifications in this bill will have no fiscal impact; and

WHEREAS, neither school districts' obligations in providing special education nor parents' rights in determining when to enroll their child in school will be impacted by the clarifications in this bill; and

WHEREAS, the Legislature of the State of Montana intends no substantive change in current practice, obligations, or funding with these changes and intends only to provide additional clarity to existing practices, obligations, and funding."

2013 Amendment: Chapter 128 inserted (6) providing that certain school district assignment decisions are subject to district grievance policies. Amendment effective March 29, 2013.

2007 Amendment: Chapter 374 in (3) inserted second sentence authorizing trustees to admit an individual graduated from high school who is not yet 19 years old even though no special circumstances exist to waive age provision. Amendment effective July 1, 2007.

1995 Amendment: Chapter 214 in (4) inserted second sentence prohibiting attendance agreement or tuition for homeless child; in (5) inserted exception clause; and made minor changes in style. Amendment effective March 24, 1995.

1989 Amendment: Inserted (4) relating to admitting a child who is homeless; and made minor changes in grammar. Amendment effective March 18, 1989.

1981 Amendment: Chapter 575 deleted former (3)(a) relating to exceptional circumstances; inserted "if there are exceptional circumstances that merit waiving the age provision of this section" at the end of (3).

Case Notes

Age of Admission to School: A reasonable interpretation of former constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age, and each school district may establish a "cutoff" date governing entry into the first grade. State ex rel. Ronish v. School District, 136 M 453, 348 P2d 797 (1960).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-5-102. Compulsory enrollment and excuses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 617, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 4, Ch. 617, L. 2023, provided: "[This act] applies to school years beginning on or after July 1, 2023."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Deleted former (2)(c) that read: "(c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title"; deleted former (3) that read: "(3) The excuse provided for in subsection (2)(c) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final"; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendment — Commissioner Correction: Deleted former (2)(a), which read: "enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to 20-7-111"; and inserted (2)(f) relating to enrollment in a nonpublic or home school.

When former (2)(a) was deleted by committee amendment and (2)(b) through (2)(g) were renumbered accordingly, a reference in (3) to "subsection (2)(d)" was overlooked and not corrected to reflect the renumbering. The Code Commissioner has corrected the reference to read "subsection (2)(c)".

Administrative Rules

Title 10, chapter 65, subchapter 3, ARM Compulsory school attendance.

Case Notes

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

Attorney General's Opinions

Compulsory Enrollment: This section requires compulsory school enrollment for any student who has reached 7 years of age prior to the first day of school, who has not yet reached his 16th birthday, and who has not yet completed the work of the 8th grade. 38 A.G. Op. 5 (1979).

20-5-103. Compulsory attendance and excuses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 693, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 316 inserted (2)(d) regarding excusal pursuant to 20-7-120. Amendment effective July 1, 2021.

Severability: Section 4, Ch. 316, L. 2021, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Compulsory Attendance: This section requires compulsory school attendance for any student who has reached 7 years of age prior to the first day of school, who has not yet reached his 16th birthday, and who has not yet completed the work of the 8th grade. 38 A.G. Op. 5 (1979).

Law Review Articles

The First Amendment and the Socialization of Children: Compulsory Public Education and Vouchers, Shiffrin, 11 Cornell J.L. Pub. & Pol'y 503 (2002).

20-5-104. Attendance officer.

Compiler's Comments

2013 Amendment: Chapter 281 in (1) substituted current text for "districts of the first and second class shall employ and appoint one or more attendance officers"; in (2) substituted current text for "districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer"; in (3) inserted "second-class or"; and made minor changes in style. Amendment effective July 1, 2013.

Applicability: Section 6, Ch. 281, L. 2013, provided: "[This act] applies to school years beginning after July 1, 2013."

20-5-105. Attendance officer — powers and duties.

Compiler's Comments

2013 Amendment: Chapter 281 in (1) inserted "subject to district policy"; in (2), (3), (4), (5), and (6) substituted "may, subject to district policy" for "shall"; in (5) before "make reports" inserted "shall"; and made minor changes in style. Amendment effective July 1, 2013.

Applicability: Section 6, Ch. 281, L. 2013, provided: "[This act] applies to school years beginning after July 1, 2013."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-5-106. Truancy.

Compiler's Comments

2013 Amendment: Chapter 281 inserted (1) defining truancy; in (2) substituted current text for "Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, the officer shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of the child will result in the person's prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against the person in a court of competent jurisdiction"; in (3)(a) substituted current text for "If convicted, the person shall be fined not less than $5 or more than $20. In the alternative, the person may be required to give bond in the penal sum of $100, with sureties, conditioned upon the person's agreement to cause the enrollment of the child within 2 days in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term"; in (3)(b) substituted current text for "If a person refuses to pay a fine and costs or to give a bond as ordered by the court, the person shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days"; inserted (4) concerning youth court referrals; and made minor changes in style. Amendment effective July 1, 2013.

Applicability: Section 6, Ch. 281, L. 2013, provided: "[This act] applies to school years beginning after July 1, 2013."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-5-107. Incapacitated and indigent child attendance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-5-109. Nonpublic school requirements for compulsory enrollment exemption.

Compiler's Comments

2005 Amendment: Chapter 138 in (2) substituted "the minimum aggregate hours" for "180 days" and after "instruction" deleted "or the equivalent"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1989 Amendment: In (5) inserted "of the county in which the home school is located, in each school fiscal year"; and made minor changes in phraseology.

Administrative Rules

Title 10, chapter 65, subchapter 3, ARM Compulsory school attendance — qualifying nonpublic school procedures.

Law Review Articles

Montana's Constitutional Prohibition on Aid to Sectarian Schools: "Badge of Bigotry" or National Model for the Separation of Church and State?, Dougherty, 77 Mont. L. Rev. 41 (2016).

IDEA and the New Inequality — The Denial of Subsidized Services to Privately Schooled Children With Disabilities, Youngberg, 24 Whittier L. Rev. 597 (2002).

Finding the Way Back Home: Funding for Home School Children Under the Individuals With Disabilities Education Act, Lambert, 101 Colum. L. Rev. 1709 (2001).

The Latest Home Education Challenge: The Relationship Between Home Schools and Public Schools, Lukasik, 74 N.C.L. Rev. 1913 (1996).

Public School Choice and Open Enrollment: Implications for Education, Desegregation, and Equity, Smith, 24 J.L. & Educ. 147 (1995).

School Choice and the Religion Clauses: The Law and Politics of Public Aid to Private Parochial Schools, Futterman, 81 Geo. L.J. 711 (1993).

Vouchers and Private School Autonomy, Kemerer, Hairstan, & Lauerman, 21 J.L. & Educ. 601 (1992).

20-5-111. Responsibilities and rights of parent who provides home school.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

20-5-112. Participation in extracurricular activities.

Compiler's Comments

Effective Date: Section 3, Ch. 297, L. 2021, provided: "[This act] is effective July 1, 2021."

Part 2
Duties — Prohibitions — Penalties

20-5-201. Duties and sanctions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 266, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 444 in (2) near beginning of first sentence following "pupil who" deleted "continually and willfully", near middle following "property" inserted "or otherwise violates district policy regarding pupil conduct", and following "is" substituted "subject to" for "liable for"; and made minor changes in style. Amendment effective October 1, 2009.

1993 Amendment: Chapter 403 inserted (4) allowing the withholding of grades, transcripts, and the diploma of a pupil responsible for the cost of school materials or for the loss or damage of school property and providing a procedure for withholding and for an appeal; and made minor changes in style. Amendment effective April 19, 1993.

Case Notes

Voluntary Membership in High School Athletic Association Not Unconstitutional Delegation of Trustee Authority: A Livingston high school student, after being informed by the Montana High School Association (MHSA) that he could not participate in basketball because of the MHSA's rule limiting student participation in MHSA events to eight consecutive semesters, filed an action alleging that the board of trustees' consent to be bound by the MHSA rules violated Art. X, sec. 8, Mont. Const., which vests school board trustees with power to supervise and control schools in their district. The Supreme Court held that the MHSA is merely acting as a neutral arbiter to fill the breach caused by the nonexistence of legislative authority and that becoming a member of the MHSA is not an unconstitutional delegation of the district's authority because membership is voluntary. The court noted that although a district's decision to withdraw from membership in the MHSA would undoubtedly cause the district to have a difficult time in finding other schools against which to compete, membership remains voluntary, and by participating, each district is electing to make the rules of the MHSA its own. Grabow v. Mont. High School Ass'n, 2002 MT 242, 312 M 92, 59 P3d 14 (2002).

20-5-202. Suspension and expulsion.

Compiler's Comments

2021 Amendment: Chapter 303 in (2)(a) in first sentence after "brought a firearm" deleted "as defined in 18 U.S.C. 921", in first and second sentences after "brought a firearm to school" inserted "or to have possessed a firearm at school", and in second sentence after "may authorize the school administration" inserted "in writing" and after "expulsion of a student" inserted "up to and including eliminating the requirement for expulsion"; in (3) at end substituted current text concerning immediate suspension for "shall suspend immediately for good cause a student who is determined to have brought a firearm to school"; in (4)(a) substituted "or allowing a student to bring a firearm" for "or allowing a firearm to be brought" and at end inserted "if:"; inserted (4)(a)(i) concerning appropriate safeguards; inserted (4)(a)(ii) concerning approved firearm storage; inserted (5) concerning notice of option to hold expulsion hearing in public and invite other individuals to attend; inserted (6) concerning the preexpulsion hearing; inserted (7) concerning expungement of a student's school record if a hearing results in a finding of no violation; inserted (8) requiring the office of public instruction to make information reported by school districts to the federal government available on its website; inserted (9) exempting students who bring firearms to school in compliance with storage requirements from this section; inserted (10) providing definitions for firearm and school; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 364 in (2)(a) inserted last sentence concerning annual review of weapons policy; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 444 in (1) in third sentence near beginning following "is" inserted "any removal of a pupil for more than 20 school days without the provision of educational services and is", and inserted fourth and fifth sentences allowing for the suspension of a student for 10 days and an additional 10 days under certain circumstances; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 457 inserted (2) requiring the adoption of school policy requiring expulsion of student concerning firearm brought to school; inserted (3) requiring immediate suspension; inserted (4) regarding instructional activities and educational services; and made minor changes in style. Amendment effective July 1, 1995.

1981 Amendment: Inserted "and 20-4-403" after "20-4-402" at the beginning of the section.

Law Review Articles

Montana's Rural Version of the School-to-Prison Pipeline — School Discipline and Tragedy on American Indian Reservations, Healey, 75 Mont. L. Rev. 15 (2014).

Morse v. Frederick: Locking the "Schoolhouse Gate" on the First Amendment, Giuttari, 69 Mont. L. Rev. 447 (2008).

Due Process Rights and High School Suspensions After Goss v. Lopez, Townsend, 36 Mont. L. Rev. 333 (1975).

20-5-207. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

20-5-208. Definition.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

20-5-209. Bullying of student prohibited — self-defense authorized.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 266, L. 2023. Amendment effective July 1, 2023.

Effective Date: This section is effective October 1, 2015.

20-5-210. Enforcement — exhaustion of administrative remedies.

Compiler's Comments

2017 Amendment: Chapter 216 in (1) after "available law" deleted "either civil or criminal"; inserted (2) concerning contacting law enforcement regarding bullying; and made minor changes in style. Amendment effective April 20, 2017.

Effective Date: This section is effective October 1, 2015.

Part 3

Attendance Outside School District

Part Administrative Rules

Title 10, chapter 10, ARM Special accounting practices.

Part Case Notes

PRIOR TO 1993 SCHOOL FINANCE REVISION

Youth Committed to Program in Nonadjacent State — School District Not Liable for Related Education Costs: The Youth Court committed a youth to a program for sexual offenders located in Minnesota. Cost was $148 a day, of which $48 were education costs, and the court assigned payment of that portion to the youth's school district. On appeal of the assignment, the Supreme Court found that 20-5-314 authorized reciprocal tuition agreements only with states adjoining Montana but found no statutory method to calculate tuition to be paid to a school in a state not adjacent to Montana. Absent specific statutory authority, the Supreme Court held that the Youth Court erred in finding the school district liable for the youth's education costs. (Decided prior to 1987 amendment to 20-5-311, repealed 1993.) In re W.J.H., 226 M 479, 736 P2d 484, 44 St. Rep. 817 (1987).

Tuition Transfer — School Board Decision Improperly Reversed — Reviewing Agency Analysis: It was improper for the State Superintendent of Public Instruction to reverse school board denial of a tuition transfer by including findings that were not part of the record, were irrelevant, or were conjectures or conclusions rather than facts. Findings of the reviewing agency may not be properly included as facts when they are not part of the record below, and the reviewing agency must confine itself to an analysis of whether the findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or whether they are arbitrary, capricious, or characterized by abuse of discretion. Frazer School District v. Flynn, 225 M 299, 732 P2d 409, 44 St. Rep. 248 (1987). This holding is dispositive of a later appeal in a companion case, Frazer School District v. Forsness, 226 M 244, 734 P2d 1218, 44 St. Rep. 624 (1987).

Constitutionality: Section 2, Ch. 77, L. 1927, providing for appeal to the State Board of Education in matters of transportation, rent, tuition, or board, was not open to the objection that under Art. XI, sec. 11, 1889 Mont. Const. (now Art. X, sec. 9, Mont. Const.), the Legislature was limited to prescribing powers and duties for Board to be exercised in connection with the state educational institutions and therefore was without authority to clothe it with jurisdiction to pass on appeals relating to matters connected with the common schools. Section 20-5-304 (repealed 1993) was not ineffective for failure to provide procedure rules for taking the appeal. State ex rel. Stephens v. Keaster, 82 M 126, 266 P 387 (1928).

Quasi-Judicial Capacity of Trustees: In exercise of power to admit nonresident pupils and fix the amount of tuition to be charged them, board of trustees acts in a quasi-judicial capacity, and courts will not interfere with the proper exercise of its discretion and judgment in that regard. Peterson v. School Bd., 73 M 442, 236 P 670 (1925).

Part Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Acceptance of Canadian Students — Tuition — Waiver: A school district board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the trustees choose to charge tuition, 20-5-305 (repealed 1993) must be referred to in setting the amount of tuition for elementary students and 20-5-312 (repealed 1993) for high school students. 42 A.G. Op. 103 (1988).

Claim of Tuition Offset by Resident Elementary School District: A school district paying the tuition of a resident elementary pupil who attends a school outside the district pursuant to 20-5-302 (repealed 1993) is not eligible to claim a tuition offset under 20-5-303 (repealed 1993) for property taxes paid by the parents to the county or district in which the child attends school. 41 A.G. Op. 50 (1986).

Responsibility for Tuition of Child in Legal Custody of Local Welfare Department: If a local welfare department has legal custody by a temporary or permanent order for placement of a minor child and places that child with foster parents outside the school district of residence (residence of the natural parents in most cases), tuition must be paid by the district of residence. If the placement of the child is outside the state, financial responsibility for school costs rests with the sending agency under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984). (Opinion rendered prior to 1985 amendment to 20-5-301, repealed 1993.)

Responsibility for Tuition of Student Who Attends High School Out of State: If a student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. The Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state. If the student's out-of-state placement is by court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984). (Opinion rendered prior to 1985 amendment to 20-5-311, repealed 1993.)

Closely Held Corporation Ineligible for Tuition Offset: A shareholder in a closed or family-type Subchapter S corporation is not eligible to claim the tuition offset under 20-5-303 (repealed 1993) when the corporation owns the property and is the taxpayer responsible for the district and county property taxes referred to in 20-5-303 (repealed 1993). One who accepts the benefits of a corporation must also accept the burdens that flow from the use of a corporate structure. A shareholder in a closely held corporation accordingly must bear any disadvantages resulting from corporate status. One disadvantage associated with incorporation in Montana is the unavailability of tuition offset under 20-5-303 (repealed 1993) when the property taxpayer is a corporation and not the child's parent. 40 A.G. Op. 42 (1984). (Opinion rendered prior to 1985 amendment to 20-5-303, repealed 1993.)

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-5-314. Reciprocal attendance agreement with adjoining state or province.

Compiler's Comments

1993 Amendment: Chapter 563 throughout section substituted reference to attendance agreement for reference to tuition agreement; in three places in (1), after "state", inserted "or province" and in second sentence, after "prescribed by", substituted "20-5-323 are" for "20-5-305 and 20-5-312 shall be"; substituted present (2) regarding completion of an attendance agreement for former language that read: "Any tuition agreement approved under the provisions of 20-5-301, 20-5-302, or 20-5-311 for a child's attendance at a school outside of the state shall be completed in accordance with the applicable reciprocal tuition agreement"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Case Notes

Youth Committed to Program in Nonadjacent State — School District Not Liable for Related Education Costs: The Youth Court committed a youth to a program for sexual offenders located in Minnesota. Cost was $148 a day, of which $48 were education costs, and the court assigned payment of that portion to the youth's school district. On appeal of the assignment, the Supreme Court found that this section authorized reciprocal tuition agreements only with states adjoining Montana but found no statutory method to calculate tuition to be paid to a school in a state not adjacent to Montana. Absent specific statutory authority, the Supreme Court held that the Youth Court erred in finding the school district liable for the youth's education costs. In re W.J.H., 226 M 479, 736 P2d 484, 44 St. Rep. 817 (1987).

Attorney General's Opinions

Responsibility for Tuition of Student Who Attends High School Out of State: If a student is voluntarily attending school outside the state, responsibility for payment of tuition depends on the existence of a valid tuition agreement. If no valid tuition agreement exists, the child's parents or guardians are responsible for tuition costs. If a valid tuition agreement exists, the child's school district of residence is responsible for tuition costs. The Superintendent of Public Instruction should be consulted about the existence of a reciprocal tuition agreement with an adjoining state. If the student's out-of-state placement is by court order, the sending agency is responsible for tuition costs under the Interstate Compact on the Placement of Children. 40 A.G. Op. 69 (1984).

20-5-320. Out-of-district attendance by parent or guardian request with no extenuating circumstances.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 368, L. 2023. Amendment effective July 1, 2024.

Applicability: Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2021 Amendment: Chapter 238 in (2)(c)(ii) inserted current definition of entity and deleted former definition that read: "means a parent or guardian or the trustees of the district of residence"; and made minor changes in style. Amendment effective July 1, 2021.

2019 Amendment: Chapter 271 in (9)(b) near middle after "domestic corporation" deleted "as defined in 35-1-113". Amendment effective June 1, 2020.

2001 Amendment: Chapter 464 in (2)(c)(i) at end of first sentence deleted "but any waiver must be applied equally to all students" and inserted second and third sentences regarding waiver of tuition; inserted (2)(c)(ii) defining entity; in (9)(a) in first sentence in two places after "parent" inserted "or guardian" and in second sentence after "paid in district" deleted "and county"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Administrative Rules

ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.

ARM 10.10.301B Out-of-district attendance agreements.

20-5-321. Attendance with mandatory approval — tuition and transportation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 368, L. 2023. Amendment effective July 1, 2024.

Applicability: Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2021 Amendment: Chapter 238 inserted (1)(c)(ii) related to a child enrolled outside of the child's high school district of residence; in (2)(c)(ii) inserted current definition of entity and deleted former definition that read: "means a parent, a guardian, the trustees of the district of residence, or a state agency"; and made minor changes in style. Amendment effective July 1, 2021.

2011 Amendment: Chapter 211 deleted former (1)(f) that read: "(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502"; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 442 inserted (1)(f) regarding mandatory enrollment if the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

2005 Amendment: Chapter 463 in (1)(b)(ii) in first sentence near middle after "under" substituted "20-5-324(5)(a)(ii)" for "20-5-324(6)"; in (3) in first sentence after "district of" substituted "attendance" for "choice" and after "agreement" deleted "and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days", deleted former second sentence that read: "The county superintendent shall approve the agreement for payment under 20-5-324(5)", and inserted "The trustees of the district of attendance shall"; inserted (3)(a) and (3)(b) requiring the district trustees to inform the county superintendent of the agreement's approval and to submit the agreement for payment approval; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 464 deleted former (1)(a)(ii) that read: "(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice"; in (1)(b)(i) after "due to" deleted "road or", after "geographic conditions" inserted "between the child's home and the school that the child would attend within the district of residence", and after "attend" substituted "school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school" for "the school nearest the child's residence"; inserted (1)(b)(ii) regarding appeal of the decision of the county transportation committee; in (1)(c) inserted second sentence allowing a child enrolled in an elementary school to continue to attend the elementary school after the other child has left the high school; in (2)(c)(i) at end of first sentence deleted "but any waiver must be applied equally to all students" and inserted second and third sentences regarding waiver of tuition; inserted (2)(c)(ii) defining entity; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4) near beginning the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1997 Amendments: Chapter 529 in (1)(d), at beginning after "child", inserted "is under the protective care of a state agency or", after "adjudicated" substituted "to be" for "by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or", and at end deleted "and has been placed in a licensed youth care facility that is approved by the department of public health and human services and, as a result of the placement, is required to attend school outside of the child's district of residence"; and in (1)(e), at end, substituted "in foster care or a group home licensed by the state" for "by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction". Amendment effective July 1, 1997.

Chapter 550 in (1)(d) substituted "youth in need of intervention" for "youth in need of supervision". Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendments: Chapter 458 in (1)(d), after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1)(d) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Inserted (1)(a)(i) concerning resident district not providing transportation and (1)(a)(ii) relating to resident district not within county providing transportation; and made minor changes in style. Amendment effective January 3, 1994.

Effective Date — Retroactive Applicability: Section 2, Ch. 32, Sp. L. November 1993, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to attendance agreements signed after [the effective date of this act] [January 3, 1994] for the school fiscal year beginning July 1, 1994."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Administrative Rules

ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.
ARM 10.10.301B Out-of-district attendance agreements.
ARM 10.20.106 Students placed in education programs.

20-5-322. Residency determination — notification — appeal for attendance agreement.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 368, L. 2023. Amendment effective July 1, 2024.

Applicability: Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2007 Amendment: Chapter 44 in (6) near beginning after "under" substituted "20-5-324(2)" for "20-5-324(6)"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 132 in (1) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 215 inserted (6) providing that a nonresident student who becomes a resident by reaching the age of 18 during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year. Amendment effective July 1, 2005.

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Administrative Rules

ARM 10.10.301B Out-of-district attendance agreements.

20-5-323. Tuition and transportation — rates.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 368, L. 2023. Amendment effective July 1, 2024.

Applicability: Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2021 Amendment: Chapter 371 in (1) near end substituted "tuition per-ANB amount" for "per-ANB maximum rate established in 20-9-306"; in (2) at beginning inserted exception clause and at end inserted "The rules must provide"; inserted (2)(a) regarding a reduction in funding due to a child's attendance; inserted (2)(b) regarding tuition equal to the actual unique costs of providing a free appropriate public education; in (3) near beginning inserted "state-paid" and after "pursuant to 20-5-321(1)(d) and (1)(e)" inserted "in addition to the tuition paid by the district of residence under 20-5-324(2)(b)"; in (3)(a) after "approve an agreement" deleted "with the district of attendance"; in (3)(b) substituted "120% of the tuition per-ANB amount" for "80% of the maximum per-ANB rate established in 20-9-306"; in (3)(c) at end substituted "student" for "ANB"; inserted (7) providing a definition of tuition per-ANB amount; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2005 Special Session Amendment: (Version effective July 1, 2006) Chapter 4 in (6) increased rate from 25 cents a mile to 35 cents a mile. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2005 Amendment: Chapter 462 in (3)(b) near middle substituted "20-9-306" for "20-9-306(10)". Amendment effective April 28, 2005.

Effective Date — Applicability: Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, now repealed, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendments — Composite Section: Chapter 409 in (6) in first sentence near end increased alternate amount charged for transportation from 21.25 cents a mile to 25 cents a mile; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 464 in (1) near middle after "20-5-321" substituted "the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance" for "the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution"; in (3)(b) near beginning after "student" substituted "80% of the maximum per-ANB rate established in 20-9-306(10)" for "the average district per-ANB foundation payment amount"; inserted (3)(c) establishing the maximum tuition rate at $2,500 per ANB; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 409, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school district transportation reimbursements for school fiscal years beginning on or after July 1, 2001."

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (2) the code commissioner changed "children with disabilities" to "a child with a disability"; and in (4)(a) after "child with" changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1997 Amendment: Chapter 529 in (1), near beginning after "subsection (3)", substituted "through (5)" for "and (4)"; in (4), in first sentence after "province", deleted "or has been placed by a state agency in an out-of-state residential program"; inserted (4)(d) excluding out-of-state placement by a state agency; inserted (5) requiring the placing state agency to pay education costs of a child placed in an out-of-state residential facility; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Administrative Rules

ARM 10.7.106A Transportation costs allocated by out-of-district attendance agreements.
ARM 10.10.301B Out-of-district attendance agreements.
ARM 10.10.301D Tuition reports.

20-5-324. Tuition payment provisions — state obligations — district obligations — financing — reporting.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 368, L. 2023. Amendment effective July 1, 2024.

Applicability: Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2021 Amendment: Chapter 371 in (1) at beginning substituted "In order to be eligible to receive payment under subsection (2)" for "Following the close of each school fiscal year" and at end inserted "by June 30 the following information for the concluding school fiscal year"; in (1)(a) at end deleted "in the previous school year"; in (2)(a)(i) at beginning inserted exception clause; in (2)(a)(ii) after "entitlement for which the district" inserted "of residence"; in (2)(a)(iii) near middle inserted "reported in subsections (1)(d) and (1)(e)"; inserted (2)(b) regarding payment by the district of residence to the district of attendance and additional tuition for which the superintendent of public instruction is responsible; substituted current (3) for former (3) that read: "(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance"; in (5)(a)(i) near end in two places inserted "or from the district's general fund or any other legally available fund in the discretion of the trustees"; in (5)(a)(ii) at end of first sentence after "under subsection (5)(a)(i)" deleted "out of the money realized to date from the district tuition or transportation fund levy"; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2013 Amendment: Chapter 305 in (5)(a)(i) before "district tuition fund" inserted "levy authorized to support the" and before "the transportation fund" inserted "the levy authorized to support"; in (5)(a)(ii) after "fund" inserted "levy"; and inserted (5)(a)(iii) allowing use of tuition levy to provide free appropriate public education. Amendment effective July 1, 2013.

2005 Amendment: Chapter 463 in (1) in introductory clause at beginning substituted "Following the close of each school fiscal year" for "At the close of the school term of each school fiscal year and before July 15" and at end substituted "superintendent of public instruction" for "county superintendent"; in (1)(a) near beginning after "who" substituted "attended" for "is attending", after "provisions of" deleted "20-5-321(1)(b)", and at end inserted "in the previous school year"; in (1)(c) at end after "each" substituted "child reported under the provisions of subsection (1)(a)" for "reported child"; in (1)(d) and in (1)(e) at end inserted "in the previous school year"; in (2) deleted former first sentence that read: "The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides" and inserted introductory clause; inserted (2)(a) through (2)(c) pertaining to the payment of tuition obligations and the determination and reimbursement of per-ANB entitlements; deleted former (3) that read: "(3) Before July 30, the county superintendent shall report the information in subsections (1)(d) and (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection"; inserted (3) requiring district trustees to submit the report to be eligible to receive payment; in (5)(a)(i) near beginning after "residence" inserted "at the resident district's expense"; inserted (5)(a)(ii) providing a timeline and other requirements for the payment of tuition and transportation obligations; in (5)(b) near middle after "residence" inserted "because of a parent's or guardian's request" and inserted "20-5-320 or"; deleted former (6) through (8) that read: "(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3)"; inserted (6)(a) specifying the funds into which a district must deposit tuition and transportation receipts; inserted (7) providing that a district must use certain reimbursements to pay obligations of students attending out-of-state schools or attending day-treatment programs; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 130 inserted (1)(e) requiring a report of the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs; in (3) near beginning of first sentence inserted reference to subsection (1)(e); in (5)(a) near middle after "(1)(b)" inserted "or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence"; and made minor changes in style. Amendment effective March 26, 2003.

Effective Date — Applicability: Section 2, Ch. 130, L. 2003, provided: "[This act] is effective on passage and approval and applies to tuition paid for attendance in school fiscal years beginning on or after July 1, 2003." Approved March 26, 2003.

2001 Amendment: Chapter 464 in (1)(a) at end inserted "approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e)"; in (4) near beginning substituted reference to subsection (5)(a) for reference to subsection (5); in (5)(a) at beginning deleted "Except as provided in subsection (6)" and near middle substituted reference to 20-5-321(1)(a) or (1)(b) for reference to 20-5-321; inserted (5)(b) requiring a parent to finance the tuition and transportation amount when a child has approval to attend a school outside the child's district of residence; in (6) near beginning substituted reference to 20-5-321(1)(d) or (1)(e) for reference to 20-5-321 and in two places substituted "district of residence" for "county of residence"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (9)(b) near middle changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1997 Amendments: Chapter 22 in (6), in two places, substituted "basic county tax" for "county basic tax" and substituted "equalization" for "districts"; in (7), in first sentence, substituted "elementary or high school county equalization fund provided for in 20-9-335" for "basic county tax account provided for in 20-9-334"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 389 in (9)(a), after "provisions of", deleted "Title 20, chapter 7, part 4, or"; inserted (9)(b) authorizing tuition received for child with disabilities in current school year in excess of tuition received for child without disabilities to be deposited in a district's miscellaneous programs fund to support authorized costs of program; and made minor changes in style. Amendment effective April 25, 1997.

Chapter 529 inserted (10) providing that statutory provisions do not apply to out-of-state placements by a state agency. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1995 Amendment: Chapter 509 in (3) and (8) substituted "per-ANB entitlement" for "foundation amount"; and in (8), after "residence", deleted "from the state equalization account". Amendment effective July 1, 1995.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Part 4
Health

20-5-402. Definitions.

Compiler's Comments

1995 Amendments: Chapter 308 in definition of postsecondary school, after "means", deleted "a vocational-technical center"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 418 in definition of Department substituted "public health" for "health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1989 Amendment: At end of definition of governing authority inserted "preschool or postsecondary school"; in definition of local health officer deleted references to Department; inserted definition of local health department, postsecondary school, and preschool; and in definition of school, in introductory clause, inserted "a place or" and inserted reference to postsecondary school and preschool. Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

Administrative Rules

ARM 37.114.701 Definitions.

20-5-403. Immunization required — release and acceptance of immunization records — notice of exemptions required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 534, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 294 in (1)(d) and (2)(a)(ii) at end inserted "as provided in 20-5-405"; in (2)(b) at end inserted "subject to the exemptions provided for in 20-5-405"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 124 in (1)(a) before "diphtheria" inserted "varicella" and at end deleted "except that pertussis vaccination is not required for a person 7 years of age or older"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 156 in (3) near middle of third sentence after "shall" inserted "retain a certified copy for the permanent record and"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: Inserted (1)(b) requiring immunization against Haemophilus influenza type "b". Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

1989 Amendment: In introductory clause of (1) inserted "other than a postsecondary school"; in (1)(a) inserted "mumps"; deleted former (1)(d) that read: "(d) is a pupil transferring from another school district, in which case the provisions of subsection (2) apply"; deleted former (2) that read: "(2) A person who transfers from one school district to another has 30 calendar days after commencement of attendance at the school to which he or she transfers to either complete immunization as specified in subsection (1)(a), commence immunization in the manner required by 20-5-404, or file for an exemption. If none of the foregoing actions is taken within 30 days, the transfer pupil is prohibited from further attendance until such action is taken"; inserted (2) relating to immunization required of postsecondary school pupils; and inserted (3) relating to pupil and record transfers. Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: At beginning of (1), changed "A" to "The"; substituted prohibition on commencing attendance for "may not enroll any person as a pupil in"; in (1)(b), substituted "attendance" for "enrollment".

1981 Amendment: Inserted (1)(d) providing a grace period for transferees; deleted former (2) which provided that failure to act pursuant to subsection (1) in a reasonable period of time was an exemption under 20-5-405(1); and inserted (2) relating to administration of transferee grace period.

Administrative Rules

ARM 37.114.705 Requirements for unconditional attendance at school offering any portion of K-12.

ARM 37.114.709 Requirements for unconditional attendance at postsecondary school.

ARM 37.114.710 Requirements for conditional enrollment at school offering any portion of K-12.

20-5-404. Conditional attendance.

Compiler's Comments

2015 Amendment: Chapter 124 substituted "the vaccine for each disease listed in 20-5-403" for "polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, Haemophilus influenza type "b", and tetanus vaccine"; and after "except that" deleted "pertussis vaccine is not required for a person 7 years of age or older and". Amendment effective October 1, 2015.

1991 Amendment: In middle inserted reference to Haemophilus influenza type "b" and at end inserted requirement that children under 5 years of age receive that vaccine. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

1989 Amendment: Inserted "other than a postsecondary school"; and inserted "mumps". Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Substituted clause relating to commencement of attendance for "may be enrolled by the governing authority on the condition that he" and inserted "if that person".

Administrative Rules

ARM 37.114.710 Requirements for conditional enrollment at school offering any portion of K-12.

20-5-405. Exemptions — limitations on agency actions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 534, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 294 in (1)(a) substituted "There is a religious exemption to the immunizations required under 20-5-403. A person enrolled or seeking to enroll in school may attend the school without obtaining the immunizations if the person files with the governing authority" for "When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year" and at end deleted "immunization of the person seeking to attend the school may not be required prior to attendance at the school"; inserted (1)(b) providing requirements for the signer of a religious exemption statement; in (2) substituted current language providing for a medical exemption and requiring a written, signed medical exemption statement for former (2) (see 2021 Session Law for former text); inserted (3) imposing restrictions on the department's medical exemption form, the denial of a medical exemption by a governing authority, and a review of a medical exemption statement by the department to grant or deny a medical exemption; and made minor changes in style. Amendment effective July 1, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Substituted (1) relating to annual affidavits for a religious exemption for "When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking to attend school may not be required prior to commencement of attendance in any school. The statement must be maintained as part of the person's immunization records"; and at end of (3) deleted "The exclusion period may not exceed 30 calendar days." Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Throughout section, changed "enrollment" to "to attend school" and to "commencement of attendance" once.

Administrative Rules

ARM 37.114.715 Medical exemption.

ARM 37.114.716 Religious exemption.

Attorney General's Opinions

Challenges to Mandatory Immunization on Religious Grounds — Restraint Advisable: Although a school district has an undeniable compelling interest in protecting students from communicable diseases, it does not have unlimited discretion to determine the legitimacy or sincerity of the religious tenets and practices of one seeking an exemption pursuant to this section. Absent established uniform standards or procedures, a school district should refrain from challenging an affidavit claiming a religious exemption from mandatory immunization. 44 A.G. Op. 7 (1991).

Religious Exemption to Mandatory Immunization Not Limited to Established or Recognized Religion: The religious exemption to mandatory immunization of students in this section is not limited to beliefs or tenets of an established or recognized traditional religion but also encompasses sincerely held personal religious beliefs. 44 A.G. Op. 7 (1991).

20-5-406. Immunization record.

Compiler's Comments

2021 Amendment: Chapter 294 near middle inserted "status, including any exemptions"; at end deleted "on a form prescribed by the department"; and made minor changes in style. Amendment effective July 1, 2021.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

Title 37, chapter 114, subchapter 7, ARM Immunization of school children.

20-5-407. Rulemaking.

Administrative Rules

Title 37, chapter 114, subchapter 7, ARM Immunization of school children.

20-5-408. Enforcement.

Compiler's Comments

2021 Amendment: Chapter 294 in (2) and (3) substituted current text for former (2) and (3) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

1989 Amendment: In (1), in first sentence, inserted "other than a postsecondary school". Amendment effective July 1, 1989.

Severability: Section 7, Ch. 644, L. 1989, was a severability clause.

1983 Amendment: Near middle of (1), substituted "allowed to attend" for "enrolled".

Administrative Rules

ARM 37.114.710 Requirements for conditional enrollment at school offering any portion of K-12.

20-5-412. Definition — parent-designated adult — administration of glucagon — training.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 393 in (1), (2) in two places, (3), and (4) inserted "an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 442 in (1) near middle, in (2) at beginning of first sentence and near beginning of second sentence, in (3) near end, and in (4) near end of second sentence after "parent" inserted "an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: "[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative."

Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

Effective Date: This section is effective October 1, 2003.

20-5-413. Limits on liability.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.

Compiler's Comments

2013 Amendment: Chapter 189 in (1) at beginning inserted "20-5-421 and"; in (4) substituted "willful or wanton misconduct" for "willful and wanton conduct"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendments — Composite Section: Chapter 44 in definition of medication at end substituted "37-8-202(1)(h)" for "37-8-202(5)". Amendment effective October 1, 2007.

Chapter 346 in definition of medication after "prescribe" deleted "asthma"; in definition of self-administration before "medication" deleted "asthma"; inserted definition of severe allergies; in (2) and in (2)(a) before "self-administration" inserted "possession or" and after "medication" inserted "as prescribed"; in (2) after "asthma" inserted "severe allergies, or anaphylaxis"; in (2)(b)(iii) at end inserted "as prescribed"; in (2)(c) after "necessary" substituted "to self-administer the asthma, severe allergy, or anaphylaxis medication" for "to administer the medication"; in (2)(d) after "asthma" inserted "severe allergies" and after "use" inserted "as prescribed"; in (5) before first "medication" inserted "asthma, severe allergy, or anaphylaxis" and before "dosage" inserted "expires or the"; in (6) after "asthma" inserted "severe allergies, or anaphylaxis" and after "medication" inserted "as prescribed"; in (7) after "nurse" inserted "asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and" and near end after "asthma" inserted "severe allergy"; inserted (8) requiring student after using epinephrine during school hours to report to school nurse or other adult at school for followup care; in (9) after "asthma" inserted "severe allergy, or anaphylaxis"; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 393 in (7) near beginning inserted "an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 442 in (7) near beginning after "parent" inserted "an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: "[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative."

Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

Effective Date: Section 4, Ch. 306, L. 2005, provided: "[This act] is effective July 1, 2005."

Name Change — Directions to Code Commissioner: Pursuant to sec. 33, Ch. 519, L. 2005, throughout section the code commissioner substituted "physician assistant" for "physician assistant-certified".

20-5-421. Emergency use of epinephrine in school setting.

Compiler's Comments

Effective Date: Section 4, Ch. 189, L. 2013, provided: "[This act] is effective July 1, 2013."

20-5-426. Emergency use of opioid antagonist in school setting — limit on liability.

Compiler's Comments

Effective Date: Section 4, Ch. 154, L. 2017, provided: "[This act] is effective July 1, 2017."

Part 5

Enrollment of Pupil by Caretaker Relative

Part Compiler's Comments

Effective Date: Section 10, Ch. 442, L. 2007, provided that this part is effective July 1, 2007.

Applicability: Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

20-5-502. Enrollment by caretaker relative — residency — affidavit.

Compiler's Comments

2011 Amendment: Chapter 211 in (1)(c) inserted "caretaker" before "relative" in two places, substituted "is unable or unwilling" for "refuse", and at end deleted "after a written or oral request by the relative to do so"; in (3) in first sentence after "the school" substituted current text for "in which the child is to be enrolled" and in second sentence inserted "If the district decides to enroll the child, then the school district"; and made minor changes in style. Amendment effective July 1, 2011.

20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format.

Compiler's Comments

2011 Amendment: Chapter 211 in (9) in text of affidavit in paragraph 4 after "full-time basis" deleted former third paragraph that provided: "[ ] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so" and in third paragraph substituted "legal custodian or guardian or execution of a notarized power of attorney" for "guardian ad litem or execution of a power of attorney", in paragraph 7 inserted "TO CARETAKER RELATIVE", substituted text of current paragraph 7d for former paragraph 8 that read: "8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.

b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:

(1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

(2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 149 in (9) in 7.c. of the form affidavit after "affidavit is" substituted i. through iii. making the caretaker affidavit effective until the earliest of one of three preconditions for "not valid for more than 6 months after the date on which it is signed by the caretaker relative"; and made minor changes in style. Amendment effective April 3, 2009.

Retroactive Applicability: Section 3, Ch. 149, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to caretaker relative educational authorization affidavits completed in compliance with 20-5-503 for the 2008-2009 school year."

CHAPTER 6
SCHOOL DISTRICTS

Chapter Case Notes

Petition to Transfer Territory Properly Denied: In a petition to transfer territory from one school district to another, the transfer was properly denied when it was not within the best and collective interests of all students, rather than a majority of students, in the transferring and receiving school districts and would create an increased burden on the taxpayers in the transferring school district. In re Petition to Transfer Territory from Dutton/Brady School District, 2011 MT 152, 361 Mont. 103, 259 P.3d 751.

School Territory Transfer Statutes Unconstitutional — Insufficient Guidelines for Delegation of Legislative Authority: In 1994, the respondents, individuals residing in both Rosebud and Big Horn Counties but outside of the Northern Cheyenne Indian Reservation, petitioned their respective County Superintendents of Schools requesting a territory transfer from the Lame Deer High School District (LDHSD—created in 1993) back to the Colstrip and Hardin High School Districts. The requests were granted. LDHSD appealed the decisions to the State Superintendent of Public Instruction, who reversed the decisions. The respective District Courts reversed the Superintendent of Public Instruction's decision. The Supreme Court reversed the District Courts' decisions on the grounds that the school territory transfer statute is an unconstitutional delegation of legislative power. The broad grant of discretion to a County Superintendent of Schools, unchecked by any standard, policy, or rule of decision, renders the statute unconstitutional. Hayes v. Lame Deer High School District, 2000 MT 342, 303 M 204, 15 P3d 447, 57 St. Rep. 1464 (2000). See also Belgrade Elementary & High School District No. 44 v. Morris, 2000 MT 347, 303 M 245, 15 P3d 482, 57 St. Rep. 1484 (2000), and In re Petitions to Transfer Territory, 2000 MT 348, 303 M 249, 16 P3d 1000, 57 St. Rep. 1486 (2000).

Sufficiency of Single Petition to Transfer Territory From One K-12 District to Another K-12 District: Residents of Upper Nine Mile Valley petitioned the Missoula County School Superintendent to be transferred from Alberton K-12 district to Frenchtown K-12 district. The superintendent determined that the petition was valid and scheduled a hearing, but prior to the hearing, the Alberton Board of Trustees requested that the hearing be canceled because two separate petitions were not filed—one for elementary students and one for high school students.

The superintendent denied the request, and on appeal to District Court, summary judgment was granted in favor of the superintendent. The Alberton Board of Trustees then appealed to the Supreme Court, asserting that two petitions were required under either 20-6-213 or 20-6-320 (both now repealed) in order to transfer both elementary and high school territories from one K-12 district to another K-12 district. Conversely, the superintendent maintained that because the request was for the transfer of combined elementary and high school territory from one K-12 district, as defined in 20-6-701, to another, only one petition was necessary. In order to give meaning to all the applicable statutes, the Supreme Court concluded that a K-12 school district is a high school district upon which an elementary district has been attached and remains a high school district for purposes of the governing statutes. Therefore, 20-6-320 (now repealed) applied to the petition in question because it concerned transfer of territory from one high school district to another. The question then became not whether a formal, second petition was required to address the elementary district, but whether under 20-6-320(8) (now repealed) the petition in question was "accompanied" by an elementary "petition" that satisfied the corollary requirements of 20-6-213 (now repealed). The Alberton trustees argued that a distinct, second elementary petition, also signed by a majority of registered electors, was required or else the entire transfer process was invalid. The Supreme Court refused to abide by such a strict, formalistic approach, noting that the law respects form less than substance. The petition clearly identified that the territory was K-12, meaning that any attached elementary territory would also be transferred, thus the petition to transfer high school territory was unquestionably "accompanied" by a petition to transfer elementary territory as well, and it was not fatal that both petitions appeared on a single sheet of paper. The court held that it would be unreasonable and far too formalistic to require that two separate petitions be submitted when one petition, clearly identifying the intent to transfer both high school and elementary territory, served the same function. The District Court was affirmed. McKirdy v. Vielleux, 2000 MT 264, 302 M 18, 19 P3d 207, 57 St. Rep. 1101 (2000).

School District Not Liable for Injury of Child on Playground — Witness Credibility as Question for Jury — Limited Review of Jury Verdict: The Morgans complained that the school district was liable for a teacher's negligence because their daughter, who needed close supervision, was injured on playground equipment during recess. The jury found in favor of the teacher. The Morgans sought a new trial on grounds of insufficient evidence to support the verdict. The Supreme Court's review of a jury verdict is necessarily very limited, and a jury verdict will not be reversed if it is supported by substantial credible evidence. The gist of the Morgans' appeal concerned the credibility and consistency of statements made by the only witness to the accident—the teacher. Witness credibility is a matter for determination by the jury after proper instruction from the court. Thus, the Supreme Court deferred to the properly instructed jury's evaluation of the teacher's credibility and affirmed the verdict. Morgan v. Great Falls School District No. 1, 2000 MT 28, 298 M 194, 995 P2d 422, 57 St. Rep. 134 (2000), following Whiting v. St., 248 M 207, 810 P2d 1177, 48 St. Rep. 396 (1991), Lee v. Kane, 270 M 505, 893 P2d 854, 52 St. Rep. 268 (1995), and Sandman v. Farmers Ins. Exch., 1998 MT 286, 291 M 456, 969 P2d 277, 55 St. Rep. 1165 (1998). Morgan was followed, with regard to the limited scope of review of a jury verdict and the test for substantial credible evidence, in Benson v. Diverse Computer Corp., 2004 MT 114, 321 M 140, 89 P3d 981 (2004).

Territory Transfer Process — Date for Appeal of State Superintendent's Decision: Section 20-6-320 (now repealed) contained the entire process for transferring territory from one high school district to another by means of a petition. Under the statutory provisions, a decision by the state Superintendent of Public Instruction was final 30 days after its date, absent any appeal. (See 1997 amendment.) Pretty on Top v. Snively, 266 M 45, 879 P2d 49, 51 St. Rep. 241 (1994), distinguishing Carbon County School District Trustees v. Spivey, 247 M 33, 805 P2d 61 (1991).

High School Sports Programs — Discrimination Against Female Participants: In a matter alleging gender-based inequality in high school athletics, it was not erroneous for the federal District Court to fashion the use of a creative settlement course by using a "facilitator". The settlement agreement was adopted by order, with the District Court retaining jurisdiction to monitor progress. The continued jurisdiction was proper, and even though the question of whether the court could consider the change in women's volleyball seasons was not properly before the District Court in the action preceding this appeal, the District Court has jurisdiction under the order and terms of the settlement agreement to exercise its continuing jurisdiction to consider the matter at some future date. Ridgeway v. Mont. High School Ass'n, 858 F2d 579 (9th Cir. 1988). After reviewing the final report on the Special Master and the parties' progress reports, the District Court ruled that a change in high school girls' volleyball and basketball seasons was not necessary to achieve and maintain gender equity. 749 F. Supp. 1544 (D.C. Mont. 1990).

Findings of Fact Not Requested by Appellant — Standard of Review: An order transferring territory from one elementary district to another did not contain a finding that the four elements of a valid petition listed in 20-6-213 (now repealed) were met, nor did the order contain findings that the transfer was in the best interests of the residents of the affected territory. Although 2-4-623 requires that a final decision in a contested case must include findings of fact, the Supreme Court found substantial credible evidence supporting the transfer, including unanimous favorable testimony from residents of the affected territory. Additionally, the court noted that appellants failed to request findings of fact from the County Superintendent or the Board of County Commissioners and that such failure barred court reversal for lack of factfindings, pursuant to 2-4-704(2)(g). Bd. of Trustees, Clinton School District v. Bd. of Trustees, Bonner School District, 221 M 341, 719 P2d 1240, 43 St. Rep. 877 (1986).

Petition to Be Signed by Majority of Electors Residing in Territory to Be Transferred: The provisions of 20-6-213 (now repealed) required that a petition for transfer of territory from one elementary district to another be signed only by a majority of electors residing in the territory to be transferred rather than by a majority of electors residing in the entire district. Bd. of Trustees, Clinton School District v. Bd. of Trustees, Bonner School District, 221 M 341, 719 P2d 1240, 43 St. Rep. 877 (1986).

Best Interests and Advisability — Elements to Consider: A majority of the residents of another district petitioned to become part of a school district in Teton County. Teton County approved the transfer, and Cascade County rejected it. A petition is granted only if the transfer is both advisable and in the best interests of the residents of the territory. One factor pertaining to advisability is the financial condition of the remaining territory. The transfer was found to be financially inadvisable. On that basis Cascade County properly denied the transfer. They did not have to consider the best interests of the residents. Gunderson v. County Comm'rs, 183 M 317, 599 P2d 359, 36 St. Rep. 1615 (1979).

Failure to Meet Jointly: Plaintiff and a majority of the residents of his territory petitioned to become a part of a school district in Teton County. The Cascade County Commissioners failed to meet jointly with Teton County Board of Commissioners as required by 20-6-213 (now repealed). Each Board of Commissioners was unanimous in its decision, though their decisions were contrary, and no facts are alleged that any other mode of decision would have produced a different result. Plaintiff has not alleged an injury from the procedure followed, and one who is not injured will not be heard to complain. The District Court properly dismissed the complaint for failure to state a claim upon which relief could be granted. Gunderson v. County Comm'rs, 183 M 317, 599 P2d 359, 36 St. Rep. 1615 (1979).

Abuse of Discretion: When the Board of County Commissioners considered all factors relevant to the creation of a joint school district and when the interests of the persons petitioning for the district were not greatly injured by the refusal to create the district, the Board of County Commissioners did not abuse its discretion. Ballard v. Gregory, 166 M 110, 530 P2d 1163 (1975).

County Commissioners' Power: Statute did not give the Board of County Commissioners power to act arbitrarily or without a hearing or in disregard of the evidence of matters which, by the terms of the statute, it should consider. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Matters Considered to Make Transfer Determination: In determining whether certain territory should be transferred from one district to another, consideration can be given the financial condition of the districts, the means and convenience of communication therein, the number and places of residences of the children therein, their ages, other matters that show the change to be advisable or otherwise, and what is for the best interest of the territory proposed to be transferred. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Indian Territory: Since former statute contemplated that Indian lands be in a school district and that Indian children be counted in apportioning school money, it was the Superintendent's mandatory duty to attach territory on an Indian reservation to an adjacent district or districts, no petition on the part of anyone being required as a condition precedent. State ex rel. Lantz v. Morris, 113 M 193, 126 P2d 1104 (1942).

Annexation — De Facto Corporation by Estoppel: It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than 5 years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District, 75 M 154, 242 P 979 (1926), distinguished in Scilley v. Red Lodge-Rosebud Irrigation District, 83 M 282, 272 P 543 (1928).

Part 1
School Districts — General Provisions

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-101. Definition of elementary and high school districts.

Compiler's Comments

1997 Amendment: Chapter 219 deleted former (4) that read: "(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts is considered a high school district under this title and the trustees of the elementary district are the trustees of the high school district. An elementary district operating a high school may not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes"; in (4) substituted "a high school district that has not unified with an elementary district under 20-6-312" for "subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school are: (a) the high school district boundaries established by the county high school boundary commission; or

(b) if no boundaries have been established, the county boundaries, except for any territory located in a joint high school district"; deleted (6) that read: "(6) A county high school recognized as a high school district under the provisions of subsection (5)(b) may not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendment: In (2)(a) inserted second sentence stating when an elementary district is inactive; in (2)(b) inserted second sentence concerning high school district with attached elementary district; and made minor changes in style. Amendment effective July 1, 1991.

Case Notes

School District Defined: Section 1020, Rev. Codes 1921 (now repealed), defined a school district to be "the territory under the jurisdiction of a single board, designated as board of trustees". It was clear that the term "school district" had reference solely to the public school system. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Negligence Liability: In absence of statute imposing liability for negligence upon school districts or their trustees, they may not be held liable, although statute contains the general provision that a school district may sue and be sued. Perkins v. Trask, 95 M 1, 23 P2d 982 (1933), distinguished in Felton v. Great Falls, 118 M 586, 169 P2d 229 (1946). (See Title 2, ch. 9, part 1.)

Continuation in Existence Until Disorganized: A school district lawfully organized is a public corporation and remains such until disorganized in some manner recognized by law. State ex rel. School District v. Urton, 76 M 458, 248 P 369 (1926).

Annexation — De Facto Corporation by Estoppel: It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district and the district thus created was acquiesced in by all concerned for more than 5 years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District, 75 M 154, 242 P 979 (1926), distinguished in Scilley v. Red Lodge-Rosebud Irrigation District, 83 M 282, 272 P 543 (1928).

Necessary and Implied Powers: A school district is a public corporation but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication. Finley v. School District, 51 M 411, 153 P 1010 (1915). See also Jay v. School District, 24 M 219, 61 P 250 (1900); State ex rel. Cartersville Irrigation District v. McGraw, 74 M 164, 240 P 817 (1925); Day v. School District, 98 M 207, 38 P2d 595 (1934).

Powers of District Distinct From Municipal Corporation: A school district is a body corporate but does not possess the powers of local legislation and control that are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 M 132, 131 P 30 (1913).

20-6-103. Permanent record of district boundaries.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Limitation on Powers to Change Boundaries: There was no authority on the part of the County Superintendent or Board of County Commissioners, under the guise of defining boundaries, to reach out and include in an existing district noncontiguous tracts of land not included therein. The County Superintendent was authorized to make minor changes as necessary to make the boundaries definite and certain but not to change the boundaries of the existing district by attaching lands wherever situated in the county not a part of any school district. State ex rel. Lantz v. Morris, 113 M 187, 126 P2d 1101 (1942).

20-6-104. Moratorium on creation of new district — exceptions.

Compiler's Comments

2007 Amendment: Chapter 194 in (1) at beginning inserted exception clause; inserted (2) concerning elementary district creating high school district for expansion into K-12 district; in (3) at beginning substituted "The moratorium in subsection (1)" for "This section"; and made minor changes in style. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

1997 Amendment: Chapter 219 after "elementary district" substituted "or a new high school district" for "under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325". Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1995 Amendment: Chapter 285 in (1), at beginning, deleted "Following July 1, 1993"; and in (2), at end, substituted "a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704" for "a petition to create a new elementary or high school district that was filed prior to July 1, 1993". Amendment effective March 30, 1995.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.

Compiler's Comments

2009 Amendment: Chapter 305 in (1) near middle of exception clause after "(1)(b)" inserted "and (1)(c)"; inserted (1)(c) expanding ability of voters to petition for changes in school district boundaries in certain circumstances; in (2) at end following "years" inserted "unless the county superintendents have agreed in writing"; and made minor changes in style. Amendment effective April 18, 2009.

2007 Amendment: Chapter 284 in (1)(a) after "20-6-322" inserted "and subsection (1)(b) of this section"; inserted (1)(b) prohibiting presentation of petition to transfer territory to or from K-12 district unless both school boards and county superintendents have agreed in writing; in (2) at beginning deleted "On or before March 27, 2003"; and made minor changes in style. Amendment effective April 26, 2007.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Case Notes

No Right to Due Process for School District: A school district is a political subdivision of the state and therefore does not possess a due process right to challenge the constitutionality of a statute as applied to the school district. Poplar Elementary School District No. 9 v. Froid Elementary School District No. 65, 2020 MT 216, 401 Mont. 152, 471 P.3d 57.

Res Judicata and Collateral Estoppel — School District Precluded From Litigating Same Issues Twice: A school district who opposed a petition to transfer territory from its district to another district was precluded from raising the argument that 20-6-105 is unconstitutional on its face. Poplar Elementary School District No. 9 (Poplar) had challenged the constitutionality of 20-6-105 in an earlier case. In re Petition to Transfer Territory from Poplar Elementary School

District No. 9 to Froid Elementary School District No. 65, 2015 MT 278, 381 Mont. 145, 364 P.3d 1222, involved the same transfer of territory petition between the same parties, and the argument raised by Poplar in the current case was the same argument raised in the prior case. Under the doctrines of collateral estoppel and res judicata, Poplar was barred from raising the same issues in the current case. Poplar Elementary School District No. 9 v. Froid Elementary School District No. 65, 2020 MT 216, 401 Mont. 152, 471 P.3d 57.

Transfer Factors Properly Considered in Granting Petition to Transfer Territory: Poplar Elementary School District Number 9 (Poplar) appealed a decision granting a transfer of a portion of its territory to neighboring Froid Elementary School District Number 65 (Froid). Poplar asserted that the acting County Superintendent of Schools abused her discretion granting the transfer. The Supreme Court disagreed and upheld the transfer. The court determined that, while there was conflicting testimony about the potential tax burden created by the transfer, the preponderance of the evidence supported the acting superintendent's findings and conclusions regarding the minor increase in tax burden to Poplar taxpayers. Although 20-6-105(6)(c) does not specifically reference federal funding or guaranteed tax base aid, the economic viability factors are not exhaustive and the acting superintendent did not abuse her discretion by including Poplar's federal impact aid or guaranteed tax base funding in her analysis. Finally, the acting superintendent did not abuse her discretion by concluding the testimony presented regarding transportation issues favored granting the transfer petition. Poplar Elementary School District No. 9 v. Froid Elementary School District No. 65, 2020 MT 216, 401 Mont. 152, 471 P.3d 57.

Hutterite Center Declared Public School — Publicly Funded: The Hillcrest Hutterite Colony petitioned the Vaughn School District to open an educational facility, which the school district agreed to run as a public school. The facility received public funding and employed a full-time teacher and teacher's aide. After opening the facility, the Vaughn School District received a petition to transfer a specified portion of territory to the Power School District under 20-6-105. A three-member panel of superintendents dismissed the petition, finding that because the facility was a public school, its proximity to the transfer land would not comply with 20-6-105. The Power School District appealed the dismissal, arguing that the facility was not a public school because such a facility was not defined in statute. The District Court denied Power School District's petition. On appeal, the Supreme Court affirmed the District Court, holding that the school met the definition of public school because it was publicly funded and employed public employees. In re Petition to Transfer Territory from Vaughn Elementary School District No. 74 to Power Elementary School District No. 30, 2015 MT 313, 381 Mont. 345, 360 P.3d 1119.

Hearing on School Territory Transfer — Error for Superintendent to Allow Unsworn Testimony: A school board petitioned the County Superintendent of Schools to transfer property from a neighboring school district to its school district. The other school district opposed the transfer of property. A Deputy County Superintendent conducted a hearing on the matter, and numerous individuals testified. Although none of those who testified was under oath, the opposing school district did not object to the testimony. After the Superintendent approved the transfer, the opposing school district appealed to the District Court, which upheld the transfer. The opposing school district then appealed to the Supreme Court, which reversed, holding that even though the opposing school district had not objected at the hearing, the Deputy Superintendent had erred in allowing testimony of unsworn witnesses. In re Petition to Transfer Territory from Poplar Elementary School District No. 9 to Froid Elementary School District No. 65, 2015 MT 278, 381 Mont. 145, 364 P.3d 1222.

Petition to Transfer Territory Properly Denied: In a petition to transfer territory from one school district to another, the transfer was properly denied when it was not within the best and collective interests of all students, rather than a majority of students, in the transferring and receiving school districts and would create an increased burden on the taxpayers in the transferring school district. In re Petition to Transfer Territory from Dutton/Brady School District, 2011 MT 152, 361 Mont. 103, 259 P.3d 751.

20-6-110. Student construction project — disclosure — immunity.

Compiler's Comments

Effective Date: Section 4, Ch. 521, L. 2005, provided that this section is effective July 1, 2005.

Applicability: Section 5, Ch. 521, L. 2005, provided: "[This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] [20-6-110(1)] is made."

Part 2
Elementary School Districts

Part Case Notes

Provisions Jurisdictional: Section 1034, Rev. Codes 1929 (now repealed) requiring petition by a majority of resident freeholders in a school district as prerequisite to consolidation was jurisdictional and not merely directory. State ex rel. Wilson v. Musburger, 114 M 175, 133 P2d 586 (1943).

Abandonment of District: An order of a County Superintendent of Schools for the abandonment of a school district was not void for want of jurisdiction because of no attempt at compliance with section 970, Rev. Codes 1935 (now repealed), since section had nothing to do with the abandonment of a school district. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Effect of Appeal to County Commissioners — Opinion Divided: An appeal lay from order creating joint school district to the Boards of County Commissioners of counties affected, and the effect of the appeal was simply to suspend or delay the effective creation of the district and not to vacate the order of creation. If, on appeal, opinion was equally divided between the Boards of County Commissioners, one Board favoring creation and the other opposed thereto, the order of creation by the County School Superintendents stood affirmed. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Mode of Procedure Under Former Section: Section 1035, Rev. Codes 1935 (now repealed), did not fully or clearly provide the procedure of creating joint school districts, and it was duty of the officers empowered to create such districts to adopt any mode of procedure reasonably suitable to carry the legislative intention into effect. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Time for Posting Notices: Section 1034, Rev. Codes 1921 (now repealed), requiring County Superintendent upon receipt of consolidation petition of school districts "to cause a ten days posted notice" to be given of the election meant that the Superintendent has 10 days within which to act voluntarily and was not a limitation on the time within which the election notices may be posted. Swaim v. Redeen, 101 M 521, 55 P2d 1 (1936). Morgan was followed, with regard to the limited scope of review of a jury verdict and the test for substantial credible evidence, in Benson v. Diverse Computer Corp., 2004 MT 114, 321 M 140, 89 P3d 981 (2004).

Right of Appeal From Order of County Commissioners: Since an order of the Board of County Commissioners in the matter of setting aside an order of the County Superintendent of Schools creating a school district is final and no appeal lies to either school authorities or courts, equity will take jurisdiction of an action to right any wrong committed by the Board. Grant v. Michaels, 94 M 452, 23 P2d 266 (1933).

Petition Facts Jurisdictional: Requirements of the statute as to what a petition for the creation of a new school district shall contain are jurisdictional; they must be made to appear in the petition or proven as matter of evidence; omission to do either is fatal. School District v. Larson, 80 M 363, 260 P 1042 (1927).

Creation of New County — Transmission of Funds: Where school district territory was cut in two by creation of new county and the County Commissioners charged with the duty of dividing the new county into school districts left the boundaries of the district in question, the district ipso facto became a joint one. Therefore, refusal of the County Treasurer of the old county, in which a portion of the district lay, to transmit to the Treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes was wrongful. State ex rel. School District v. Urton, 76 M 458, 248 P 369 (1926).

Petition — Contents: A petition for the creation of a new school district is not a pleading, the contents of which are subject to critical legal analysis to determine its sufficiency. The petition is sufficient to confer jurisdiction upon the board of trustees if it clearly indicates the desire of a majority of the school electors residing in the proposed new district for segregation and describes its boundaries. State ex rel. Hall v. Peterson, 55 M 355, 177 P 245 (1918).

Part Attorney General's Opinions

Merger of Districts Without High School: Merger of two districts, neither containing a high school, is not an annexation for purposes of administration of social security but a consolidation requiring a referendum to provide social security coverage. 36 A.G. Op. 55 (1976).

20-6-201. Elementary district classification.

Compiler's Comments

1993 Amendment: Chapter 137 in (4), at end, substituted "in 20-3-302" for "filling trustee vacancies" and deleted former second and third sentences that read: "Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law"; and made minor changes in style.

Case Notes

One Governmental Subdivision Not Subject to Suit by Another: School districts sued the county for recovery of lost revenue and investment income on decreased reserve funds. The Supreme Court found that dismissal of the suit was proper because absent specific statutory or constitutional authority, one governmental subdivision may not sue another for damages. School District No. 55 v. Musselshell County, 245 M 525, 802 P2d 1252, 47 St. Rep. 2249 (1990).

20-6-202. Time limitation for boundary changes.

Compiler's Comments

2001 Amendment: Chapter 237 near end of introductory clause substituted "fourth Monday" for "second Monday"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Case Notes

Nunc Pro Tunc Order — Relation Back of Action: District Court, on application for Writ of Mandate, properly ordered a Superintendent to hear a petition to have unattached territory annexed to two adjoining districts erroneously denied by him, nunc pro tunc as of February 17th of the preceding year (when he should have acted), his action thereby relating back. State ex rel. Lantz v. Morris, 113 M 193, 126 P2d 1104 (1942).

20-6-209. Elementary district abandonment.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 138 in (1)(a) near beginning and in (2) in first sentence substituted "the minimum aggregate hours" for "180 days"; and in (1)(a) after "lesser" and in (2) near middle of first sentence after "lesser" substituted "number of aggregate hours" for "number of days". Amendment effective July 1, 2005.

Chapter 510 in (1) after "contiguous district" inserted "or districts" and after "county" inserted "or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in (1)(a) and (2), after "approved", substituted "by the board of trustees under the provisions of 20-9-806" for "by the county superintendent or the superintendent of public instruction under the provisions of 20-9-804"; and made minor changes in style. Amendment effective July 1, 1997.

Case Notes

Grounds for Review — Hardship Caused by Order: Contiguity is not the only requirement for attaching an abandoned district to another district. Thus District Court should have granted Writ of Review where manner of attachment allegedly required children to travel 14 miles farther each way to get to more overcrowded schools and worked an undue hardship on both parents and children. Potter v. Miller, 145 M 197, 399 P2d 994 (1965).

Abandonment of Nonoperating District Properly Ordered: County Superintendent of Schools properly ordered abandonment of elementary school district where school had not been maintained within said district during the last 3 consecutive school years and an average of four or less pupils had been furnished transportation to another elementary school. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Transportation of Pupils Upon Abandonment: On abandonment of an elementary school district no student eligible to attend high school is deprived of the opportunity of attending school. Transportation must be provided by the high school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Consolidation Law Inapplicable: Section relating to the consolidation of school districts had nothing to do with the abandonment of a school district and was not dependent upon any question of whether school was held within either or any of the districts in question. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Mandamus — Exhaustion of Administrative Remedy Required: Where plaintiff seeking a Writ of Mandate to annul an order of a County School Superintendent directing the abandonment of a school district had the right of appeal to the Superintendent of Public Instruction and, if unsuccessful there, could have had the matter passed upon by the District Court on Writ of Review but did not pursue such remedy, the Writ of Mandate was not available to him. State ex rel. McDonnell v. Musburger, 111 M 579, 111 P2d 1038 (1941).

Attorney General's Opinions

Abandoned Elementary School District Not Allowed to Petition to Reopen School: An elementary school district that has not operated a school for 3 consecutive school years is considered permanently abandoned pursuant to this section, and the abandoned district may not petition to reopen a school in the district pursuant to 20-6-502. However, this section also requires the County Superintendent to attach the territory of the abandoned district to another district, and nothing in that section precludes the revised district from petitioning to reopen a school. 49 A.G. Op. 14 (2002).

20-6-214. Boundary adjustments in elementary school districts.

Compiler's Comments

2003 Amendment: Chapter 151 inserted second sentence requiring that territory proposed for transfer conform to 26-6-105(1) and (2) and that the resolution contain information outlined in 20-6-105(3); near end of third sentence after "proceed" inserted "to a hearing" and at end substituted "20-6-105(6)" for "20-6-213"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Case Notes

Form of Ballots as Voiding Election: Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolidation" or "Against consolidation" as required by prior statute and testimony showed that in at least one instance a voter was confused by this heading and mismarked her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Abuse of Discretion Required to Be Shown: Where administrative official exercises his power within the limits fixed by statute, not arbitrarily or fraudulently but within his sound discretion, the courts may not interfere. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

Authority to Change Boundaries Delegated: Aside from statutory limitations, Legislature has delegated to the County Superintendent of Schools and to the Board of County Commissioners a full measure of discretionary power in creating and changing the boundaries of school districts. Read v. Stephens, 121 M 508, 193 P2d 626 (1948).

20-6-215. Review of boundaries by county superintendent.

Compiler's Comments

2003 Amendment: Chapter 151 in second sentence near middle after "changes" inserted "must include information that the territory proposed for transfer complies with the provisions of 20-6-105(1) through (3)" and at end substituted "20-6-105(6)" for "20-6-213"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

20-6-218. Relocation of elementary school within district.

Compiler's Comments

Effective Date: Section 3, Ch. 281, L. 1989, provided that this section is effective March 23, 1989.

Part 3

High School Districts

20-6-301. High school district classification.

Compiler's Comments

2005 Amendment: Chapter 91 inserted second sentence providing that if there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district in which the operating high school building that was first constructed is located; and made minor changes in style. Amendment effective March 24, 2005.

20-6-307. High school district abandonment.

Compiler's Comments

2005 Amendment: Chapter 510 at end of third sentence inserted "or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

20-6-308. Organization of joint high school district.

Compiler's Comments

2003 Amendment: Chapter 151 at end of second sentence after "district" inserted "and must be made pursuant to the procedures provided in 20-6-105"; deleted former (1) and (2) that read: "No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or

(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

20-6-312. County high school unification.

Compiler's Comments

1997 Amendment: Chapter 219 in (1) deleted former second sentence that read: "If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county" and deleted former last sentence that read: "The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303"; in (2)(b), after "20% of", deleted "the electors of the county or, if the county has been divided into high school districts"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

Case Notes

Consolidation of High Schools to Consolidate Courses: Under Ch. 47, Ex. L. 1933 (sections 1301.1 through 1301.6, R.C.M. 1935, since repealed), a school district maintaining only a 2-year high school course might properly be consolidated with a district maintaining a complete course. The act was constitutional. State ex rel. Berthot v. School District, 102 M 356, 58 P2d 264 (1936); Pierson v. Hendricksen, 98 M 244, 38 P2d 991 (1934).

Date of Consolidation — Statute Not Repealed: Section 1023, Rev. Codes 1921 (now repealed), declaring that no school district should be created or boundaries thereof changed between March 1 and July 1 of any calendar year was not impliedly repealed by act authorizing high school consolidation; action of Commissioners in consolidating high schools in March, thereby creating new district at least for high school purposes, was void. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Legislative Intent — Arbitrary Action Without Notice: Legislature never intended to confer upon the Board of County Commissioners the arbitrary power of consolidating county high schools without notice to anyone affected thereby and without making any provision for the disposition of the property of the discontinued school. Box v. Duncan, 98 M 216, 38 P2d 986 (1934).

Attorney General's Opinions

Board of County Commissioners — No Power to Consolidate High School Districts: The sole and mandatory procedure for consolidating two high school districts in a county is in 20-6-315 (now repealed). The Board of County Commissioners has no authority to consolidate districts. 41 A.G. Op. 5 (1985).

20-6-313. Transactions after approved county high school unification.

Compiler's Comments

1997 Amendment: Chapter 219 deleted former (1)(a) that read: "The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts" and deleted (1)(e) that read: "(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-6-314. Time limitations for boundary changes.

Compiler's Comments

2001 Amendment: Chapter 237 near end of introductory clause substituted "fourth Monday" for "second Monday". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1997 Amendments: Chapter 22 substituted "January" for "March"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 403 in introductory clause substituted "January" for "March"; and made minor changes in style. Amendment effective April 28, 1997.

Source: This section was modeled after 20-6-202, a similar provision relating to elementary school districts.

20-6-322. Boundary adjustments in high school districts.

Compiler's Comments

2003 Amendment: Chapter 151 inserted second sentence requiring that territory proposed for transfer conform to 26-6-105(1) and (2) and that the resolution contain information outlined in 20-6-105(3); near end of third sentence after "proceed" inserted "to a hearing" and at end substituted "20-6-105(6)" for "20-6-320"; and made minor changes in style. Amendment effective March 27, 2003.

Effective Date — Applicability: Section 9, Ch. 151, L. 2003, provided: "[This act] is effective on passage and approval [approved March 27, 2003] and applies to school territory transfer proceedings beginning on or after [the effective date of this act.]"

Effective Date: Section 7, Ch. 403, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 28, 1997.

20-6-326. Procedure for expansion of elementary school district into K-12 school district — trustee resolution.

Compiler's Comments

2021 Amendment: Chapter 551 in (5) after "enroll students in a" inserted "particular"; in (5)(a) near beginning after "the ANB" inserted "for any inaugural grades", near middle after "number resulting from dividing the" inserted "highest budgeted", near middle after "the elementary program" inserted "in the preceding 3 fiscal years", and at end inserted "for the first time in the ensuing school year". Amendment effective May 14, 2021.

2017 Amendment: Chapter 205 substituted current text concerning expansion of an elementary school district into a K-12 school district for former text (see 2017 Session Law for former text). Amendment effective July 1, 2017.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

Part 4
School District Reorganization

20-6-410. Tenure protected — hiring preference for employees.

Compiler's Comments

Effective Date: Section 3, Ch. 497, L. 1991, provided: "[This act] is effective July 1, 1991."

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election.

Compiler's Comments

2009 Amendment: Chapter 60 in first sentence near middle after "except when" deleted "elementary", after "or when" deleted "an elementary", and at end deleted "with the annexing district"; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 7, Ch. 60, L. 2009, provided: "[This act] applies to school district budgets for the school year beginning July 1, 2009."

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

20-6-412. Property tax valuation after district boundary change.

Compiler's Comments

1993 Amendment: Chapter 133 near middle substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Case Notes

Transfer of School District Property to Another District — Distribution of Flat Tax Proceeds: In 1989, the method of taxing coal gross proceeds with a property tax was replaced with a flat tax of 5% on production. The final clause of 15-23-703(4)(b) (1991) directs that the flat tax be distributed in accord with the property tax distribution scheme of 1990. The Decker school district was transferred from Lodge Grass to Hardin in 1991. Thus, under the 1990 property tax scheme, Hardin would have been entitled to property tax revenue from the Decker district after that territory was transferred to Hardin. When read in conjunction with this section, 15-23-703(4)(b) (1991) entitled Hardin to distribution of the Decker district coal tax revenue under the flat tax distribution scheme. Lodge Grass High School District v. Hamilton, 264 M 290, 871 P2d 890, 51 St. Rep. 282 (1994).

20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.

Compiler's Comments

1999 Amendment: Chapter 214 in (2) near end substituted "the taxable value of the territory" for "the number of children attending school and residing within the territory"; and made minor changes in style. Amendment effective March 30, 1999.

1989 Amendment: Inserted (3) relating to the handling of tuition debt; and in (4), after "bonded indebtedness", inserted "and tuition". Amendment effective July 1, 1989.

20-6-414. Cash disposition when districts consolidated.

Compiler's Comments

2009 Amendment: Chapter 60 in second sentence after "two or more" deleted "elementary"; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 7, Ch. 60, L. 2009, provided: "[This act] applies to school district budgets for the school year beginning July 1, 2009."

20-6-418. Surrender of records when district ceases to exist.

Case Notes

Division of Property Required: Upon creation of a new school district out of an old one a division of its property and funds should be made as of the date on which it was created, with each district to hold and own all permanent property, such as sites, schoolhouses, and furniture, situated within its boundaries. Weasel Head v. Armstrong, 99 M 364, 43 P2d 243 (1935).

20-6-421. Conditions for district annexation.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-422. District annexation.

Compiler's Comments

2009 Amendment: Chapter 60 in (8) in second sentence substituted "bonded indebtedness of the annexing district by the owners" for "between the owners", before "territory" deleted "annexed", and at end substituted "of the district to be annexed" for "and in the annexing district"; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 7, Ch. 60, L. 2009, provided: "[This act] applies to school district budgets for the school year beginning July 1, 2009."

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-423. District consolidation.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

20-6-424. Interim governance of consolidated district.

Compiler's Comments

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date: Section 15, Ch. 510, L. 2005, provided: "[This act] is effective July 1, 2005."

Part 5

Opening and Closing of Schools

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-501. Definition of various schools.

Compiler's Comments

1999 Amendment: Chapter 343 in third sentence in (1) after "high school" deleted "or an accredited 6-year high school"; deleted former (2)(c) that read: "(c) a 6-year high school is a school that comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 219 deleted (2)(e) that read: "(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1987 Amendment: Deleted (2)(f) that read: "(f) a postsecondary vocational-technical center established under the provisions of 20-7-311".

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

20-6-502. Opening or reopening of elementary school.

Compiler's Comments

2001 Amendment — Coordination: Section 21, Ch. 237, a coordination section, amended this section as follows: in (1) near beginning of first sentence substituted "two pupils" for "three pupils" and at end deleted "during the ensuing school fiscal year"; in (2) at end of second sentence substituted "two" for "five" and inserted third sentence pertaining to procedures to be used by trustees planning to open a school during the current school fiscal year; in (3) in first sentence after "commissioners" deleted "(budget board)", in second sentence near beginning substituted "board" for "budget board" and at end substituted "two" for "five", and in third sentence substituted "board" for "budget board"; in (4)(a) at beginning of first sentence substituted "board" for "budget board", inserted second sentence requiring trustees to apply to superintendent for approval to open or reopen a school by June 1 prior to the beginning of the school year in which the school is to be opened, in third sentence at end inserted "by the fourth Monday of June", and in fifth sentence at end substituted "by June 1" for "before the fourth Monday of June"; inserted (4)(b)(i) pertaining to the submission of the budget for a reopening school during a current school fiscal year to the superintendent of public instruction for approval or adjustment; inserted (4)(b)(ii) requiring a school to be classified as an isolated school prior to opening during a current school fiscal year; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

The amendments to this section made by sec. 1, Ch. 105, L. 2001, were replaced by sec. 21, Ch. 237, L. 2001, a coordination section.

The amendments to this section made by sec. 9, Ch. 237, L. 2001, were rendered void by sec. 21, Ch. 237, L. 2001, a coordination section.

Attorney General's Opinions

Abandoned Elementary School District Not Allowed to Petition to Reopen School: An elementary school district that has not operated a school for 3 consecutive school years is considered permanently abandoned pursuant to 20-6-209, and the abandoned district may not petition to reopen a school in the district pursuant to this section. However, 20-6-209 also requires the County Superintendent to attach the territory of the abandoned district to another district, and nothing in that section precludes the revised district from petitioning to reopen a school. 49 A.G. Op. 14 (2002).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

20-6-504. Opening of a junior high school.

Attorney General's Opinions

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.

Compiler's Comments

1993 Amendment: Chapter 633 in (1), in second sentence after "applied", deleted "under 20-9-320" and before "between" substituted "BASE funding program amount" for "foundation program schedule amount provided in 20-9-303(2)(a)". Amendment effective July 1, 1993.

1989 Special Session Amendment: Near end of second sentence of (1) substituted "the foundation program schedule amount provided in 20-9-303(2)(a)" for "the maximum-general-fund-budget-without-a-voted-levy"; and made minor changes in phraseology. Amendment effective July 1, 1990.

20-6-507. Opening of middle school.

Administrative Rules

ARM 10.30.201 Approval criteria.

20-6-508. Kindergarten through grade 12 system.

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

20-6-509. School closure.

Case Notes

Dissemination of Incomplete Document Used to Make Decision — Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

School District Advisory Group as Public or Governmental Body: A school district assembled a group of people to research and advise the district on the closure of schools. The Legislature has given a school district the power to close schools. Therefore, the advisory group assumed the identity of the district with respect to the closure question and performed a legislatively designated governmental function that served a clear public and governmental purpose, and the advisory group was a public or governmental body subject to Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Standing of Parent When Information on Proposed School Closure Requested by Another: School district parents, including Bryan, worked in concert to rebut a school closure recommendation, delegating duties among themselves. Schroeder, but not Bryan, requested information from the school authorities, which was not received. Bryan sued as a result of the school closure. That Bryan did not personally request the information did not prevent her from having standing to claim a violation of Art. II, sec. 9, Mont. Const. Bryan v. Yellowstone County Elementary School District No. 2, 2002 MT 264, 312 M 257, 60 P3d 381 (2002), distinguished in Fleenor v. Darby School District, 2006 MT 31, 331 M 124, 128 P3d 1048 (2006). Fleenor was overruled in Schoof v. Nesbit, 2014 MT 6, 373 Mont. 226, 316 P.3d 831, to the extent Fleenor requires a plaintiff in a right to know or right to participate case to allege an injury beyond failure to receive notice or to allege a personal stake in a particular governmental decision for purposes of establishing standing to pursue a claim.

Mandamus Not Applicable: The matter of maintaining or closing of any particular school or schools, being addressed to the discretion of the board, cannot be controlled by mandamus. State ex rel. Robinson v. Desonia, 67 M 201, 215 P 220 (1923).

Part 6
School Property

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 640, L. 2023. Amendment effective July 1, 2023.

2001 Amendment: Chapter 276 inserted (2) regarding acceptance of agreement by trustees as consideration for exchange of land; and made minor changes in style. Amendment effective April 20, 2001.

1993 Amendment: Chapter 633 substituted language in (1)(c) prohibiting trustees from taking action without voter approval unless cost of constructing, purchasing, or acquiring site or building is financed without exceeding maximum general fund budget amount for former (1)(c) that read: "(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the foundation program schedule amount provided in 20-9-303(2)(a), and in the case of a site purchase, the site has been approved under the provisions of 20-6-621". Amendment effective July 1, 1993.

1989 Special Session Amendment: In (1)(c) substituted "the foundation program schedule amount provided in 20-9-303(2)(a)" for "the maximum-general-fund-budget-without-a-vote amount prescribed in 20-9-316 through 20-9-321"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Case Notes

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in this section; (2) using insurance proceeds to credit the district building fund under 20-9-508; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under 20-6-621. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Attorney General's Opinions

Community College District Statutory Borrowing Authority: A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues. A district may also enter into a promissory note loan agreement with a private lender whereby the district would repay the loan from college revenues. A college district election is not required to approve these construction project financing arrangements; however, a city is required to hold a public hearing prior to issuing industrial development revenue bonds. A district is subject to the election requirement in this section when acquiring or constructing sites or buildings. 42 A.G. Op. 78 (1988).

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

20-6-604. Sale of property when resolution passed after hearing — appeal procedure.

Compiler's Comments

1997 Amendment: Chapter 144 in (3) substituted "shall provide notice of the resolution" for "shall cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted".

1991 Amendment: In (6), after "disposal", inserted "of real or personal property of the district" and after "fund, or" substituted "other appropriate fund" for "any combination of these three funds"; and made minor changes in style. Amendment effective April 23, 1991.

1987 Amendment: In (1), at beginning of second sentence (former beginning of (2)), substituted "If a decision to sell or dispose of property is made, the trustees shall adopt a resolution" for "The trustees of any district shall adopt a resolution stating their intention" and made minor change in phraseology; deleted remainder of former (2) that read: "When such a resolution is adopted, the trustees shall set the date of the trustees' meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for 5 days after the date of its adoption"; inserted (2) relating to date the resolution may become effective; inserted (3) relating to notice of the resolution; and in (4), near beginning of first sentence, substituted "prior to the effective date" for "within 5 days after the date".

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

20-6-605. Land acquired by conditional deed or at will or sufferance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-6-606. Letting contracts for school facilities.

Compiler's Comments

2005 Amendment: Chapter 574 at end inserted "or Title 18, chapter 2, part 5"; and made minor changes in style. Amendment effective October 1, 2005.

20-6-607. Leasing district property and disposition of any rentals.

Compiler's Comments

2005 Amendment: Chapter 462 in first sentence after "facilities" inserted "or personal property"; and made minor changes in style. Amendment effective April 28, 2005.

Case Notes

School District Not Considered Person Engaged in Business Subject to Liability Under Montana Unfair Trade Practices Act: The Great Falls school district entered exclusive agreements with Coke and Pepsi to provide soft drinks in school facilities in exchange for $500,000 over a 10-year period. Plaintiff, which had supplied soft drinks to the district for almost 20 years, sued the school district for violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973. The school district contended that it was not subject to suit under the Act because by definition, it was not a person engaged in business, and the Supreme Court agreed. The plain meaning of person in 30-14-202 does not include a school district. To conclude otherwise would infringe on a school district's statutory power to raise revenue for funding education. A school district is also not a business as defined in the Act because a business is a person, which does not include a school district. Further, in accordance with the purpose set out in 30-14-201, the Act was created to apply to competitive businesses, not government, which generally acts as a market regulator and not a competitor. Mont. Vending, Inc. v. Coca-Cola Bottling Co. of Mont., 2003 MT 282, 318 M 1, 78 P3d 499 (2003).

Attorney General's Opinions

Rental of School Facilities by Religious Groups: Religious groups can use public school facilities on an occasional and short-term basis during nonschool hours upon securing permission from the school district trustees and paying a fair rental. 36 A.G. Op. 65 (1976).

20-6-608. Authority and duty of trustees to insure district property.

Compiler's Comments

1999 Amendment: Chapter 343 inserted (2) allowing trustees to deposit proceeds from insurance settlement on real or personal property into appropriate fund; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Special Session Amendment: In first sentence, after "shall", deleted "have the authority and it shall be their duty to"; and inserted last sentence including insurance costs in the general fund budget. Amendment effective July 1, 1990.

Attorney General's Opinions

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

20-6-609. Trustees' authority to acquire property by lease-purchase agreement.

Compiler's Comments

2015 Amendment: Chapter 66 substituted "up to 7 years for personal property and for up to 15 years for real property" for "3 years". Amendment effective February 27, 2015.

1997 Amendment: Chapter 22 in first sentence, after "lease", inserted "for 3 years" and inserted second sentence requiring compliance with 20-6-625. Amendment effective July 1, 1997.

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

20-6-621. Selection of school sites — approval election.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 640, L. 2023. Amendment effective July 1, 2023.

2001 Amendment: Chapter 483 at end of (3)(c) substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1999 Amendment: Chapter 18 deleted (4) that provided: "(4) The board of land commissioners may sell, at the appraised value, or lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than:

(a) 25 acres to be used as a site in the district for an elementary school; or

(b) 50 acres to be used as a site in the district for a high school." Amendment effective October 1, 1999.

1997 Amendment: Chapter 79 at beginning of (1)(a) inserted exception clause; at beginning of (1)(b) deleted "except"; in (4)(a) increased allowable acreage for sale or lease from 10 acres to 25 acres, before "site" deleted "school", and after "district" inserted "for an elementary school"; inserted (4)(b) authorizing sale or lease of 50 acres for high school site; and made minor changes in style. Amendment effective March 17, 1997.

1995 Amendments — Composite Section: Chapter 418 in (3)(b) substituted "department of public health" for "department of health and environmental sciences of the state of Montana"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (3)(b) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1985 Amendment: In (3)(c) changed "department of administration" to "department of commerce".

1981 Amendment: Substituted "department" for "board" in (3)(b).

Administrative Rules

Title 37, chapter 111, subchapter 8, ARM Schools.

Case Notes

Repealed Statute Regarding Sale or Lease of School Trust Lands to School Districts — No Justiciable Controversy or Action Upon Which Relief Could Be Granted: Former subsection (4) of this section allowed the Board of Land Commissioners to sell, for appraised value, or to lease, for $1 a year, school trust lands to a school district. The Department of Natural Resources and Conservation stipulated that the provision was unconstitutional because it made state lands available for less than full market value. The District Court agreed, noting that leasing school trust lands to some school districts would favor only some of the beneficiaries and not the school trust as a whole. The Legislature concurred and repealed the subsection in 1999. Plaintiff subsequently sued the Department, the Board, and the state, contending that the Department unlawfully determined that the provision was unconstitutional and failed to defend the constitutionality of the provision. The state moved to dismiss the complaint on grounds that no justiciable controversy existed and that the complaint alleged no cause of action upon which relief could be granted. The District Court granted summary judgment for the state, and on appeal, the Supreme Court affirmed. Any determination that the Department exceeded its authority would have had no bearing on the existing rights or interests at issue, and a judgment granting the relief sought would not have effectively operated to resolve any issue in the case. Thus, there was no justiciable case or controversy, and the claim was properly dismissed. Advocates for Educ., Inc. v. Dept. of Natural Resources and Conservation, 2004 MT 230, 322 M 429, 97 P3d 553 (2004), following Mont.-Dak. Util. Co. v. Billings, 2003 MT 332, 318 M 862, 80 P3d 1247 (2003).

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in 20-6-603; (2) using insurance proceeds to credit the district building fund under 20-9-508; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under this section. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Contiguity of Land Separated by Public Road: The Supreme Court held that a site approval election was unnecessary for the purchase of a tract of land that would border a present school site for 800 feet but for a county road running between the parcels. The parcels were found to be contiguous within the meaning of this section. The fact that each parcel would be owned by a different school district did not necessitate an election because the purchase met the intent of this section by promoting the building of schools within the same general area of a city, thereby easing transportation and administration procedures. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

Attorney General's Opinions

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

20-6-622. Review and approval of school building plans and specifications.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near end after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) changed "department of administration" to "department of commerce".

1983 Amendment: In (1), after "No school building" deleted "in the state", after "privately owned or operated" inserted "in which students are housed or instructed" and substituted "may" for "shall", after "remodeled" deleted "or repaired", and inserted last clause relating to building codes; in (2), after "plans and specifications" inserted "required in subsection (1)"; at end of (2), substituted "applicable building code" for "rules promulgated by the department"; and in (3), substituted "required in subsection (1)" for "submitted to the department of administration".

20-6-624. School building plans and specifications approval before payment.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in (2) substituted "board of public health" for "state board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "state board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Pursuant to sec. 3, Ch. 546, the codifier has not codified the Ch. 418 amendment in (2).

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Administrative Rules

Title 37, chapter 111, subchapter 8, ARM Schools.

20-6-625. Authorization to lease buildings or land for school purposes.

Compiler's Comments

2015 Amendment: Chapter 66 in second sentence near beginning substituted "15 years" for "3 years" and in second sentence near end substituted "approved by the qualified electors, but not exceeding 99 years" for "of not more than 99 years"; and made minor changes in style. Amendment effective February 27, 2015.

Attorney General's Opinions

School District Power Regarding Property — Applicability to Community College Trustees: The authority to lease and/or lease/purchase property for school purposes and to sell unused school property granted by 20-6-603, 20-6-604, 20-6-609, and 20-6-625 is extended to a community college board of trustees under 20-15-102. 41 A.G. Op. 72 (1986).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Short-Term Lease — Voter Approval Unnecessary: School district trustees may lease, for a term of 3 years or less, a mobile building to be used as a school and may relocate it on land already owned by the district without voter approval. 37 A.G. Op. 97 (1977).

20-6-631. When contracts for architectural services required.

Compiler's Comments

1997 Amendment: Chapter 153 at beginning inserted reference to trustees of school district; after "determine that the" deleted "estimated cost of any"; increased dollar amount of estimate requiring architectural services from $50,000 to $150,000; inserted reference to Title 37, chapter 65; and made minor changes in style. Amendment effective March 25, 1997.

20-6-633. Hiring for architectural services authorized.

Compiler's Comments

1997 Amendment: Chapter 153 in first sentence, at beginning, substituted language concerning trustees' determination that architectural services are necessary for "After selecting a firm" and substituted language authorizing trustees to hire licensed architect for "shall negotiate with the selected firm a fair and reasonable fee"; in last sentence, in two places, substituted "architect" for "firm"; and made minor changes in style. Amendment effective March 25, 1997.

20-6-640. Long-term loans.

Compiler's Comments

Effective Date: Section 2, Ch. 585, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 23, 1991.

Part 7
K-12 School Districts

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

1991 Statement of Intent: The statement of intent attached to Ch. 555, L. 1991, provided: "A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules to prescribe procedures for budgeting and for revenue distribution for K-12 school districts formed by the attachment of an elementary district to a high school district. It is the intent of the legislature to encourage the formation of K-12 school districts whenever the trustees and the electorate of districts with the same boundaries choose to do so. In order to facilitate this action, it may be necessary for the superintendent of public instruction to address certain unforeseen circumstances through the rulemaking process."

Part Administrative Rules

Title 10, chapter 30, subchapter 4, ARM K-12 districts.

20-6-701. K-12 school districts required — definition — procedure for creation — exception.

Compiler's Comments

1997 Amendments: Chapter 22 in (1), after exception clause, deleted "by the school fiscal year beginning July 1, 1995"; in two places in (4) changed reference to Public Law 81-874 funding to reference to impact aid funding; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 95 in (1), after exception clause, deleted "by the school fiscal year beginning July 1, 1995"; and in two places in (4) substituted "federal funding" for "Public Law 81-874 funding", after "creation" inserted "or continuation", and after "K-12 district" substituted "has resulted in or will result" for "would result". Amendment effective March 19, 1997.

1993 Amendment: Chapter 194 at beginning of (1) inserted "Except as provided in subsection (4), by the school fiscal year beginning July 1, 1995" and made attachment mandatory rather than permissive; in (3)(a) substituted "The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts" for language concerning providing for passage of trustee resolutions requesting County Superintendent to order an election or allowing not less than 20% of electors of an elementary and high school district to petition for election to consider attachment proposition; in (3)(b) substituted requirement that County Superintendent order attachment of an elementary school district to a high school district within 10 days of receipt of resolution for requirement that County Superintendent within 10 days of receipt of a resolution or valid petition order district trustees to call an attachment election in conjunction with a regular school election; deleted (3)(b)(ii) that required that attachment proposition include assumption of the elementary school district's bonded indebtedness by the high school district; deleted (3)(c) that required that districts conduct attachment election in manner prescribed for school elections; deleted (3)(d) that required that County Superintendent, after receiving certificate of election from district trustees, determine if the attachment proposition has been approved by the districts and, if so, within 10 days of receipt of the certificate order attachment of the elementary school district to the high school district; and inserted (4) excluding application of this section to school districts receiving Public Law 81-874 funding if creation of K-12 district would result in loss of Public Law 81-874 funding. Amendment effective July 1, 1993.

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Sufficiency of Single Petition to Transfer Territory From One K-12 District to Another K-12 District: Residents of Upper Nine Mile Valley petitioned the Missoula County School Superintendent to be transferred from Alberton K-12 district to Frenchtown K-12 district. The superintendent determined that the petition was valid and scheduled a hearing, but prior to the hearing, the Alberton Board of Trustees requested that the hearing be canceled because two separate petitions were not filed—one for elementary students and one for high school students.

The superintendent denied the request, and on appeal to District Court, summary judgment was granted in favor of the superintendent. The Alberton Board of Trustees then appealed to the Supreme Court, asserting that two petitions were required under either 20-6-213 or 20-6-320 (both now repealed) in order to transfer both elementary and high school territories from one K-12 district to another K-12 district. Conversely, the superintendent maintained that because the request was for the transfer of combined elementary and high school territory from one K-12 district, as defined in this section, to another, only one petition was necessary. In order to give meaning to all the applicable statutes, the Supreme Court concluded that a K-12 school district is a high school district upon which an elementary district has been attached and remains a high school district for purposes of the governing statutes. Therefore, 20-6-320 (now repealed) applied to the petition in question because it concerned transfer of territory from one high school district to another. The question then became not whether a formal, second petition was required to address the elementary district, but whether under 20-6-320(8) (now repealed) the petition in question was "accompanied" by an elementary "petition" that satisfied the corollary requirements of 20-6-213 (now repealed). The Alberton trustees argued that a distinct, second elementary petition, also signed by a majority of registered electors, was required or else the entire transfer process was invalid. The Supreme Court refused to abide by such a strict, formalistic approach, noting that the law respects form less than substance. The petition clearly identified that the territory was K-12, meaning that any attached elementary territory would also be transferred, thus the petition to transfer high school territory was unquestionably "accompanied" by a petition to transfer elementary territory as well, and it was not fatal that both petitions appeared on a single sheet of paper. The court held that it would be unreasonable and far too formalistic to require that two separate petitions be submitted when one petition, clearly identifying the intent to transfer both high school and elementary territory, served the same function. The District Court was affirmed. McKirdy v. Vielleux, 2000 MT 264, 302 M 18, 19 P3d 207, 57 St. Rep. 1101 (2000).

20-6-702. Funding for K-12 school districts.

Compiler's Comments

2017 Amendment: Chapter 404 inserted (3)(d) regarding calculation of levy authority limits and the state school major maintenance aid for a K-12 school district; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

1997 Amendment: Chapter 22 in (3)(b), in two places after "program", deleted "amount", near beginning, after "tax", inserted "for elementary equalization", and near middle, after "basic", substituted "county tax for high school equalization" for "special tax"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendments: Chapter 563 near middle of (6) substituted "20-5-320 through 20-5-324" for "chapter 5, part 3" and substituted "20-5-323" for "20-5-305 and 20-5-312".

Chapter 633 in (3)(a) substituted "total per-ANB entitlements" for "foundation program schedule payments"; throughout (3)(b) and (3)(c) substituted "BASE funding" for "foundation"; and in (3)(c), near beginning of first sentence, substituted "BASE funding program purposes" for "the permissive levy amount" and after "using" substituted "each district's guaranteed tax base ratio" for "the mill value per elementary ANB and the mill value per high school ANB" and in second sentence substituted "BASE budget levy" for "permissive amount". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Failure of Legislature to Define Quality Education — Inability of Court to Determine That Education System Adequately Funded: The District Court held that the state system of funding public education was unconstitutional under Art. X, sec. 1(3), Mont. Const., but did not violate the equal protection clause in Art. II, sec. 4, Mont. Const. On appeal, the Supreme Court held that because the Legislature has not defined what "quality" means, it was not possible to conclude that the current funding system was designed to provide a quality education. Although deferring to the Legislature to provide a definition of a quality education, given the unchallenged findings of the District Court regarding Art. X, sec. 1(3), Mont. Const., the Supreme Court nevertheless concluded that whatever definition the Legislature devises, the current system was not sufficiently grounded in principles of quality to be considered constitutional. Because the unconstitutionality of the present funding system was affirmed, the Supreme Court held that the District Court need not have addressed the equal protection issue, so the District Court was directed to vacate its conclusion that the present system did not violate equal protection. Columbia Falls Elementary School District No. 6 v. St., 2005 MT 69, 326 M 304, 109 P3d 257 (2005). In Stroebe v. St., 2006 MT 19, 331 M 23, 127 P3d 1051 (2006), plaintiffs also challenged the constitutionality of Montana's system of funding public schools. The District Court granted the state's motion for summary dismissal on grounds that the equitable funding challenge was not currently justiciable. On appeal, the Supreme Court noted that plaintiffs' issues had been previously addressed in Columbia Falls, id., and that the circumstances under which plaintiffs brought the present case had sufficiently changed under Columbia Falls, so that rendering another decision while the funding system was undergoing legislative reform would not only interfere with the Columbia Falls decision but would decide a question that was essentially moot. The equitable funding challenge was therefore not currently justiciable, and the appeal was dismissed.

20-6-703. Transitions after formation of K-12 school district.

Compiler's Comments

1997 Amendment: Chapter 403 in (1)(a), near beginning, substituted "county superintendent" for "board of county commissioners" and inserted "order the trustees to". Amendment effective April 28, 1997.

1993 Special Session Amendment: Chapter 36 deleted (4) that read: "(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408." Amendment effective July 1, 1994.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendment: Chapter 633 in (3), at end, substituted "20-9-308" for "20-9-315". Amendment effective July 1, 1993.

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

20-6-704. Dissolution of K-12 school district.

Compiler's Comments

2009 Amendment: Chapter 60 in (5)(a) near beginning before "district" deleted "elementary". Amendment effective July 1, 2009.

Applicability: Section 7, Ch. 60, L. 2009, provided: "[This act] applies to school district budgets for the school year beginning July 1, 2009."

2005 Amendment: Chapter 510 in (1) near end after "program with" substituted "a contiguous" for "an adjacent" and at end after "provisions of" substituted "20-6-422 or 20-6-423" for "20-6-203 through 20-6-208 or 20-6-315 through 20-6-319"; in (3) near beginning of first sentence after "consolidated with" substituted "a contiguous" for "an adjacent"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 95 at beginning of (1) inserted exception clause, after "section" inserted "the trustees of a district shall submit for approval to", and after "electors of a K-12 district" deleted "shall approve"; inserted (2) providing procedures for the dissolution of a K-12 district if trustees determine that creation or continuation of the district has resulted or will result in the loss of federal funding; in first sentence in (3) inserted reference to subsection (2) and in second sentence, after "districts", substituted requirement that resolution or petition contain a description of manner of apportionment of property, funds, and financial obligations for former language that read: "and the resolution or petition does not contain a description of the apportionment of funds and property, the provisions of subsection (4)(c) must be used to determine the disposition of property and funds"; in (5), after "dissolved", deleted "for purposes of annexing or consolidating the high school or elementary program with one or more other districts"; deleted former (5)(a) that read: "The trustees of the K-12 district are the trustees of the district whose territory is not consolidated or annexed to one or more adjacent districts upon dissolution of the K-12 district"; in (5)(a), before "district", inserted "elementary" and after the second "K-12 district" substituted language concerning apportionment between the elementary and high school programs of obligations not identified in subsection (3) for "including tuition"; deleted former (5)(c) that read: "(c) Unless otherwise provided for in the proposition for dissolution of the K-12 district, all the tangible property, real and personal, of the K-12 district and all cash and receivables remaining to the credit of the K-12 district after providing for payment of outstanding debts, except bonded indebtedness, become the property of the district whose territory is not annexed or consolidated with one or more adjacent districts"; and made minor changes in style. Amendment effective March 19, 1997.

Effective Date: Section 4, Ch. 285, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 30, 1995.

Administrative Rules

ARM 10.30.415 Dissolution of K-12 districts.

20-6-711. Tenure protected — hiring preference for noncertified employees.

Compiler's Comments

Effective Date: Section 13, Ch. 555, L. 1991, provided: "[This act] is effective July 1, 1991."

Part 8
Public Charter Schools

Part Compiler's Comments

Effective Date: Section 17, Ch. 510, L. 2023, provided: "[This act] is effective July 1, 2023."

Transition: Section 15, Ch. 510, L. 2023, provided: "The legislature intends that the board of public education prepare to solicit public charter school proposals so that public charter schools may be operational for the school year beginning July 1, 2024."

20-6-805. Public charter school proposal process.

Administrative Rules

ARM 10.55.608 Charter school application.

CHAPTER 7
SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

Part 1
Accreditation and Curriculum

Part Administrative Rules

Title 10, chapter 54, ARM Content standards and performance descriptors.

Title 10, chapter 55, ARM Standards of accreditation.

20-7-101. Accreditation standards — process for adoption.

Compiler's Comments

2023 Amendments — Coordination: See 2023 Session Law for amendment made by sec. 1, Ch. 81, L. 2023. Amendment effective March 23, 2023.

The amendment to this section made by sec. 2, Ch. 81, L. 2023, was rendered void by sec. 3, Ch. 81, L. 2023, a coordination section.

2021 Amendment: See 2021 Session Law for amendment made by sec. 48, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2017 Code Commissioner Correction: Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (3) and (4) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

2015 Amendment: Chapter 379 in (1) inserted second and third sentences concerning requirement for superintendent to develop recommendations including economic impact statement; inserted (2) concerning process for developing accreditation standards and establishment of a rulemaking committee; in (3) near beginning inserted "including the economic impact statement required under subsection (1)", at end inserted "at least 1 month in advance of a scheduled committee meeting", and deleted last two sentences that read: "The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget"; in (4) substituted "Unless the expenditures by school districts required under the proposal are determined by the education and local government interim committee to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs" for "If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact" and deleted last sentence that read: "A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program"; and made minor changes in style. Amendment effective April 30, 2015.

2005 Amendment: Chapter 208 inserted (2) requiring board, prior to adoption or amendment of accreditation standard, to submit proposal to interim committee, requiring committee to request fiscal analysis by legislative fiscal division, and requiring fiscal division to provide analysis to committee and office of budget and program planning for use in preparation of executive budget; inserted (3) prohibiting board from implementing standard with substantial fiscal impact until July 1 following next regular legislative session, requiring board to request that same legislature fund implementation of proposed standard, and providing that substantial fiscal impact is amount that cannot be readily absorbed in existing school district program budget; and made minor changes in style. Amendment effective April 7, 2005.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

1983 Amendment: Inserted (2) relating to records retention.

Administrative Rules

Title 10, chapter 53, ARM Content standards.
Title 10, chapter 54, ARM Content standards and performance descriptors.
Title 10, chapter 55, ARM Standards of accreditation.

20-7-102. Accreditation of schools.

Compiler's Comments

2017 Purported Amendments: Section 10, Ch. 275, L. 2017, and section 2, Ch. 336, L. 2017, purported to amend this section by changing a subsection reference to 20-9-306. Section 12, Ch. 275, L. 2017, and section 5, Ch. 336, L. 2017, amended 20-9-306 so that the changes to the subsection reference were unnecessary and the section remains unchanged.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2013 Amendment: Chapter 400 in (4) substituted "20-9-306(15)(c)(ii)" for "20-9-306(14)(c)(ii)". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Purported Amendment: Section 5, Ch. 418, L. 2011, purported to amend this section by changing a subsection reference to 20-9-306. Section 26, Ch. 418, L. 2011, a coordination section, amended 20-9-306 so that the change to the subsection reference was unnecessary and the section remains unchanged.

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in (4) at end substituted "20-9-306(14)(c)(ii)" for "20-9-306(11)(c)(ii)"; and made minor changes in style. Amendment effective July 1, 2006.

(Former July 1, 2007, version) In (4) at end substituted "20-9-306(14)(c)(ii)" for "20-9-306(10)(c)(ii)"; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2005 Amendment: (Temporary version) Chapter 462 in (4) at end substituted "20-9-306(11)(c)(ii)" for "20-9-306(10)(c)(i)"; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

(Version effective July 1, 2007) In (4) at end substituted "20-9-306(10)(c)(ii)" for "20-9-306(10)(c)(i)"; and made minor changes in style. Amendment effective July 1, 2007.

2001 Amendment: Chapter 73 at beginning of first sentence of (1) deleted "Every school year" and after "junior high school" inserted "7th and 8th grades funded at high school rates" and in third sentence after "school year" inserted "or years" and at end inserted "by the superintendent of public instruction"; inserted (2) allowing multiyear accreditation of schools that are in compliance with 20-4-101; inserted (4) defining 7th and 8th grades funded at high school rates; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: In (2), substituted two references to nonpublic schools for two references to nonpublic high schools.

Administrative Rules

Title 10, chapter 55, subchapter 6, ARM General provisions.

Title 10, chapter 55, subchapter 7, ARM School leadership.

Title 10, chapter 55, subchapter 8, ARM Educational opportunity.

Title 10, chapter 55, subchapter 9, ARM Academic requirements.

ARM 10.55.908 and 10.55.909 School facilities and student records.

Title 10, chapter 55, subchapter 10 through subchapter 23, ARM School program area standards.

Case Notes

Mandamus Unavailable to Accredit Three-Year High School: Granting Writ of Mandate to compel State Board of Education to accredit school as 3-year high school before obtaining approval of Superintendent of Public Instruction was an invasion of Board's discretionary power. State ex rel. School District v. Cooney, 102 M 521, 59 P2d 48 (1936).

20-7-103. Montana pathway to excellence program — purpose.

Compiler's Comments

Erroneous Codification Instruction: Section 25, Ch. 418, L. 2011, provided that this section was to be codified as an integral part of Title 20, chapter 9. The Code Commissioner has codified this section in Title 20, chapter 7, to more closely reflect the subject matter.

Effective Date — Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section is effective on passage and approval and applies to school fiscal year 2012. Chapter 418, L. 2011, was enacted into law without the Governor's signature on May 13, 2011.

20-7-104. Transparency and public availability of public school performance data — reporting — availability for timely use to improve instruction.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 4, Ch. 747, L. 2023. Amendment effective July 1, 2023.

The amendment to this section made by sec. 1, Ch. 417, L. 2023, was rendered void by sec. 8, Ch. 747, L. 2023, a coordination section.

Transition: Section 6, Ch. 747, L. 2023, provided: "Data sharing agreements between the office of public instruction, the department of labor and industry, and the commissioner of higher education made under the authority of 20-7-104(9) prior to July 1, 2023, remain in effect until the earlier of the expiration date of the agreement or the adoption by the education and workforce data governing board of policies governing the linkage and sharing of education and workforce data relevant to the agreement. The legislature intends that the policies of the education and workforce data governing board replace the need for ad hoc data sharing agreements to the greatest extent possible."

2019 Amendments — Composite Section: Chapter 12 in (9)(a) in first sentence after "subsection (1)(b)" inserted exception clause reference to (9)(c) and at beginning of last sentence inserted exception clause; inserted (9)(c) concerning the release of personally identifiable information to postsecondary education institutions, testing agencies, or scholarship organizations to increase access to higher education opportunities for students; and made minor changes in style. Amendment effective February 19, 2019.

Chapter 196 in (7)(f) substituted “K-12 data with higher education and workforce data” for “K-12 and higher education data”; in (9)(a) in first sentence near beginning after “subsection (1)(b)” and at beginning of second sentence inserted exception clause; inserted (9)(b) concerning the release of student-level information to the commissioner of higher education and the department of labor and industry; and made minor changes in style. Amendment effective April 18, 2019.

2013 Amendment: Chapter 400 in (1) substituted “office of public instruction’s statewide data system must, at a minimum” for “office of public instruction shall develop a publicly available data system that”; inserted (1)(a) requiring data entry and intuitive reporting options and prioritizing collaborative support; in (1)(b) substituted current language for “displays an educational data profile for each school district”; in (2) at beginning inserted “Subject to subsection (1)(b)”; in (6), (6)(a), and (6)(b) substituted current language for “The superintendent of public instruction shall continually enhance the statewide data system to support the collection of data from schools, implement a data collection plan to reduce redundant data requests”; in (6)(d) at beginning deleted “promote” and at end deleted “Actionable data analysis must be produced to promote academic improvement”; inserted (9) regarding acceptable and unacceptable uses of personally identifiable information; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

Erroneous Codification Instruction: Section 25, Ch. 418, L. 2011, provided that this section was to be codified as an integral part of Title 20, chapter 9. The Code Commissioner has codified this section in Title 20, chapter 7, to more closely reflect the subject matter.

Effective Date — Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section is effective on passage and approval and applies to school fiscal year 2012. Chapter 418, L. 2011, was enacted into law without the Governor’s signature on May 13, 2011.

20-7-105. K-12 data task force.

Compiler’s Comments

Effective Date — Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years. Approved May 6, 2013.

20-7-106. Tribal computer programming boost scholarship program.

Compiler’s Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 606, L. 2023. Amendment effective May 18, 2023.

Effective Date: Section 5, Ch. 416, L. 2021, provided: “[This act] is effective on passage and approval.” Approved May 7, 2021.

Termination: Section 6, Ch. 416, L. 2021, provided: “[This act] terminates June 30, 2025.”

20-7-111. Instruction in public schools.

Compiler’s Comments

2021 Amendment: Chapter 239 in (1) at beginning inserted exception clause; inserted (2) concerning required instruction regarding the United States constitution and the pledge of allegiance; and made minor changes in style. Amendment effective July 1, 2021.

Administrative Rules

Title 10, chapter 55, subchapter 7, ARM School leadership.

20-7-112. Sectarian publications prohibited — religious materials allowed — prayer permitted.

Compiler’s Comments

2023 Amendments — Composite Section: Section 1, Ch. 280, L. 2023, in (1)(a) deleted former last sentence that read: “However, any teacher, principal, or superintendent may open the school day with a prayer”; inserted (1)(b)(ii) regarding reading religious material during free time; inserted (1)(c) authorizing selection of religious material to meet self-selected reading requirements; inserted (2) regarding prayer in school, on school grounds, and at school-sponsored events; and made minor changes in style. Amendment effective July 1, 2023.

Section 1, Ch. 281, L. 2023, inserted (1)(b)(iii) authorizing student conversations about religion, religious beliefs, or religious practices with another student or teacher; and made minor changes in style. Amendment effective April 26, 2023.

1989 Amendment: In first sentence, before “distributed”, deleted “used or” and at end of sentence deleted “or be included in the school library”; at beginning of second sentence substituted

"Instruction may not be given advocating" for "Instruction shall not be given in"; inserted last sentence relating to including the Bible and other religious material in a library; and made minor changes in phraseology. Amendment effective March 29, 1989.

Severability: Section 2, Ch. 367, L. 1989, was a severability clause.

Attorney General's Opinions

Public Character of School Not Altered by Religion of Student Body: An elementary school district composed entirely of property belonging to North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of 1972 Montana Constitution provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school. 36 A.G. Op. 5 (1975).

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

20-7-116. Supervised correspondence study.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-7-117. Kindergarten and preschool programs.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 6, Ch. 608, L. 2023. Amendment effective July 1, 2024.

The amendment to this section made by sec. 6, Ch. 745, L. 2023, was rendered void by sec. 8, Ch. 745, L. 2023, a coordination section.

Transition: Section 9, Ch. 608, L. 2023, provided: "(1) The board of public education, the office of public instruction, and the boards of trustees of school districts shall collaborate and prepare for the full implementation of [sections 1 through 4] [Title 20, chapter 7, part 18] in the school year beginning July 1, 2024. The legislature intends that the evaluation methodology be available for administration in the spring of 2024 to determine child eligibility.

(2) The legislature intends that school districts operating multiyear kindergarten programs in the school year beginning July 1, 2023, plan for the transition to early literacy targeted intervention programs under [sections 1 through 4] [Title 20, chapter 7, part 18] for the school year beginning July 1, 2024."

2007 Special Session Amendment: Chapter 1 in (1) in first sentence after "or make available a" inserted "kindergarten", in second sentence near beginning inserted "kindergarten" and after "program" inserted reference to designation by trustees as either half-time or full-time program, and inserted third and fourth sentences requiring kindergarten program to meet minimum aggregate hour requirements and allowing half-time enrollment of child in full-time program; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

1991 Amendment: In first sentence of (1), near beginning, substituted "shall establish or make available" for "may establish"; and made minor changes in style. Amendment effective July 1, 1992.

1987 Amendment: In (1), in two places, changed "has been enrolled" to "have been enrolled".

Administrative Rules

ARM 10.20.104A Initial year of operation of a full-time kindergarten program — ANB calculation.

Title 10, chapter 63, ARM Early childhood education.

20-7-118. Remote instruction.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 580, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 580, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2021 Amendment: Chapter 247 inserted (1)(d) regarding attending school in the nearest district offering offsite instruction in an equivalent course and approval of the trustees of the district providing the offsite instruction"; and made minor changes in style. Amendment effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

Effective Date — Applicability: Section 4, Ch. 570, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school fiscal years beginning on or after July 1, 2005".

20-7-119. Administration of United States civics test.

Compiler's Comments

Effective Date — Applicability: Section 3, Ch. 303, L. 2017, provided: "[This act] is effective July 1, 2017, and applies to school years beginning on or after July 1, 2017."

20-7-120. Excused absences from curriculum requirements — notice — prohibited activities.

Compiler's Comments

Effective Date: Section 5, Ch. 316, L. 2021, provided: "[This act] is effective July 1, 2021."

Severability: Section 4, Ch. 316, L. 2021, was a severability clause.

20-7-131. Equivalency of completion of secondary education.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 149 (Ch. 94, L. 1983) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Public Education to adopt rules for issuance of documents certifying equivalency of completion of secondary education.

While the Board has clearly delineated rulemaking authority to adopt standards of accreditation and establish the accreditation status of every school, its rulemaking authority has only been implied in the area of setting standards for documents which state that an eligible applicant has satisfied requirements for equivalency of completion of secondary education.

At the recommendation of the Administrative Code Committee [now Administrative Rule Review Committee], the Board requested legislation specifically providing the Board with the authority to adopt policies for the issuance of high school equivalency certificates and to direct the Superintendent of Public Instruction to issue those certificates.

The bill gives the Board the express rulemaking authority to adopt rules in the area of high school equivalency certificates. It is contemplated that:

(1) the Board's current rules in this area will be amended to show proper authority and implementation;

(2) the Board may adopt rules required for other types of programs of similar nature."

Administrative Rules

Title 10, chapter 66, ARM Adult secondary education credentials.

20-7-133. Pledge of allegiance required — exemption for students and teachers.

Compiler's Comments

2021 Amendment: Chapter 239 in (1) at end inserted "and may be followed by a moment of silence"; in (2) substituted current language requiring that the pledge of allegiance must be recited at the beginning of each day for kindergarten through grade 12 for former language requiring recitation of the pledge of allegiance at the beginning of each day for kindergarten through grade 6 and at the beginning of each week for grades 7 through 12; and made minor changes in style. Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 320, L. 1997, provided: "WHEREAS, the United States Supreme Court has consistently ruled that a state may require recitation of the pledge of allegiance so long as any student or teacher objecting to participation for any reason is allowed to nondisruptively refuse to participate; and

WHEREAS, courts have also ruled that a student who refuses to participate in the pledge of allegiance cannot be compelled to take any particular action, such as standing, remaining seated, or leaving the room during group recitation of the pledge; and

WHEREAS, in an effort to educate students in the American values of patriotism and love of country and to pass on the feelings of civic pride and commitment to America, the Board of Public Education, as one small step in increasing Montana students' awareness of their heritage as Americans, enacted a policy on January 26, 1989, recommending that teachers in every public school classroom begin the day with recitation of the pledge of allegiance while allowing an excuse from participation for any student or teacher who objects for any reason; and

WHEREAS, in 1980 the United States Supreme Court let stand the decision in Palmer v. Board of Education of City of Chicago, 603 F.2d 1271 (7th Cir. 1979), certiorari denied, 444 U.S. 1026 (1980), which held that while a teacher may not be required to participate in the pledge of allegiance, the teacher, despite any personal convictions, may be required to teach subjects related to the flag or other patriotic matters in the prescribed curriculum; and

WHEREAS, section 20-4-301, MCA, requires a teacher to provide moral and civic instruction by endeavoring to impress students with the principles of morality, truth, justice, and patriotism; to instruct students in the principles of free government; and to train them to comprehend the rights, responsibilities, and dignity of American citizenship."

20-7-134. Access to public high school campuses — definition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 303, L. 2023. Amendment effective October 1, 2023.

Effective Date: Section 62, Ch. 271, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

20-7-135. Where sexually oriented performances are prohibited.

Compiler's Comments

Effective Date: Section 7, Ch. 719, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 22, 2023.

Severability: Section 6, Ch. 719, L. 2023, was a severability clause.

20-7-136. Legislative findings — purpose.

Compiler's Comments

Effective Date: Section 9, Ch. 747, L. 2023, provided: "[This act] is effective July 1, 2023."

20-7-137. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 747, L. 2023, provided: "[This act] is effective July 1, 2023."

20-7-138. Education and workforce data governing board — membership — duties.

Compiler's Comments

Effective Date: Section 9, Ch. 747, L. 2023, provided: "[This act] is effective July 1, 2023."

Part 2
Libraries

20-7-201. State visual, aural, and other educational media library.

Compiler's Comments

1987 Amendment: Near end of third sentence substituted "the audiovisual and media library account in the state special revenue fund" for "a media library enterprise fund" and in fourth sentence substituted "audiovisual and media library account" for "library media enterprise fund".

1983 Amendment: Substituted references to enterprise fund for references to revolving fund.

Part 3
Vocational and Technical Education

Part Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-301. Duties of superintendent of public instruction.

Compiler's Comments

2001 Amendment: Chapter 133 throughout section substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Throughout section inserted references to "K-12"; deleted former (3), (5), (8), and (12) through (14) relating to postsecondary vocational-technical center certificates to students, Director's qualifications, budget recommendations to the Legislature, tuition and fee charges, allowable building rental costs, and guidelines for authority of a local school district Board of Trustees operating a center; and in (5), at end, deleted "which are to receive financial assistance".

Advisory Council Formed: Executive Reorganization Order 5-72, signed by the Governor and effective September 15, 1972, established a vocational education advisory council for purposes of this chapter.

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

Case Notes

Constitutionality: Amendment by Ch. 434, L. 1975, designating State Board of Education as State Board of Vocational Education, contravened intent of Art. X, sec. 9, Mont. Const., which intended vocational education to be responsibility of Board of Public Education, and was unconstitutional. The act was unseverable and thus invalid in toto, but the appropriation to Superintendent of Public Instruction remained operative. Bd. of Pub. Educ. v. Judge, 167 M 261, 538 P2d 11 (1975).

20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs.

Compiler's Comments

2001 Amendment: Chapter 133 in three places substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Near beginning substituted "an elementary or high school district" for "any district, community college district, or unit of the Montana university system", near middle inserted "K-12", and at end inserted "for compliance with K-12 vocational education standards".

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules.

Compiler's Comments

2021 Amendment: Chapter 69 deleted former (1)(b) that read: "(b) career and technical student organizations for grants in accordance with 20-7-320"; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 69, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2019 Amendment: Chapter 392 inserted (1)(b) regarding grants for career and technical student organizations; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 133 in two places in (1) and in (2) substituted "secondary K-12 career and vocational/technical education" for "secondary vocational education and industrial arts"; in second sentence in (2) substituted "method for distribution" for "method for ANB determination"; in (3) substituted "secondary K-12 career and vocational/technical education program" for "secondary vocational education or industrial arts program or a course in such a program" and after "that program" deleted "or course"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

Statement of Intent: The statement of intent attached to HB 618 (Ch. 287, L. 1981) provided: "Section 1. Rulemaking authority having been specifically granted under sections 1 and 2 of House Bill 618, this statement of intent is required by law.

Section 2. The allocation method established in House Bill 618 is to be administered by the office of the superintendent of public instruction for secondary vocational and industrial arts programs according to rules promulgated by that office. The rules are to provide for the form of the application and any budgeting and accounting requirements that are needed to satisfactorily provide for fiscal responsibility regarding the funds. Further rules are necessary to define and approve course areas and programs to receive the funding. The rules shall contain a table of five classes of courses ranked by the relative cost of providing the course. An example of such a table would be:

Category	Weight
I	.50
II	.40
III	.30
IV	.20
V	.10

The superintendent of public instruction is to place each course or program into one of these classes. The weights are to be adjusted as necessary to provide equitable allocation of funds and to insure that appropriated funds are not exceeded."

20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.

Compiler's Comments

2019 Amendment: Chapter 3 in (4) substituted "factors listed in subsection (1)" for "four factors listed in subsections (1)(a) through (1)(d)". Amendment effective October 1, 2019.

2017 Amendment: Chapter 336 in (1) after "vocational/technical education programs" deleted "according to the relative additional costs of those programs"; inserted (1)(e) regarding student participation in workforce development activities; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2015 Amendment: Chapter 350 inserted (6) regarding use of funds to expand and enhance career and vocational/technical education programs. Amendment effective July 1, 2015.

2001 Amendment: Chapter 133 in two places in (3) and in (5) substituted "K-12 career and vocational/technical education" for "K-12 vocational education and industrial arts"; in (1) substituted "K-12 career and vocational/technical education programs" for "vocational programs" and after "programs" substituted language requiring categorization according to relative additional cost of programs based on outlined weighted factors for "programs into one of five weighted categories based upon the relative additional costs of those programs"; deleted former (2) that read: "(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs"; in (2) substituted "factors outlined in subsection (1)" for "categories" and substituted "allocations do not exceed the amount" for "procedures outlined in subsection (4) do not result in entitlements that exceed the amount"; at beginning of first sentence of (3) inserted exception clause, near middle after "based upon the" substituted "calculation" for "average number belonging (ANB)", and before "preceding" substituted "year" for "ANB calculation period immediately", inserted second sentence requiring funding for expenditures to be based on the calculation for secondary K-12 career and vocational/technical education programs of the high school district for 2 years preceding the year of requested funding, and at beginning of third sentence substituted "funding" for "ANB"; in (4) after "programs" substituted language requiring total funding to be distributed to eligible programs based on four listed factors for "the ANB generated for each category established in subsection (1) must be multiplied by the factor for that category, and the product must be multiplied by the district's direct state aid per-ANB. Industrial arts programs must be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of the computation of all secondary vocational education and industrial arts categories"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1993 Amendment: Chapter 633 in (3), after "(4)", deleted "and (5)"; in (5), at end of first sentence, substituted "district's direct state aid per-ANB" for "applicable ANB dollar value established by 20-9-319"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In first sentence of (4), before "immediately", substituted "ANB calculation period" for "year"; near end of (5), after "total of", inserted "the computation of"; in second sentence of (6), before "be expended", substituted "may" for "shall"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

Statement of Intent: See compiler's comments to 20-7-305.

20-7-307. Work-based learning programs — requirements of agreements.

Compiler's Comments

Effective Date: Section 4, Ch. 477, L. 2023, provided: "[This act] is effective July 1, 2023."

20-7-308. State director of K-12 career and vocational/technical education — duties.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 49, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2001 Amendment: Chapter 133 throughout section substituted "K-12 career and vocational/technical education" for "K-12 vocational education"; in (3) after "staff" substituted language regarding membership of professional staff for "necessary for the state supervision and administration of K-12 vocational education"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1987 Amendment: Throughout section inserted references to "K-12"; and deleted former (7) through (10) and (12) through (15) that read: "(7) provide a postsecondary vocational-technical center system policy and procedural handbook for institutional operations that will standardize operations among the centers;

(8) identify and direct the county treasurer in those counties where postsecondary vocational-technical centers are located to establish the necessary multifund structures for postsecondary vocational-technical center financial operations;

(9) meet with the chairman of the board of trustees, district superintendent, and center director of each postsecondary vocational-technical center at least twice each year to discuss recommended changes in the superintendent of public instruction's policies and procedures;

(10) formulate and put into effect uniform fiscal, student, staff, and program accounting systems for the postsecondary vocational-technical centers;

(12) represent the postsecondary vocational-technical center system to state agencies, associations, and others when appropriate;

(13) recommend a staffing pattern for the postsecondary vocational-technical centers;

(14) provide for the evaluation of programs and services within each postsecondary vocational-technical center;

(15) provide for evaluation of each postsecondary vocational-technical center's ability to meet employment and student vocational-technical education needs".

Administrative Rules

Title 10, chapter 41, ARM Career and vocational/technical education.

20-7-320. State-level strengthening career and technical student organizations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 706, L. 2023. Amendment effective July 1, 2023.

Effective Date: Section 3, Ch. 276, L. 2013, provided: "[This act] is effective July 1, 2013."

20-7-321. Acceptance of acts of congress for vocational education.

Compiler's Comments

Cite to Federal Law: The Vocational Education Act of 1963, referred to in this section, is compiled in the U.S.C. as Title 20, §§ 35 to 35n. The Vocational Education Amendments of 1968 are compiled at numerous places in Title 20, U.S.C.

20-7-328. Legislative intent.

Compiler's Comments

2009 Amendment: Chapter 2 in (1) after "Perkins" substituted "Career and Technical Education Improvement Act of 2006" for "Vocational and Applied Technology Education Act"; and throughout section in three places before "and technical" substituted "career" for "vocational". Amendment effective October 1, 2009.

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

20-7-329. Eligible agency for federal vocational education requirements.

Compiler's Comments

2009 Amendment: Chapter 2 in (1) and in (2) in two places substituted "Carl D. Perkins Career and Technical Education Improvement Act of 2006" for "1984 federal Carl D. Perkins Vocational and Applied Technology Education Act"; in (2) in first sentence after "career and" substituted "technical" for "vocational/technical" and near end after "plan for" substituted "career" for "vocational", and near middle of second sentence after "supervision of" substituted "technical" for "vocational-technical". Amendment effective October 1, 2009.

2001 Amendment: Chapter 133 in middle of first sentence in (2) substituted "K-12 career and vocational/technical education" for "K-12 vocational education" and in second sentence substituted "vocational-technical education" for "postsecondary vocational education". Amendment effective July 1, 2001.

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

20-7-330. Creation of state plan committee — meetings — report.

Compiler's Comments

2009 Amendment: Chapter 2 in (1) in first sentence after "plan for" substituted "career" for "vocational"; in (2)(b) and (2)(d) after "Perkins" substituted "Career and Technical Education Improvement Act of 2006" for "Vocational and Applied Technology Education Act"; and in (2)(c) near beginning after "needs of" substituted "technical" for "vocational-technical". Amendment effective October 1, 2009.

2001 Amendment: Chapter 130 in first sentence in (1) substituted "appoint three people from their respective advisory boards to serve" for "appoint two people to serve" and substituted "committee to review and update" for "committee to develop" and substituted language in second sentence requiring two members of each advisory board to be educators and the remaining member to be a representative of a business or community interest for former language that read: "The four appointed members shall select a fifth member who must represent a community-based organization that provides vocational and technical education services"; in (2)(a) substituted "discuss the state plan" for "discuss the implementation of the state plan"; deleted former (2)(b) that read: "(b) evaluate the state plan"; and made minor changes in style. Amendment effective March 26, 2001.

Termination Provision Repealed: Section 2, Ch. 130, L. 2001, repealed sec. 6, Ch. 460, L. 1999, which terminated this section June 30, 2001. Effective March 26, 2001.

Effective Date: Section 5, Ch. 460, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 460, L. 1999, provided: "[This act] terminates June 30, 2001."

20-7-334. Advancing agricultural education in Montana program account.

Compiler's Comments

2015 Amendment: Chapter 245 in (3)(a) substituted "$1,000" for "$500"; in (3)(a) and (3)(b) substituted "prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program" for "An agricultural education program may not receive more than one payment in a school year"; in (3)(c) in first sentence before payment deleted "one-time" and inserted second sentence regarding additional payment for expansion of teaching staff; and in (3)(d) substituted "$20,000" for "$11,250". Amendment effective July 1, 2015.

2011 Amendment: Chapter 337 in (2) near beginning inserted "and money appropriated by the legislature for the purpose of this section"; in (3)(a) in first sentence at end after "education specialist" substituted current text for "must receive a one-time payment of $500" and inserted second sentence prohibiting more than one payment; and in (3)(b) in first sentence after "may receive a" deleted "one-time" and inserted second sentence prohibiting more than one payment. Amendment effective July 1, 2011.

Severability: Section 3, Ch. 337, L. 2011, was a severability clause.

Effective Date: This section is effective October 1, 2009.

20-7-335. Career coaching for career technical education and K-12 career and vocational/technical education — duties.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 4
Special Education for Exceptional Children

Part Administrative Rules

Title 10, chapter 16, ARM Special education.

ARM 10.55.718 Assignment of persons providing sign language interpreting for students.

Part Case Notes

Exhaustion of Remedies Under Individuals With Disabilities Act Not Required Upon Claim of Discrimination in Public Education Under Human Rights Act: Amanda Johnson suffered from Campomelic Syndrome and as a result was confined to a wheelchair. Prior to Amanda's enrollment at Great Falls High School, her family brought Amanda's access issues to the attention of the Great Falls School District. There was no elevator in the school, which precluded Amanda's access to second-floor classrooms and science labs. There were numerous other physical barriers as well, such as parking problems, snow-covered sidewalks, cafeteria restrictions, heavy doors, office countertops that were too high, and inaccessibility to restrooms, water fountains, vending machines, and public telephones. The district determined that it could not build an elevator and continue to provide educational services to the rest of the student body; however, the district did prepare individualized education programs for Amanda each year that attempted to accommodate her by scheduling her classes on the first floor, transporting her to another high school for science labs, fitting desks for her and providing special seating, making minor physical adjustments to the building, providing a parking space for her in the faculty lot, attempting to coordinate snow removal with her arrival, and assigning a staff member to help her use the cafeteria. Nevertheless, her family was dissatisfied with the district's efforts and brought an education discrimination claim, alleging that the district illegally discriminated against Amanda by failing to provide an accessible building in violation of Title 49, ch. 2, commonly known as the Montana Human Rights Act (MHRA), and specifically 49-2-307 and 49-2-308. A hearings examiner found that Amanda did have far less access to the school than her classmates, but concluded that the district had provided reasonable access in light of the resources available to meet Amanda's needs. The hearings examiner ordered the district to proactively monitor accommodations provided to students with physical disabilities and to take a number of steps to minimize the likelihood of future violations of the MHRA. The Commission for Human Rights adopted the hearings examiner's findings and conclusions, and the district filed for judicial review, arguing to the District Court that: (1) the Commission lacked jurisdiction to consider the complaint until Amanda exhausted the administrative remedies under the Individuals With Disabilities Education Act (IDEA) through the Office of Public Instruction; and (2) the relief granted exceeded the Commission's statutory authority. The District Court agreed and overruled the Commission's order, and the issues were appealed to the Supreme Court. On the first issue, the Supreme Court found that the gravamen of Amanda's claim was grounded in discrimination under the MHRA, not the right to a free appropriate public education under the IDEA. Disabled students can receive an appropriate education, as attested by Amanda's 3.7 grade point average, and still suffer discrimination when the physical premises of a school deprive them of basic human dignities. When claims involve the simple application of the IDEA exhaustion doctrine in the absence of a parallel state statutory remedy, the logic of the IDEA exhaustion may apply, but when, as here, state human rights laws provide an administrative remedy through the Commission for Human Rights, there is no compelling reason to preclude the MHRA claim by first requiring the IDEA exhaustion. The court found no legal basis for determining that the IDEA was intended to limit applicable state human rights discrimination claims. Thus, Amanda's claim could proceed prior to exhaustion of or without ever invoking the IDEA administrative remedies, and the District Court erred in holding otherwise. On the second issue, the Supreme Court found that the remedy ordered by the Commission—requiring the district to formalize its policy and procedure for addressing the special needs of disabled students—fell within the authority of 49-2-506 and was reasonable in light of the relief requested. The District Court was reversed, and the Commission's order was reinstated. Great Falls Pub. Schools v. Johnson, 2001 MT 95, 305 M 200, 26 P3d 734 (2001), following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999 (1997), and distinguishing Koopman v. Freemont County School District No. 1, 911 P2d 1049 (Wyo. 1996).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after the son was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the school district. The District Court dismissed the section 1983 action, holding that the Shieldses failed to appeal the decision of the trustees to the Superintendent of Public Instruction and thereby failed to exhaust their administrative remedies. The Shieldses argued that the doctrine of exhaustion of administrative remedies should not apply to them because they are seeking damages and because they were excused by futility and due process. The Supreme Court affirmed the dismissal, citing: (1) the exhaustion requirement contained in IDEA, 20 U.S.C. 1415(f); (2) the exhaustion requirement contained in the state rules, ARM 10.16.2417(5) (transferred to 10.16.3523); and (3) the case of Koopman v. Freemont City School District No. 1, 911 P2d 1049 (Wyo. 1996), in which the Wyoming Supreme Court held that the doctrine of exhaustion of administrative remedies applied in a case nearly identical to the case brought by the Shieldses. Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies Under Montana Human Rights Act: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after he was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the School District. The District Court dismissed the section 1983 action, holding that the Shieldses failed to first file a complaint with the Human Rights Commission and thereby failed to exhaust their administrative remedies. The Shieldses argued that their case was a state tort action and did not fall within the jurisdiction of the Commission under Title 49, ch. 2, commonly known as the Montana Human Rights Act. Citing Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), the Supreme Court held that because the gravamen of the complaint was discrimination, the complaint fell under the Montana Human Rights Act and that the Shieldses were therefore required to file a written, verified complaint with the Commission. The Supreme Court held that only after exhausting that procedure could they then bring a complaint in District Court. Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Failure to Follow Procedural Requirements of Individuals With Disabilities Education Act Held Not to Deny Free Appropriate Public Education — Independent Cause of Action for Misdiagnosis and Misplacement Dismissed as Barred by Res Judicata: Brian Parini was diagnosed with a learning disability and was placed in special education pursuant to the requirements of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. Subsequently, Brian's mother filed a petition with the Office of Public Instruction (OPI), alleging that Brian's condition had not been subjected to a 3-year reevaluation as required by IDEA and that Brian was therefore denied his right under IDEA to a free appropriate public education (FAPE). OPI found that while IDEA may not have been complied with as to certain procedural requirements, Brian was not denied a FAPE. Brian then filed a complaint with the District Court in which he alleged that OPI had erred and also asserted an independent cause of action for damages, claiming that school employees had negligently misdiagnosed and misplaced him, denying him a FAPE. Relying extensively upon federal case law interpreting and applying IDEA, the Supreme Court held that the absence of a reevaluation did not deny Brian an educational opportunity because there was no causal linkage between the absence of the reevaluation and the educational opportunity afforded to Brian. The Supreme Court also concluded, in reliance upon its opinion in B.M. v. St., 200 M 58, 649 P2d 425 (1982), and Art. X, sec. 1, Mont. Const., that Brian was entitled to bring an independent tort action for negligent misdiagnosis and misplacement. However, the

Supreme Court held that because a nearly identical claim had been brought before OPI and the District Court and decided against Brian, his independent tort action was barred by the doctrine of res judicata. Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

High School Association Enforcement of Sports Eligibility Rules — Learning Disabled Student Lacking Individualized Education Program — Injunction Improper: The Montana High School Association (MHSA) ruled that J.M., an alleged learning disabled student, was ineligible for participation in interscholastic sports activities during his senior year because he had already participated in four seasons of sports. The District Court, relying on T.H. v. Mont. High School Ass'n, CV-92-150-BLG-JFB (D.C. Mont. Sept. 24, 1992), enjoined MHSA from enforcing the four-season rule because J.M. had a federally protected right under the federal Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. On appeal, the Supreme Court found that it was improper to elevate J.M.'s privilege of participation in interscholastic sports to the level of a federally protected right under IDEA and to afford him individualized inquiry when J.M. had not followed the statutorily and administratively mandated mechanism for identification and qualification under IDEA and for developing a formal, written individualized education program. Because MHSA was not a state or local education agency, as defined in IDEA, MHSA had no obligation to identify or evaluate J.M.'s special education needs. The District Court's reliance on T.H. was in error, and the injunction was inappropriate absent evidence that J.M. was actually qualified for IDEA benefits. J.M. v. Mont. High School Ass'n, 265 M 230, 875 P2d 1026, 51 St. Rep. 401 (1994), followed in M.H. v. Mont. High School Ass'n, 280 M 123, 929 P2d 239, 53 St. Rep. 1328 (1996).

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

Part Law Review Articles

Special Education, Guardianships, and Procedural Due Process, Seneczko, 81 Mont. L. Rev. 289 (2020).

The Right to a Special Education, Monzie, 57 Mont. L. Rev. 151 (1996).

When Parents and Educators Clash: Are Special Education Students Entitled to a Cadillac Education?, DeBerry, 34 St. Mary's L.J. 503 (2003).

20-7-401. Definitions.

Compiler's Comments

Contingent Effective Date: Section 19(2), Ch. 444, L. 2015, provided: "[Section 6] [amending 20-7-401] is effective on the date that the Montana developmental center closes. The director of the department of public health and human services shall certify the closure of the Montana developmental center to the governor, and the governor shall transmit a copy of the certification to the code commissioner." Information from the department of public health and human services indicates that the Montana developmental center officially closed on November 1, 2018.

2015 Amendment: Chapter 444 in (5) after "Montana state hospital" deleted "the Montana developmental center". Amendment effective on occurrence of contingency.

2011 Amendment: Chapter 44 inserted definition of state-operated adult health care facility providing special education services to its residents; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 479 deleted definition of assistive technology device that read: ""Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability"; deleted definition of assistive technology service that read: ""Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability"; deleted definition of autism that read: ""Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance"; in definition of child with a disability near middle after "as having" substituted "a disability" for "cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities" and after "because of" substituted "the disability" for "those impairments" and deleted second sentence that read: "A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified"; deleted definition of cognitive delay that read: ""Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance"; deleted definition of deaf-blindness that read: ""Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness"; deleted definition of deafness that read: ""Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance"; deleted definition of emotional disturbance that read: ""Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed"; deleted definition of hearing impairment that read: ""Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness"; deleted definition of orthopedic impairment that read: ""Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy)"; deleted definition of other health impairment that read: ""Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance"; in definition of related services near beginning after "means" deleted "transportation and any developmental, corrective, and other supportive", after "services" inserted "in accordance with regulations of the Individuals With Disabilities Education Act", and after "special education" deleted "and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes" and deleted former second sentence that read: "The term also includes school health services, social work services in schools, and parental counseling and training"; deleted definition of specific learning disability that read: ""Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages"; deleted definition of speech-language impairment that read: ""Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance"; deleted definition of traumatic brain injury that read: ""Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma"; deleted definition of visual impairment that read: ""Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 4, Ch. 479, L. 2003, provided: "[This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization." In a letter dated April 11, 2005, the Office of Public Instruction informed the Code Commissioner that July 1, 2005, is "the date by which Congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization".

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to children with disabilities and child with disabilities to references to child with a disability. Amendment effective March 15, 1999.

1997 Amendment: Chapter 472 substituted child with a disability for child with disabilities as defined term; in definition of specific learning disability, in two places, substituted "disabilities" for "handicaps"; and made minor changes in style.

1993 Amendment: Chapter 356 inserted definitions of assistive technology device and assistive technology service; substituted present definition of autism for former definition that read: ""Autism" means a condition that is manifested by severe communication and other developmental and educational problems"; near beginning of definition of child with disabilities inserted reference to evaluation in accordance with the Individuals With Disabilities Education Act and near middle, after "health impairments", inserted "deaf-blindness; multiple disabilities"; inserted definition of deaf-blindness; at end of definition of deafness, before "educational performance", substituted "child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's" for "child's hearing is nonfunctional for the purpose of"; substituted present definition of free appropriate public education for former definition that read: ""Free appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met"; near middle of definition of related services, after "physical therapy", inserted "recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training"; inserted definition of traumatic brain injury; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 16 in definition of handicapped child substituted "speech/language impaired" for "speech-impaired" (rendered void by Ch. 249); and made minor changes in style.

Chapter 249 inserted definitions of autism, child with disabilities, cognitive delay, and free appropriate public education; deleted definitions of appropriate public education, deaf/blind, handicapped child, mentally retarded, and multihandicapped (see 1989 MCA for text); in definition of other health impairment, after "means", deleted "having an autistic condition that is manifested by severe communication and other developmental and educational problems" and after "diabetes" inserted "that adversely affects a child's educational performance"; in definition of related services substituted reference to child with disabilities for reference to handicapped child; in definition of special education, near middle, substituted reference to child with disabilities for reference to handicapped child; in definition of specific learning disability, near end, substituted "cognitive delay" for "mental retardation"; in definition of visual impairment, at end, substituted "partial blindness and blindness" for "partially seeing and blind children"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

1985 Amendments: Chapter 560 in definition of emotionally disturbed, in first sentence, at end of introductory language, inserted "that adversely affects educational performance" and near end of first sentence, after "physical symptoms", deleted "pains", inserted second sentence including a schizophrenic within definition, in third sentence made minor changes in phraseology and at end of sentence inserted "unless it is determined that the child is emotionally disturbed", and deleted the remainder of definition that read: "The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment"; and in definition of handicapped child inserted last sentence permitting a child 5 years of age or younger to be identified as handicapped without the handicapping condition being specified.

Chapter 618 inserted definition of surrogate parent.

1983 Amendment: Inserted definitions of deaf/blind, multihandicapped, and related services; in definition of emotionally disturbed in third sentence (now deleted), deleted "autistic" before "psychotic"; in definition of handicapped child, inserted "deaf/blind, multihandicapped" after "emotionally disturbed"; in definition of other health-impaired, inserted (a), including an autistic condition, and "having" at beginning of (b); at end of definition of special education, deleted "The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy."

1981 Amendment: Inserted definition of appropriate public education.

20-7-402. Special education to comply with board policies.

Compiler's Comments

2005 Amendment: Chapter 255 in (1)(a) at end substituted "environment" for "alternative setting"; in (1)(c) near beginning substituted "an evaluation team" for "child study teams" and before "to plan individual education programs" deleted "use of instructional teams"; substituted (1)(d) concerning evaluation process consistent with the Individuals With Disabilities Education Act for "comprehensive evaluation for each child with a disability"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1)(a), (1)(b), and (1)(c) the code commissioner changed references to children with disabilities to references to a child with a disability; and in (1)(d) changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

1985 Amendment: In (1)(b) inserted "including the appointment of a surrogate parent if necessary".

Administrative Rules

Title 10, chapter 16, ARM Special education.

ARM 10.60.101 Board of Public Education policy statement.

Case Notes

Wrongful Placement of Special Education Child — Duty Owed by School District — Sovereign Immunity No Bar to Claim for Damages: The plaintiff, a minor child, was diagnosed as needing special education and was to be educated in a class with other "normal" children but was later removed to a class of retarded children and as a result regressed in development. The school district's action of placement of the child was subject to judicial review and was not barred from review by the doctrine of sovereign immunity merely because it was discretionary. The school authorities owed the child a duty of reasonable care in testing and placing her in an appropriate special education program, and the District Court therefore erred in dismissing the child's action for damages. B.M. v. St., 200 M 58, 649 P2d 425, 39 St. Rep. 1285 (1982). B.M. was followed in Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program. This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-7-403. Duties of superintendent of public instruction.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 156, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 156, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2021 Amendment: Chapter 371 in (13) substituted current language requiring contracting for the provision of appropriate educational opportunity for former (13) (see 2021 Session Law for former text). Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2005 Amendment: Chapter 255 substituted (5) concerning appropriate technical assistance documents for "recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs"; in (6) near middle substituted "identifying" for "diagnosing"; deleted former (8) that read: "(8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction"; in (11) near beginning after "child with a disability" inserted "including a homeless child with a disability"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (4), (5), and (7) and in (12) in two places the code commissioner changed references to children with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

1997 Amendment: Chapter 529 in (14), at beginning, inserted exception clause and at end substituted "placed in an in-state residential facility or children's psychiatric hospital" for "when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility". Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1993 Amendment: Chapter 356 at beginning of (11) substituted "ensuring" for "preparing"; at beginning of (12) substituted "ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction" for "acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education" and at end inserted "or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state"; deleted former (13) that read: "administering regional special education services for children in need of special education in accordance with policies of the board of public education"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment — Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

Chapter 765 throughout section substituted reference to child with disabilities for reference to handicapped child; inserted (15) requiring Superintendent to contract for the provision of a free appropriate public education for certain children with disabilities placed by a state agency; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: Inserted (11) relating to surrogate parents.

Statement of Intent — Surrogate Parent: The statement of intent attached to Ch. 618, L. 1985, section 3 of which is codified as 20-7-403(11), provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the superintendent of public instruction. In preparing instructional and training material to be given to a person appointed as a surrogate parent, the superintendent should look to the material used in the state of Connecticut, which developed the surrogate parent concept. The superintendent should tailor the material to carefully delineate the procedure used in Montana for evaluating and placing handicapped children [now children with disabilities] and devising educational programs for them. The material should specifically delineate the role of the surrogate in working with the child study team as early as possible."

Rules adopted by the superintendent concerning reimbursement of the surrogate parent should be aimed at fully reimbursing the surrogate while not creating a financial hardship to the school district. The rules should be such that people will not be financially discouraged from accepting appointment as a surrogate parent."

1981 Amendment: Substituted language of (13) relating to contracting for audiological services for former language of (13) to remove the requirement that the superintendent of public instruction contract directly with local school districts or cooperative service organizations for audiological services.

Administrative Rules

Title 10, chapter 16, ARM Special education.

Case Notes

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program. This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Method of Establishing Regional Service Centers for Special Education: House Bill 145 (1977) (an uncodified appropriations bill) requires the Superintendent of Public Instruction to establish the regional special education services referred to in 20-7-403 (see 1993 amendment) and 20-7-415 (repealed 1993) by negotiating contracts with local school districts whereby the contracting local districts agree to furnish regional special education services to be compensated from the regional service centers' appropriation. 37 A.G. Op. 26 (1977).

20-7-404. Cooperation of state agencies.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 521, L. 2023. Amendment effective July 1, 2023.

1995 Amendment: Chapter 546 near beginning of first sentence substituted "department of public health and human services" for "state department of health, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Near beginning deleted references to Department of Institutions and Department of Social and Rehabilitation Services and inserted reference to Department of Family Services.

20-7-411. Regular classes preferred — obligation to establish special education program.

Compiler's Comments

2019 Amendment: Chapter 16 in (2) near end substituted "5 years of age" for "6 years of age". Amendment effective October 1, 2019.

Preamble: The preamble attached to Ch. 16, L. 2019, provided: "WHEREAS, school districts are required to make available at least a half-day kindergarten program to all resident 5-year-olds pursuant to 20-7-117, MCA; and

WHEREAS, 5-year-old kindergarten students currently generate ANB funding pursuant to 20-9-311, MCA, and the clarifications in this bill will have no fiscal impact; and

WHEREAS, neither school districts' obligations in providing special education nor parents' rights in determining when to enroll their child in school will be impacted by the clarifications in this bill; and

WHEREAS, the Legislature of the State of Montana intends no substantive change in current practice, obligations, or funding with these changes and intends only to provide additional clarity to existing practices, obligations, and funding."

2011 Amendment: Chapter 44 in (2), (4)(a), (4)(b), (5), and (6) inserted "or a state-operated adult health care facility providing special education services to its residents"; in (5) in first sentence at end inserted "or by contracting for services from qualified providers" and inserted second sentence regarding coordination of services by health care facility; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 255 in (1) in first sentence at end substituted "environment" for "alternative setting"; inserted (4) allowing the board to establish a special education program for a child with a disability; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to children with disabilities to references to a child with a disability; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendment: Chapter 356 at beginning of (2) deleted "After September 1, 1977" and near middle substituted "each child" for "every person"; at beginning of (3) deleted "On or before September 1, 1990"; inserted (5) regarding availability of assistive technology devices and assistive technology services; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to disability for reference to handicap; and made minor changes in style. Amendment effective July 1, 1991.

1987 Amendment: Inserted (3) relating to special education for handicapped preschool children (now preschool children with disabilities).

Case Notes

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Reasonableness of Interpretative Regulation: An administrative regulation by the Superintendent of Public Instruction which restricted the use of special education funds to educational costs and provided that services such as psychiatric therapy or medical assistance must be deleted from those costs was reasonable and consistent with the carrying out of the legislative direction, and a school district could not use the funds to provide psychiatric-medical treatment outside of the state. Doe v. Colburg, 171 M 97, 555 P2d 753 (1976).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Law Review Articles

The Right to a Special Education, Monzie, 57 Mont. L. Rev. 151 (1996).

Special Education, Private Schools, and Vouchers: Do All Students Get a Choice?, Taylor, 34 J.L. & Educ. 1 (2005).

20-7-414. Determination of children in need and type of special education needed.

Compiler's Comments

2005 Amendment: Chapter 255 in (1) in second sentence near middle inserted "in accordance with 20-7-411"; and substituted (2) requiring procedures for special education that are consistent with the federal act and state law and rules for former (2) that read: "(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education." Amendment effective July 1, 2005.

1993 Amendment: Chapter 356 near middle of first sentence of (1) substituted "school district" for "trustees" and substituted second sentence regarding availability of free appropriate public education for former second and third sentences that read: "Whenever the trustees of a school district or the governing authority of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461." Amendment effective July 1, 1993.

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

1991 Amendment: In (1), near middle, substituted reference to child with disabilities for reference to handicapped child and after "guardian" substituted "cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered" for "is unknown or unavailable"; and made minor changes in style. Amendment effective July 1, 1991.

1989 Special Session Amendment: Near end of (2) substituted "foundation program" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1985 Amendment: In (1) inserted second, third, and fourth sentences relating to surrogate parents (see 1985 Session Law for text).

Administrative Rules

Title 10, chapter 16, ARM Special education.

Title 10, chapter 60, ARM Board of Public Education policies on special education.

Case Notes

Failure to Follow Procedural Requirements of Individuals With Disabilities Education Act Held Not to Deny Free Appropriate Public Education — Independent Cause of Action for Misdiagnosis and Misplacement Dismissed as Barred by Res Judicata: Brian Parini was diagnosed with a learning disability and was placed in special education pursuant to the requirements of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. Subsequently, Brian's mother filed a petition with the Office of Public Instruction (OPI), alleging that Brian's condition had not been subjected to a 3-year reevaluation as required by IDEA and that Brian was therefore denied his right under IDEA to a free appropriate public education (FAPE). OPI found that while IDEA may not have been complied with as to certain procedural requirements, Brian was not denied a FAPE. Brian then filed a complaint with the District Court in which he alleged that OPI had erred and also asserted an independent cause of action for damages, claiming that school employees had negligently misdiagnosed and misplaced him, denying him a FAPE. Relying extensively upon federal case law interpreting and applying IDEA, the Supreme Court held that the absence of a reevaluation did not deny Brian an educational opportunity because there was no causal linkage between the absence of the reevaluation and the educational opportunity afforded to Brian. The Supreme Court also concluded, in reliance upon its opinion in B.M. v. St., 200 M 58, 649 P2d 425 (1982), and Art. X, sec. 1, Mont. Const., that Brian was entitled to bring an independent tort action for negligent misdiagnosis and misplacement. However, the Supreme Court held that because a nearly identical claim had been brought before OPI and the District Court and decided against Brian, his independent tort action was barred by the doctrine of res judicata. Parini v. Missoula County High School District No. 1, 284 M 14, 944 P2d 199, 54 St. Rep. 711 (1997).

High School Association Enforcement of Sports Eligibility Rules — Learning Disabled Student Lacking Individualized Education Program — Injunction Improper: The Montana High School Association (MHSA) ruled that J.M., an alleged learning disabled student, was ineligible for participation in interscholastic sports activities during his senior year because he had already participated in four seasons of sports. The District Court, relying on T.H. v. Mont. High School Ass'n, CV-92-150-BLG-JFB (D.C. Mont. Sept. 24, 1992), enjoined MHSA from enforcing the four-season rule because J.M. had a federally protected right under the federal Individuals With Disabilities Education Act (IDEA), 20 U.S.C. 1400, et seq. On appeal, the Supreme Court found that it was improper to elevate J.M.'s privilege of participation in interscholastic sports to the level of a federally protected right under IDEA and to afford him individualized inquiry when J.M. had not followed the statutorily and administratively mandated mechanism for identification and qualification under IDEA and for developing a formal, written individualized education program. Because MHSA was not a state or local education agency, as defined in IDEA, MHSA had no obligation to identify or evaluate J.M.'s special education needs. The District Court's reliance on T.H. was in error, and the injunction was inappropriate absent evidence that J.M. was actually qualified for IDEA benefits. J.M. v. Mont. High School Ass'n, 265 M 230, 875 P2d 1026, 51 St. Rep. 401 (1994).

Procedural Flaws in Individualized Education Program — Parents Entitled to Reimbursement for Private Tutoring: The parents of a handicapped student filed suit seeking reimbursement for the costs of private tutoring elected by the parents when the school district failed to comply with procedures under federal law in the preparation of an individualized education program (IEP). Affirming the District Court decision, the Ninth Circuit Court ruled that the district's failure to comply with procedures in preparing the IEP deprived the student of free appropriate public education and that the parents were entitled to reimbursement for private tutoring until the IEP was properly prepared. W.G. v. Bd. of Trustees of Target Range School District No. 23, 960 F2d 1479 (9th Cir. 1992).

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Federal Law Compelling Exception to Hearsay Rule — Administrative Psychological Assessment Report Admitted: When an assessment of a child's psychologic and mental condition is made as part of administrative proceedings, the report is part of the administrative record and accordingly it is a part of the evidence that the District Court had to consider. Federal law requires this, and it overrides any other consideration with respect to the reception into evidence of the report, including the inherent evil in accepting hearsay evidence not subject to cross-examination. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-7-419. Rules.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 156, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 156, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

1993 Statement of Intent: The statement of intent attached to Ch. 375, L. 1993, provided: "A statement of intent is required for this bill because [section 7] [20-7-419] gives the superintendent of public instruction authority to adopt rules, including but not limited to the calculation of tuition, the calculation and distribution of funding, and the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools."

Effective Date: Section 9, Ch. 375, L. 1993, provided: "[This act] is effective July 1, 1993."

Administrative Rules

ARM 10.20.106 Students placed in education programs.

20-7-420. Residency requirements — financial responsibility for special education.

Compiler's Comments

2021 Amendment: Chapter 371 in (2) in first sentence after "financially responsible for" inserted "a portion of" and after "attends school outside the district" deleted "and county"; deleted former (3) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2011 Amendment: Chapter 211 in (1) at end deleted "unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence"; and made minor changes in style. Amendment effective July 1, 2011.

2009 Amendment: Chapter 137 in (1) near beginning of first sentence after "attending" inserted "the Montana youth challenge program or". Amendment effective July 1, 2009.

Applicability: Section 4, Ch. 137, L. 2009, provided that this section applies to school fiscal years beginning on or after July 1, 2010.

2005 Amendments — Composite Section: Chapter 132 in (1) in first sentence substituted "Except for a pupil attending a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215" for "In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased". Amendment effective July 1, 2005.

Chapter 255 in (2) in first sentence near end after "has been placed" deleted "by a state agency". Amendment effective July 1, 2005.

Chapter 463 in (2) in first and second sentences at beginning substituted "The superintendent of public instruction" for "The county of residence". Amendment effective July 1, 2005.

1999 Amendments — Composite Section: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (2) in first sentence and in (4) in two places the code commissioner changed references to children with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

Chapter 343 in (2) after "20-5-323" inserted "and 20-5-324", after "20-7-401" deleted "including a child", and after "who" inserted "attends school outside the district and county of residence because the student"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 529 in (2), in second sentence after "child", deleted "with disabilities"; deleted former (4) that read: "(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402"; in (4) inserted second sentence requiring the placing state agency to pay education fees of a child with disabilities who is placed out of state; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

1995 Amendment: Chapter 509 in (3), at end of third sentence and in fourth sentence substituted "available funds" for "the state equalization aid account"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 375 in first sentence of (1), after "guardian", inserted "if the parents are deceased"; at beginning of first sentence of (3) substituted "If an eligible child, as defined in 20-7-436, is receiving inpatient treatment" for "If a child with disabilities who is in need of special education is placed", near middle substituted "educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435" for "educational placement is in a public school district", and at end substituted "the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium" for former text that read: "the district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital"; near middle of (4), after "special education", inserted "and related services"; in (5), before "room", inserted "financial costs of"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 near beginning of first and second sentences of (2) and near middle of (3) substituted "county" for "district" and after "tuition" inserted "and transportation" (amendment in (3) rendered ineffective by amendment to (3) in ch. 375); in first sentence of (2), after "under", substituted "20-5-323" for "20-5-305 and 20-5-312"; and made minor changes in style.

Code Commissioner Correction: In (3) the Code Commissioner substituted "of direct state aid" for "paid on the foundation program schedules as provided in 20-9-318 through 20-9-320". Sections 20-9-318 through 20-9-320 were repealed by Ch. 633, L. 1993. The Code Commissioner has substituted "direct state aid" because that concept replaced foundation program schedules in Ch. 633, L. 1993. The authority for the correction is found in sec. 84, Ch. 10, L. 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (2), at end of first sentence, substituted "a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state" for "special education students" and inserted second sentence regarding lack of district financial responsibility for certain disabled children placed by a state agency; inserted (3) establishing tuition responsibility of district of residence for disabled child; inserted (4) requiring Superintendent of Public Instruction to provide funds for education fees required to provide free appropriate public education for certain children with disabilities placed by a state agency; and inserted (5) establishing state agency responsibility for a placed disabled child's room, board, and treatment. Amendment effective July 1, 1991.

Attorney General's Opinions

Residency of Special Education Student Following Termination of Parental Rights But Before Permanent Placement: For special education purposes, the school district of residence of a child for whom the Department of Family Services (now Department of Public Health and Human Services) has legal custody following termination of parental rights and before a permanent placement is accomplished is the same as that of the physical location of the District Court that ordered the termination. 43 A.G. Op. 36 (1989), overruling 40 A.G. Op. 69 (1984).

Residency of Special Education Student in Temporary Custody of Department: For special education purposes, the school district of residence of a child for whom the Department of Family

Services (now Department of Public Health and Human Services) has temporary legal custody is the district of residence of the child's parents, regardless of whether the child is placed in a foster home in a separate school district. 43 A.G. Op. 36 (1989).

Residency of Special Education Student When Custodial Parent Imprisoned — District of Residence Responsible for Tuition: The school district of residence of a special education student whose custodial parent is imprisoned is the school district where the custodial parent resided prior to imprisonment. If a special education student is admitted to a school district that is not his district of residence, his district of residence is responsible for the student's tuition. 43 A.G. Op. 35 (1989).

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) near middle after "child with" the code commissioner changed "disabilities" to "a disability". Amendment effective March 15, 1999.

1993 Amendments: Chapter 375 near end of (1), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 in (2), after "Tuition", inserted "and transportation" and after "under" substituted "20-5-323" for "20-5-305 and 20-5-312".

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), at beginning, substituted "In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities" for "With the approval of the superintendent of public instruction" and near end, after "education", deleted "in a special education program". Amendment effective July 1, 1991.

Composite Section: This section was amended by Ch. 470, Ch. 481, and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. All three chapters incorporated the same concept into this section. Since Ch. 470 was the most comprehensive, its language, with a few minor changes, was chosen.

Case Notes

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program (see 1991 amendment). This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

20-7-422. Out-of-state placement of child with disability — payment of costs.

Compiler's Comments

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, throughout section the code commissioner changed references to a child with disabilities to references to a child with a disability. Amendment effective March 15, 1999.

1997 Amendments: Chapter 529 in (3), near middle after "related services", deleted "is adjudicated by a court of competent jurisdiction to be an abused or neglected child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and", after "out-of-state" deleted "private", and after "facility, the" substituted "state agency making the placement shall pay the education costs resulting from the placement" for "superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program"; and substituted (4) regarding placement with a facility that will provide the child with a free appropriate public education for former language that read: "Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation." Amendment effective July 1, 1997.

Chapter 550 in (3) substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Coordination: Section 8, Ch. 529, L. 1997, provided: "If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void." House Bill No. 2 included appropriations to the affected Departments to pay for the education costs associated with out-of-state education placements; therefore, the amendments to this section by Ch. 529, L. 1997, apply.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 458 in (3), after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

1993 Amendments: Chapter 375 in (3), after "special education", inserted "and related services". Amendment effective July 1, 1993.

Chapter 563 deleted second sentence of (1) that read: "The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311"; and deleted (2)(b) that read: "(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A)."

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), at beginning of first sentence, substituted "In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child" for "If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education" and in second sentence, after "provisions", substituted "in 20-5-301 and 20-5-311" for "of the laws governing the attendance of pupils in schools outside the state of Montana"; substituted present (2) regarding amount and manner of payment of costs associated with placement for former (2) that read: "(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, the superintendent of public instruction shall, in cooperation with the department of family services, negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition must be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the foundation program amount for special education"; inserted (3) requiring Superintendent to negotiate for payment of certain fees and costs; inserted (4) requiring payment of negotiated fees and costs from the special education appropriation; and made minor changes in style. Amendment effective July 1, 1991.

1989 Special Session Amendment: Near end of (2) substituted "foundation program amount" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: In middle of (2) deleted references to Department of Social and Rehabilitation Services and Department of Institutions and inserted reference to Department of Family Services.

Correction: In sec. 3, Ch. 661, L. 1979, the reference in subsection (2) was to 20-7-431(1)(b)(iii)(A) (nonexistent). The Code Commissioner changed the reference to "20-7-431(1)(a)(iii)(A)" to correct the error, which arose through amendments made by the Legislature in the course of enacting Ch. 661.

Case Notes

Determination of Child's Condition and Needs — Necessary Evidence: Once the District Court found from the evidence that child A had not been making substantial progress as a participant in the mildly mentally retarded special education program and might be retrogressing and had also found that the child was severely emotionally disturbed, it was necessary that the child be placed in a special out-of-state school. The evidence supported no other choice, and substantial evidence supported the finding. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

Federal Law Compelling Exception to Hearsay Rule — Administrative Psychological Assessment Report Admitted: When an assessment of a child's psychologic and mental condition is made as part of administrative proceedings, the report is part of the administrative record and accordingly it is a part of the evidence that the District Court had to consider. Federal law requires this, and it overrides any other consideration with respect to the reception into evidence of the report, including the inherent evil in accepting hearsay evidence not subject to cross-examination. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

State/Federal Law Conflict — Role of Superintendent of Public Instruction: When state regulations conflict with federal regulations, state regulations yield to federal regulations. A Montana statute on out-of-state special education (20-7-422) implies that discretion is vested in the Superintendent of Public Instruction to grant or withhold approval for an out-of-state special education program (see 1991 amendment). This implication runs counter to the language of the federal statutes which require that the decision of the hearing officer in the appeal to the Superintendent of Public Instruction is final. However, a position by the Superintendent that a decision of the District Court would be binding upon her and would be approved with no further claim of right of rejection is in harmony with the federal statutes and regulations. Therefore, there is no dual procedure arising out of the state regulations for special education programs as long as the Superintendent maintains that she is bound by the findings of the hearing officer and by the court if an appeal is taken from the hearing officer's findings. The hearing officer was therefore correct in dismissing the Superintendent as a party to the controversy, and the Superintendent is not a proper party in a court appeal as long as she claims no discretion once the court has acted. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979).

20-7-424. No tuition when attending state institution.

Compiler's Comments

1993 Amendment: Chapter 563 near end of first sentence, before "operating", deleted "or county" and before "or 20-7-421" substituted "20-5-321" for "20-5-305" and in third sentence, after "existing", deleted "special education"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993 provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Attorney General's Opinions

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.

Compiler's Comments

2005 Amendment: Chapter 255 in (1)(a)(vi) and (1)(b)(vi) substituted "evaluation team" for "child study team". Amendment effective July 1, 2005.

2001 Amendment: Chapter 145 deleted former (5)(b) that read: "(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 145, L. 2001, provided: "WHEREAS, state funding for special education has not kept pace with school districts' required special education expenditures, which has caused a financial shift under the formula from providing districts with block grants to reimbursing districts for disproportionate special education costs; and

WHEREAS, this financial shift has made a school district's funding level less predictable, and those districts receiving reimbursements for disproportionate costs have not been adequately compensated for extraordinarily high special education costs; and

WHEREAS, a revision of the current special education funding formula is necessary to stabilize the proportion of the state appropriation for special education that is distributed through block grants and for special education cooperative administration and travel."

Effective Date — Applicability: Section 3, Ch. 145, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for fiscal school years beginning on or after July 1, 2001."

1993 Amendment: Chapter 466 in (1), near beginning, substituted "allowable costs and reports must be reviewed" for "schedule or allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and", after "superintendent of public instruction" deleted "in his review and approval of the budget", and at end substituted "payments and a district's special education expenditures" for "for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313"; in (1)(a)(i), at beginning, inserted "the cost of", after "teacher aids" deleted "special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost", and near end deleted "entire" before "working"; in (1)(a)(ii), at beginning, inserted "the total cost of", after "textbooks" deleted "if used exclusively", and after "programs" deleted "the actual total cost"; inserted (1)(a)(iii) concerning equipment and (1)(a)(iv) concerning activities providing prereferral intervention; deleted former (1)(a)(iii) that read: "(iii) other expenses"; in (1)(a)(v), at beginning, inserted "the cost of" and at end deleted "the actual total cost"; in (1)(a)(vi), before "personnel", inserted "instructional" and at end deleted "the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes"; in (1)(b) substituted "related" for "supportive"; in (1)(b)(i), at beginning, inserted "the cost of", substituted "corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include"; in (1)(b)(ii), at beginning, inserted "the cost of" and at end substituted "corresponding to the working time that each person devotes to the special program" for "the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program"; deleted (1)(c) that read: "(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost"; inserted (1)(b)(iii) concerning supplies, (1)(b)(iv) concerning prereferral interventions, (1)(b)(v) concerning contracted services, (1)(b)(vi) concerning transportation costs, (1)(b)(vii) concerning equipment, and (1)(b)(viii) concerning cooperatives; deleted (2)(b) and (2)(c) that read: "(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section"; deleted former (4) that read: "(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education"; in (5)(b), near beginning, substituted "special education allowable cost payment, as determined in 20-9-321" for "allowable cost of the special education budgets" and at end, after "appropriations", deleted "based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district"; and made minor changes in style. Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

Name Change — Short Form Amendment: Section 55(2), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment" in this section.

1991 Amendment: Deleted (1)(d) that read: "(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction". Amendment effective July 1, 1991.

1989 Special Session Amendment: Throughout section substituted "foundation program" or "foundation program amount" for "maximum-budget-without-a-vote"; in (1)(b)(ii), after "clerical personnel", substituted "who assist" for "for"; in (2) substituted "adopt rules" for "prior to September 1, 1977, revise the rules"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: Inserted (1)(c)(iv) relating to repair and maintenance of equipment.

1985 Amendment: In (6)(a) after "legislative appropriations", inserted "however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation"; and near beginning of (6)(b) after "budgets", deleted "approved by the superintendent of public instruction".

1983 Amendment: In (6)(b), in first sentence after "If" inserted "the total allowable cost of the" and after "based upon" substituted "prioritized budget items as established by the superintendent of public instruction" for "its budget as a percent of all approved special education budgets".

Statement of Intent: The statement of intent attached to HB 444 (Ch. 548, L. 1983) provided: "A statement of intent is required of this bill because it grants authority to the Superintendent of Public Instruction to prioritize budget items to determine total amounts to be distributed to districts for special education.

It is intended that the prioritization be aimed at providing maximum funding for basic required or mandated services and least funding for other allowable services. The priorities must be structured to provide the most services to the greatest number of students within the limitations of local conditions. The priorities should be established by a combination of mandated services, student/teacher ratios, and local conditions that affect costs of providing services. The district's share of the funding is not intended to be line-itemed by the Office of Public Instruction; the bill provides a manner for determining the funding to be received by the districts. The manner in which the funds are to [be] used by the district is to be done within the allowable cost schedule provided in 20-7-431."

1981 Amendment: Inserted "or to in-state child study team meetings or in-state individualized education program meetings" after "must travel on an itinerant basis from school to school or district to district" in (1)(a)(iii)(B).

Composite Section: This section was amended by Ch. 481 and Ch. 661, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Subsections (6)(a) and (6)(b) represent apparently conflicting provisions enacted by the above chapters.

Correction: In sec. 1, Ch. 661, L. 1979, the reference in subsection (2)(b) was to subsection (1)(c), and the reference in subsection (2)(c) was to subsection (1)(d)(i) (nonexistent). The Code Commissioner changed the references to "subsection (1)(b)" and "subsection (1)(c)(i)", respectively, to correct the errors which arose through amendments made by the Legislature in the course of enacting Ch. 661.

Administrative Rules

Title 10, chapter 16, subchapter 38, ARM Special education funding.

Case Notes

State/Federal Law Conflict — Psychotherapeutic Services: When state regulations conflict with federal regulations, state regulations yield to federal regulations. Therefore, the federal regulations allowing for psychological services, which include psychotherapy, override the state regulations that exclude psychotherapy. In re the "A" Family, 184 M 145, 602 P2d 157, 36 St. Rep. 1898 (1979), distinguishing Doe v. Colburg, 171 M 97, 555 P2d 753 (1976).

Attorney General's Opinions

Rental of Land and Buildings as Allowable Cost: Rental of land and buildings is an allowable cost unless used only by special education pupils, in which case specific authorization by the Superintendent is required. The allowable costs for special education may not exceed the proportion of special pupils to regular pupils in the district in the previous year unless rental occurred prior to 1974-75 school year. 37 A.G. Op. 34 (1977).

20-7-435. Funding of educational programs for eligible children receiving in-state inpatient treatment of serious emotional disturbances.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 156, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 156, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2021 Amendment: Chapter 371 in (1)(a) at end after "in a cost-effective manner" deleted remainder of first sentence and former second sentence (see 2021 Session Law for former text); inserted (1)(b) providing definition of appropriate educational opportunity; in (2) at beginning inserted "From appropriations provided for the purposes of this section"; in (3)(a) following "superintendent of public instruction shall" substituted current language requiring a daily rate that reflects actual document costs and excludes reimbursable costs for "ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility"; substituted current (3)(b) through (3)(d) for former (3)(b) through (3)(d) (see 2021 Session Law for former text); in (4) near beginning inserted "beyond those authorized under this section", near middle substituted "an eligible child who receives an education" for "an eligible Montana child who receives inpatient treatment and an education", and at end inserted "under subsection (3) or as provided under subsection (5)"; substituted current (5) for former (5) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2019 Amendment: Chapter 142 inserted (7) allowing the superintendent of public instruction to distribute funds to public school districts for contracts with in-state children's psychiatric hospitals or residential treatment facilities for children with significant needs. Amendment effective July 1, 2019.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) in first sentence the code commissioner changed "children with disabilities" to "child with a disability"; and made minor changes in style. Amendment effective March 15, 1999.

1993 Amendments: Chapter 375 at end of (1) inserted "including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109"; in (3)(a), at beginning, substituted "ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children" for "monitor the provision of an appropriate educational opportunity for the child"; deleted former (3)(c) that required 100% funding of approved allowable costs under this section from appropriated funds and that required an excess appropriation to revert to the state equalization aid account; inserted (3)(c) requiring funding of approved allowable costs from appropriations with exception of services reimbursed under state or federal law or an insurance policy; inserted (3)(d) requiring funding for allowable costs according to proration based on average daily membership; in (4), after "treatment", inserted "and an education under contract with"; near beginning of (5), in first sentence after "provide an", substituted "education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part" for "appropriate educational opportunity" and near end, after "educational program", substituted "that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children" for "for a child" and substituted second sentence providing that the amount negotiated with the school district must include all education and related services costs that may be negotiated under subsection (3) and all education and related services costs necessary to fulfill requirements for providing child with an education for former second sentence that read: "The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3)"; in (6), at end, inserted "including funds received under the provisions of 20-7-420"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (6)(b) substituted "20-9-308" for "20-9-315"; deleted (6)(c) that read: "(c) may not be included in the foundation program amount of the district"; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 15, Ch. 765, L. 1991, provided: "[This act] is effective July 1, 1991."

20-7-436. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 156, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 156, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2003 Amendment: Chapter 479 in definition of children's psychiatric hospital in (a)(ii) near middle after "standards of" substituted "the centers for medicare and medicaid services" for "the health care financing administration"; in definition of eligible child near beginning before "child" inserted "Montana resident" and after "age" deleted "who is emotionally disturbed as defined in 20-7-401"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 4, Ch. 479, L. 2003, provided: "[This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization." In a letter dated April 11, 2005, the Office of Public Instruction informed the Code Commissioner that July 1, 2005, is "the date by which Congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization".

1995 Amendments: Chapter 18 in definition of children's psychiatric hospital, in (a)(i) after "children", inserted "and youth"; in definition of eligible child, after "20-7-401", deleted "or 52-2-101"; in definition of residential treatment facility, in (a)(i) after "children", inserted "or youth"; and made minor changes in style.

Chapter 418 in definition of residential treatment facility, in (a)(iii) and (a)(v), substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of residential treatment facility, in (a)(iii) and (a)(v), substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1993 Amendment: Chapter 375 in definition of eligible child, before "52-2-101", inserted "20-7-401 or"; in definition of residential treatment facility, in (a)(i) after "disturbances", deleted "and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age", inserted (a)(ii) to include operating for the primary purpose of providing residential psychiatric care to persons under 21, inserted (a)(iii) requiring licensure by Department of Health and Environmental Sciences, inserted (a)(iv) requiring participation in Montana Medicaid program for psychiatric services for persons under 21, and inserted (a)(v) to include a facility that notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv) has received a certificate of need from Department of Health and Environmental Sciences prior to January 1, 1993; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date: Section 15, Ch. 765, L. 1991, provided: "[This act] is effective July 1, 1991."

20-7-443. Financial assistance special education services for children under 6 years of age.

Compiler's Comments

2005 Amendment: Chapter 255 near beginning substituted "providing special education services" for "operating an approved special education class or program" and at end substituted "in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction" for "under 20-7-442"; and made minor changes in style. Amendment effective July 1, 2005.

20-7-451. Authorization to create full service education cooperatives.

Compiler's Comments

1991 Amendment: In (1), near middle of first sentence after "perform", substituted "any or all education" for "all special education". Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

1989 Amendment: Deleted former (3) that read: "(3) The superintendent of public instruction may pay directly to a cooperative the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of such payments must be within the limit set by the legislature for approved special education budgets"; and made minor change in punctuation. Amendment effective July 1, 1989.

1985 Amendment: In (3) near beginning of first sentence, after "may", substituted "pay" for "transfer", after "cooperative the", substituted "approved allowable" for "state and federal portion of a district's budgeted", and after "education services", inserted "from the state special revenue fund for state equalization aid as provided in 20-9-343" and second sentence concerning the total of payments of allowable costs.

20-7-452. Detailed contents of full service education cooperative contracts.

Compiler's Comments

1991 Amendment: At end of (1) inserted "for purposes of providing special education services". Amendment effective July 1, 1991.

1989 Amendment: In (1) inserted "which may not be less than 3 years"; near beginning of (6) substituted "a management board" for "an administrator or a joint board", near middle, after "cooperative", substituted "and that is comprised of trustees" for "including representation", and at end substituted "or their authorized representatives" for "on the joint board"; and made minor changes in phraseology. Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

Administrative Rules

Title 10, chapter 16, subchapter 39, ARM Special education cooperatives.

20-7-454. Final approval and filing of full service education cooperative contract.

Compiler's Comments

2007 Amendment: Chapter 94 at beginning of introductory clause deleted "Within 10 days after approval by the attorney general" and after "20-7-451" inserted "20-7-452, and 20-7-454"; and made minor changes in style. Amendment effective October 1, 2007.

1991 Amendment: In introductory clause, after "full service", deleted "special". Amendment effective July 1, 1991.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.

Compiler's Comments

2007 Amendment: Chapter 94 near beginning after "20-7-451" inserted "20-7-452, and 20-7-454"; and made minor changes in style. Amendment effective October 1, 2007.

1991 Amendment: Near beginning, after "full service", deleted "special" and near middle, after "administrative officer", inserted "management board". Amendment effective July 1, 1991.

20-7-456. Tenure of teachers employed by cooperatives.

Compiler's Comments

1991 Amendment: In (4), before "cooperative contract", deleted "special education". Amendment effective July 1, 1991.

20-7-457. Funding provisions for special education cooperatives.

Compiler's Comments

2019 Amendment: Chapter 9 in (1) substituted "special education cooperative" for "cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes"; deleted former (3) that read: "(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year"; and made minor changes in style. Amendment effective October 1, 2019.

2007 Amendment: Chapter 94 in (4) near beginning of first sentence after "requirements of" deleted "20-7-453 and"; in (6) at beginning deleted "Before July 1, 1994"; and made minor changes in style. Amendment effective October 1, 2007.

1993 Amendment: Chapter 466 in (1), after "20-3-361", substituted "prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321" for "for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets"; in (4), at beginning, deleted "After June 30, 1990" and at end deleted "formed after June 30, 1990"; and inserted (6) concerning boundaries for cooperatives and (7) concerning restructuring of cooperatives.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

1991 Amendments: Chapter 136 in (2), after "cooperative", inserted "for special education purposes"; and in second sentence of (4), after "full service", deleted "special". Amendment effective July 1, 1991.

Chapter 568 inserted (5) authorizing a full service education cooperative to establish certain funds to provide for purposes of the cooperative contract and purposes allowed by law. Amendment effective April 23, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 343, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [20-7-457] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] [20-7-458, repealed 1994] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4] [20-7-457]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board."

Effective Date: Section 8, Ch. 343, L. 1989, provided: "[This act] is effective July 1, 1989."

Administrative Rules

Title 10, chapter 16, subchapter 38, ARM Special education funding.

Title 10, chapter 16, subchapter 39, ARM Special education cooperatives.

20-7-461. Appointment and termination of appointment of surrogate parent.

Compiler's Comments

2005 Amendment: Chapter 255 in (1) at end substituted requirement that a surrogate parent be nominated and the documentation be given the youth court within 10 days of determining that a child is in need of a surrogate parent for: "The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination"; and in (3) in second sentence near end decreased the time period from 45 to 20 days and inserted last sentence providing that the nominated person is the surrogate parent if the court does not act within 20 days. Amendment effective July 1, 2005.

2003 Amendment: Chapter 16 in (2) at end of first sentence after "agency" inserted "that is providing educational services to the child". Amendment effective February 11, 2003.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1) in first sentence in two places the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1993 Amendment: Chapter 356 substituted present (1) regarding assignment of surrogate parent for former subsection that read: "Any person may advise the trustees of a school district or the governing authority of an institution of a child with disabilities within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution shall determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination"; in (3), in two places after "district", inserted "or their designee" and in two places, after "institution", inserted "or its designee"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), near middle, substituted reference to child with disabilities for reference to handicapped child; in (3), at beginning of second sentence, deleted "If the court does not appoint the nominee", at end substituted "shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents" for "must make another nomination under this section", and inserted third sentence regarding nomination when the court denies appointment; inserted (4) requiring adoption of rules for an appointment termination procedure; and made minor changes in style. Amendment effective July 1, 1991.

Statement of Intent: The statement of intent attached to Ch. 618, L. 1985, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the superintendent of public instruction. In preparing instructional and training material to be given to a person appointed as a surrogate parent, the superintendent should look to the material used in the state of Connecticut, which developed the surrogate parent concept. The superintendent should tailor the material to carefully delineate the procedure used in Montana for evaluating and placing handicapped children (now children with disabilities) and devising educational programs for them. The material should specifically delineate the role of the surrogate in working with the child study team as early as possible.

Rules adopted by the superintendent concerning reimbursement of the surrogate parent should be aimed at fully reimbursing the surrogate while not creating a financial hardship to the school district. The rules should be such that people will not be financially discouraged from accepting appointment as a surrogate parent."

Case Notes

Appointment of Surrogate Parent — Issue Not Moot: An adult with disabilities who received special education services appealed a decision of the District Court that had appointed a third party in lieu of a foster father as a surrogate parent. The school district argued that the disabled student's issue was moot because the student had aged out of the school system and was no longer eligible for education services. However, the student was pursuing a separate due process claim against the school district under the federal Individuals with Disabilities Education Act. Because the due process claim could result in education services for the disabled student, the surrogate had broad powers that could impact the student's future education possibilities, rendering the issue not moot. In re C.S., 2014 MT 74, 374 Mont. 289, 320 P.3d 981.

Foster Parent as "Parent" in Appointment of Surrogate Parent: An adult with disabilities who received special education services was placed with a foster father. Under the federal Individuals with Disabilities Education Act (IDEA), Butte-Silver Bow County requested that the District Court appoint a surrogate parent for the disabled adult. The court appointed a third party as the surrogate parent and denied a request by the disabled adult to remove the third party and appoint the foster father as the surrogate parent for purposes of making educational decisions. The Supreme Court reversed, finding that although Montana statutes do not specifically address a foster parent's priority for appointment as a surrogate parent, Montana is bound by IDEA regulations through both the acceptance of federal funding and Montana's administrative law, which requires procedures for the appointment of a surrogate parent to comply with federal law. IDEA requires an available parent, including a foster parent, to be appointed as the surrogate parent for an adult student. Therefore, the District Court had erroneously appointed a third party in lieu of the eligible foster father. In re C.S., 2014 MT 74, 374 Mont. 289, 320 P.3d 981.

20-7-462. Responsibilities of surrogate parent.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in introductory clause the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

20-7-463. Surrogate parent — immunity from liability — reimbursement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-7-469. Dyslexia — definition — screening — intervention.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 50, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 3, Ch. 227, L. 2019, provided: "[This act] is effective on July 1, 2019."

Applicability: Section 4, Ch. 227, L. 2019, provided: "[This act] applies to school years beginning on or after July 1, 2019."

Preamble: The preamble attached to Ch. 227, L. 2019, provided: "WHEREAS, reading is fundamental to developing a person's full educational potential, which is the goal of the people of Montana as stated in Article X, section 1, of the Montana Constitution; and

WHEREAS, dyslexia can impede a person's ability to read and is one of the most common learning disabilities, with some estimates as high as one in five people having dyslexia; and

WHEREAS, the Legislature finds that ensuring Montana students with dyslexia are identified and receive appropriate educational services as early as possible is vital to these students maximizing their educational potential."

20-7-470. Blind persons' literacy rights and education — short title.

Compiler's Comments

Preamble: The preamble attached to Ch. 490, L. 2005, provided: "WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of Star Student, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment."

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-471. Blind persons' literacy rights and education — definitions.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

Administrative Rules

ARM 10.16.3022 Criteria for identification of student as having visual impairment.

20-7-472. Individualized education program for child with blindness.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-473. Standards of competency and instruction — Braille reading and writing.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-474. Instructional materials and Braille equipment — Braille equipment loan program.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

20-7-475. Blind persons' literacy rights and education — personnel training.

Compiler's Comments

Effective Date: Section 10, Ch. 490, L. 2005, provided that this section is effective July 1, 2005.

Administrative Rules

ARM 10.55.717 Assignment of persons providing instruction to Braille students.

Part 5

Traffic Education

Part Administrative Rules

Title 10, chapter 13, ARM Traffic education.

20-7-501. Definitions.

Compiler's Comments

1999 Amendment: Chapter 181 deleted definition of instructor of motorcycle safety training that read: ""Instructor of motorcycle safety training" means an instructor approved by the superintendent of public instruction to instruct motorcycle safety training"; deleted definition of motorcycle safety training course that read: ""Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the superintendent of public instruction and that is designed to teach motorcyclists how to safely operate their vehicles"; and made minor changes in style. Amendment effective July 1, 1999.

Repeal of Termination Date: Section 1, Ch. 63, L. 1993, repealed sec. 2, Ch. 428, L. 1991, which provided that the 1991 amendments to this section terminated October 1, 1993. Repealer effective February 19, 1993.

1991 Amendments: Chapter 428 in definition of traffic education, near beginning of first sentence, inserted references to bicycle, pedestrian, and school bus traffic laws and at end, before "motor vehicles", inserted "bicycles and" and inserted last sentence relating to how the instruction should be designed; and made minor change in style. Amendment terminates October 1, 1993.

Chapter 701 in definition of traffic education, near beginning, inserted "or motorcycle laws" and at end of first sentence inserted "or motorcycles"; and inserted definitions of motorcycle safety training course and instructor of motorcycle safety training. Amendment effective July 1, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

20-7-502. Duties of superintendent of public instruction.

Compiler's Comments

2021 Amendment: Chapter 450 in (6) at end inserted "including a commercially available private traffic education course"; inserted (10) authorizing an online or distance learning classroom component; inserted (11) authorizing alternatives for the hands-on driving component; and made minor changes in style. Amendment effective May 10, 2021.

1999 Amendment: Chapter 181 in (3) after "education" deleted "and an instructor of motorcycle safety training. Qualifications for an instructor of motorcycle safety training must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent"; in (4) after "education" deleted "and instructors of motorcycle safety training" and after "teachers" deleted "or instructors"; in (5) after "education" deleted "and motorcycle safety training"; in (9) after "reviews" deleted "and motorcycle safety training course monitoring"; and made minor changes in style. Amendment effective July 1, 1999.

1991 Amendment: In (2), before "instruction", deleted "classroom instruction and behind-the-wheel"; in (3), near beginning before "qualifications", deleted "classroom instruction and the behind-the-wheel instruction", after "education" inserted "and an instructor of motorcycle safety training", and inserted second sentence regarding qualifications for an instructor of motorcycle safety training; in (4), in two places, inserted references to instructors of motorcycle safety training; in (5), near beginning after "education", inserted "and motorcycle safety training"; inserted (9) requiring periodic reviews and monitoring; and made minor changes in style. Amendment effective July 1, 1991.

Administrative Rules

Title 10, chapter 13, ARM Traffic education.

20-7-503. District establishment of traffic education program.

Compiler's Comments

2021 Amendment: Chapter 450 inserted (2) authorizing online or distance learning traffic education and authorizing the hands-on driving portion to be taken with a parent or guardian; and made minor changes in style. Amendment effective May 10, 2021.

20-7-504. State traffic education account — proceeds earmarked for account — transmittal.

Compiler's Comments

2001 Amendment: Chapter 237 near beginning of (2) substituted "county" for "court". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Code Commissioner Instruction: Pursuant to sec. 47, Ch. 257, L. 2001, in (2) in two places the code commissioner changed "state treasurer" to "department of revenue".

1999 Amendment: Chapter 181 deleted former (2) that read: "(2) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 inserted (3) relating to transmittal of fees from the court to the State Treasurer for deposit in the traffic education account. Amendment effective March 12, 1997.

1995 Amendment: Chapter 509 deleted former (2) that read: "(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 39 in (1), after first sentence, deleted: "There must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail"; deleted former (2) providing that all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses be contributed to the traffic education account; inserted (2) that read: "(2) Money paid into the account pursuant to 3-10-601 must be distributed to approved traffic education courses as provided in 20-7-506"; and made minor changes in style. Amendment effective July 1, 1994.

1992 Special Session Amendment: Chapter 11, Sp. L. July 1992, in (1), at beginning of second sentence, inserted exception clause; and inserted (4) transferring $300,000 from the state traffic education account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 701 inserted (3) regarding accrual and dispensation of funds in the state traffic education account; and made minor changes in style. Amendment effective July 1, 1991.

Transfer of Money: Section 3, Ch. 701, L. 1991, provided: "Any money remaining in the motorcycle safety training account after [the effective date of this act] [effective July 1, 1991] is transferred into the state traffic education account provided for in 20-7-504."

1987 Amendment: In second sentence of (1), after "court", inserted "except a justice's court".

1985 Amendment: In (2) substituted language relating to a portion of fees collected pursuant to 61-5-121 for former provision that 35% of all money received from motor vehicle driver's license fees be deposited in the traffic education account.

1981 Amendment: Changed "fines assessed and bails forfeited on all offenses involving a violation" to "fines and forfeitures collected in any court from persons apprehended or arrested by highway patrol officers or department of highways peace officers for any violation" in (1); deleted "or a city ordinance" after "Title 61" and "except offenses relating to parking of vehicles" after "motor vehicles" in the second sentence of (1); increased "20%" to "25%" in (1)(a) through (1)(d); and increased "5%" to "35%" at the beginning of (2).

Interim Study Committee Bill: Chapter 487, L. 1981 (HB 675), was introduced at the request of the Study Committee on State Mandates and the Effects of State-Owned Property on Local Governments. See committee report, Legislative Council, 1980.

Case Notes

Penalty Assessment on Bail: Statute providing for penalty assessment on bail violated Due Process Clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. State ex rel. Sanders v. Butte, 151 M 171, 441 P2d 190 (1968).

Attorney General's Opinions

Allocation of Justice's Court Fines and Costs: Money which has been collected as fines and costs in Justice's Court and paid to the County Treasurer by the Justice of the Peace and which remains after the specific allocations made in this section should be credited to the county general fund pursuant to 46-18-235 (prior to 1987 amendment). 41 A.G. Op. 39 (1985).

Payments to Crime Victims Compensation Account: Payments to the Crime Victims Compensation Account are to be calculated as 6% of the total of all nonparking motor vehicle fines and bail forfeitures, including fines and forfeitures for violations of the 55-mile-per-hour speed limit. 37 A.G. Op. 64 (1977).

20-7-506. Annual allocation and distribution of traffic education account proceeds.

Compiler's Comments

1995 Amendment: Chapter 509 in (1), at beginning, inserted "Subject to the provisions of subsection (2)"; inserted (2) concerning activities to be funded by funds in the traffic education account; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 39 deleted (2) that read: "(2) Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include:

(a) development, printing, and distribution of essential materials;
(b) preparation of teachers of traffic education;
(c) state supervision of the program; and
(d) any and all other activities deemed necessary by the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1994.

20-7-507. District traffic education fund.

Compiler's Comments

1993 Special Session Amendment: Chapter 39 at beginning of second sentence substituted "All nontax receipts" for "The state traffic education reimbursement and all nontax receipts"; and made minor changes in style. Amendment effective July 1, 1994.

Part 6
Textbook Regulation

20-7-602. Textbook selection and adoption.

Compiler's Comments

2005 Amendment: Chapter 490 inserted (2) relating to availability of textbooks to blind and visually impaired children; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 490, L. 2005, provided: "WHEREAS, Article X, section 1(1), of the Montana Constitution establishes the state's goal of providing a system of education that will develop the full educational potential of each person and guarantees equality of educational opportunity to each person; and

WHEREAS, according to an article in a 1998 edition of Star Student, a preliminary study evaluating the correlation between adult literacy skills and employment conducted by Dr. Ruby Ryles, the founding coordinator of the master's program in orientation and mobility at the Louisiana Tech University, found that in a study of 74 adults who were born legally blind and were patrons of the Library for the Blind, 44% of the participants who had learned to read in Braille were unemployed, while those who had learned to read using print had a 77% unemployment rate; and

WHEREAS, the preliminary unemployment results prompted Dr. Ryles to conduct a study to establish the correlations between present literacy rates and the early reading education by comparing the results of 45 legally blind high school students from 45 cities, towns, and rural communities in 11 eastern and southern states with those of 15 sighted students attending the same schools as the legally blind students; and

WHEREAS, Dr. Ryles discovered that early Braille readers outperformed sighted students in vocabulary by a 5% margin on the comprehension, vocabulary, and other subtests of the Stanford achievement test and nearly matched their sighted classmates on the Woodcock Johnson R (revised) test; and

WHEREAS, in the capitalization and punctuation portion of the Woodcock Johnson R (revised) test, early Braille reading students who received Braille instruction 4 to 5 days each week in the 1st through 3rd grades produced a mean score that was 7 percentage points higher than their sighted classmates, 25 percentage points higher than students who received Braille instruction fewer than 4 days each week, and 42 percentage points higher than their legally blind classmates who received no Braille instruction; and

WHEREAS, in the spelling portion of the Woodcock Johnson R (revised) test, early Braille learners averaged 1 percentage point higher than fully sighted readers, 32 percentage points higher than students who received Braille instruction fewer than 4 days each week in 1st through 3rd grades, and 38 percentage points higher than legally blind students who received no instruction in reading Braille; and

WHEREAS, the studies performed by Dr. Ryles lead to the inescapable conclusion that early Braille education is crucial to literacy and that literacy is crucial to employment."

20-7-604. Licensing textbook dealers.

Compiler's Comments

2015 Amendment: Chapter 69 inserted (2)(b) concerning surety bond filing fees; and made minor changes in style. Amendment effective February 27, 2015.

2007 Amendment: Chapter 94 in (2) deleted former fourth sentence that read: "The bond shall be approved by the attorney general"; and made minor changes in style. Amendment effective October 1, 2007.

20-7-605. Notification and processing of complaint against licensed textbook dealer.

Compiler's Comments

1995 Amendment: Chapter 509 in (2), at end, substituted "general fund" for "public school equalization aid account"; and made minor changes in style. Amendment effective July 1, 1995.

20-7-606. Doing business without textbook dealer's license — penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-7-607. Restricting competition — penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 7
Adult Education

Part Attorney General's Opinions

Use of Adult Education and Transportation Funds Prohibited in New School Construction: Under the 2009 version of 20-9-208, the transfer of funds from one budgeted fund to another budgeted fund is restricted, particularly if the funding source is a property tax levy. Property taxes levied to support adult education and transportation funds may be transferred to the school flexibility fund as long as the transfer is within or directly related to the purposes for which the funds were raised, for example, to support adult education or transportation. A transfer of property taxes for any other purpose, such as constructing a new school, is invalid. Transferred funding sources cannot be converted to flex fund revenues or cash balances to cover expenditures authorized for flex fund purposes. A county or school board may demand an accounting to determine how funds were transferred, budgeted, and spent. If liability exists, a county, school board, or citizen with standing may pursue any remedy provided by law. 54 A.G. Op. 6 (2012).

20-7-701. Definition of adult basic education and adult education.

Compiler's Comments

2019 Amendment: Chapter 279 in definition of adult education at end inserted "and the provision of advanced opportunities to qualified pupils pursuant to Title 20, chapter 7, part 15". Amendment effective July 1, 2019.

1995 Amendment: Chapter 308 deleted former (2) that read: "(2) Neither definition may include the instruction in vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

20-7-702. Authorization to establish adult education programs.

Compiler's Comments

2021 Amendment: Chapter 351 near beginning of first sentence substituted "or a community college district created prior to January 1, 2021" for "or community college district"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2011 Amendment: Chapter 171 in second sentence after "education" substituted "career and technical education" for "K-12 career and vocational/technical education". Amendment effective October 1, 2011.

2001 Amendment: Chapter 133 in second sentence substituted "K-12 career and vocational/technical education, vocational-technical education" for "vocational education". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 15, Ch. 133, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

20-7-704. Adult education tuition and fees.

Compiler's Comments

2021 Amendment: Chapter 351 near beginning of first sentence substituted "or a community college district created prior to January 1, 2021, may" for "or community college district shall have the authority to"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

20-7-705. Adult education fund.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) at end of first sentence substituted "or a community college district created prior to January 1, 2021" for "or community college district". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2011 Amendment: Chapter 152 in (5) substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

2001 Amendments — Composite Section: Chapter 220 at beginning of (3) deleted "Subject to 15-10-420" and substituted "1.1 mills" for "1 mill", "2.2 mills" for "2 mills", and "3.3 mills" for "3 mills" (Ch. 574 rendered the mill levy increases by Ch. 220 void); and made minor changes in style. Amendment effective April 11, 2001.

Chapter 574 in (3) near middle substituted "levy of a tax on the taxable value of all taxable property within the district" for "levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district". Amendment effective July 1, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendment: Chapter 584 at beginning of (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 211 in (3), near end of second sentence (voided by Ch. 430), and near end of first sentence of (4) substituted "final budget" for "preliminary budget". Amendment effective April 7, 1997.

Chapter 430 at end of (3), after "program", deleted "when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval"; and near beginning in (5), after "program", deleted "that has been approved by the superintendent of public instruction". Amendment effective July 1, 1997.

1995 Amendment: Chapter 38 in (3), near beginning of first sentence after "high school district", substituted "may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312" for "that is not unified with an elementary district may". Amendment effective February 8, 1995.

Applicability: Section 2, Ch. 38, L. 1995, provided: "[This act] does not apply to a unification of a county high school district with an elementary district that was effective prior to the school fiscal year beginning July 1, 1994."

1993 Special Session Amendment: Chapter 34 in (3), in first sentence, substituted "may authorize a levy of not more than 2 mills on the district and" for "or of" and after "not more than" substituted "3 mills" for "2 mills". Amendment effective January 3, 1994.

1993 Amendment: Chapter 133 in (5), near end, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendments: Chapter 555 in (3), near middle of first sentence, inserted "or of a K-12 school district formed under the provisions of 20-6-701"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 568 in (2), in second sentence after "all", deleted "federal, state, and" and inserted third sentence requiring federal and state adult education program money to be deposited in the miscellaneous programs fund; in (3), in second sentence before "approval", inserted "trustees shall obtain the" and after "instruction" deleted "shall have been acquired by the trustees"; and made minor changes in style. Amendment effective April 23, 1991.

1981 Amendment: Inserted "except that trustees of a county high school district that is not unified with an elementary district may authorize a levy of not more than 2 mills on the district" in the first sentence of (3).

20-7-712. Adult basic education fund and its distribution.

Compiler's Comments

2011 Amendment: Chapter 171 in (1) after "school" inserted "district", after "college district" deleted "or accredited", and after "tribal college" inserted "public library, community-based organization, or a consortium of those organizations"; in (2) in second sentence near beginning inserted "or authorized representative" and at end substituted "program" for "courses" and substituted third sentence for "The financial administration and accounting of adult basic education funds must be the same as that of adult education." Amendment effective October 1, 2011.

2001 Amendment: Chapter 148 at end of (1) inserted "or accredited tribal college located in Montana"; in (2) in second sentence inserted "or tribal college"; and made minor changes in style. Amendment effective July 1, 2001.

20-7-713. Adult education fund operating reserve.

Compiler's Comments

1991 Amendments: Chapter 568 in five places, after "adult", deleted "basic"; in two places substituted "operating reserve" for "cash reserve"; in first sentence, before "end-of-the-year", deleted "fund" and after "end-of-the-year" substituted "fund balance" for "cash balance"; in second sentence, before "balance", deleted "cash"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in two places substituted "operating reserve" for "cash reserve"; in first sentence, after "end-of-the-year", substituted "fund balance" for "cash balance"; in second sentence, before "balance", deleted "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-7-714. County adult literacy programs — authorization to levy tax and establish fund.

Compiler's Comments

2001 Amendment: Chapter 574 in (1)(a) near middle of first sentence substituted "levy a tax on the taxable value of all taxable property" for "levy up to 1 mill on each dollar of taxable property". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 at beginning of (1)(a) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 264 in (2)(c), at end, substituted "16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation" for "at least 19 years of age and whose high school class has graduated".

Part 8
Public Recreation

20-7-802. How program operated — independently or cooperatively — delegation.

Case Notes

Leases of Trust Property Unauthorized: Chapter 71, L. 1939 (20-7-801 through 20-7-805), does not authorize the leasing of trust property. Hames v. Polson, 123 M 469, 215 P2d 950 (1950).

No Delegation of Municipal Functions: Legislature could not authorize city to delegate such municipal functions as leasing of park grounds to special park board composed of member of City Council and two members of private club to whom grounds were leased. Hames v. Polson, 123 M 469, 215 P2d 950 (1950).

Part 9
Gifted and Talented Children

20-7-902. Identification of gifted and talented children.

Compiler's Comments

2021 Amendment: Chapter 150 in (1) near beginning after "school district" substituted "shall provide educational services to gifted and talented students that are commensurate to provide educational services to gifted and talented students that are commensurate to student needs and foster a positive self-image" for "may identify gifted and talented children and devise programs to serve them"; in (2) substituted current text relating to structured support for former text (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

Case Notes

Accreditation Standard Mandating Gifted and Talented Program Within Board's Constitutional Powers of "General Supervision": After the Board of Public Education refused to amend its rule requiring all districts to identify and provide programs for gifted and talented students, the Legislature, claiming the rule conflicted with 20-7-902, which authorized rather than mandated gifted and talented programs, enacted House Bill No. 116 (1991) at the request of the Administrative Code Committee (now appropriate administrative rule review committee) to repeal the rule. In invalidating House Bill No. 116, the District Court held that the Board, pursuant to its exercise of general supervision powers under Art. X, sec. 9(3), of the Montana Constitution, is vested with constitutional rulemaking authority that is self-executing and independent of any power delegated to the Board by the Legislature. Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

Attorney General's Opinions

Rule Requiring Every School District to Provide Educational Services to Gifted and Talented Children Invalid: The adoption of 20-2-121 did not provide a statutory grant of authority to the Board of Public Education to require the creation of gifted and talented children programs. Rather, this section makes the creation of gifted and talented children programs optional for individual school districts. Therefore, ARM 10.55.804, promulgated pursuant to the Board's statutory authority to adopt accreditation standards and making the creation of such programs mandatory, conflicts with this section and is thus invalid. 44 A.G. Op. 4 (1991). (See case note Bd. of Pub. Educ. v. Administrative Code Comm. at this section.)

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding.

Compiler's Comments

1983 Amendment: Substituted (1) relating to policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education for former language, which read "The superintendent of public instruction shall adopt criteria for gifted and talented children's program proposals and the procedures for submission of such proposals."; in (2) inserted "in accordance with policies of the board of public education".

20-7-904. Review and recommendations of proposals — reporting.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 51, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 93 inserted (4) concerning report on programs serving gifted and talented students; and made minor changes in style. Amendment effective October 1, 2019.

1983 Amendment: In (1), substituted "The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain" for "Program proposals submitted by school districts to the superintendent of public instruction shall contain"; and inserted (3) relating to supervision and coordination by the Superintendent of Public Instruction (see 1983 Session Law for text) for former subsection, which read "The superintendent of public instruction must establish a procedure for proposed review and approval."

Part 12
Montana Digital Academy

20-7-1201. Montana digital academy — purposes — governance.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 537, L. 2023. Amendment effective July 1, 2023.

2015 Amendment: Chapter 142 in (5) in second sentence after "implement" inserted "and publish". Amendment effective July 1, 2015.

2011 Amendments — Composite Section: Chapter 19 in (1), (2), (3), and (5) substituted "digital academy" for "virtual academy". Amendment effective October 1, 2011.

Chapter 418 in (1), (2), (3), and (5) substituted "digital academy" for "virtual academy". Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

Effective Date: Section 5, Ch. 417, L. 2009, provided: "[This act] is effective July 1, 2009."

Report to Legislature: Section 2, Ch. 417, L. 2009, provided: "The governing board shall provide the 62nd legislature with a report that details:

(1) how the line item funding in House Bill No. 645 cited in [section 4] [not codified—coordination instruction] was spent; and

(2) future funding requirements and recommendations, instructor standards, curriculum development issues, and evaluation of the software for implementing a seamless educational distance learning continuum in the state of Montana."

Law Review Articles

"Virtual" Schools: Real Discrimination, Lin, 32 Seattle U. L. Rev. 177 (2008).

Rural School Districts Struggle to Meet the Demands of No Child Left Behind, Webb, 16 S.J. Agric. L. Rev. 191 (2007).

20-7-1202. Funding — rulemaking authority.

Compiler's Comments

Effective Date: Section 4, Ch. 142, L. 2015, provided: "[This act] is effective July 1, 2015."

20-7-1203. Montana digital academy clearinghouse.

Compiler's Comments

Effective Date: Section 5, Ch. 537, L. 2023, provided: "[This act] is effective July 1, 2023."

Part 13
Protection and Wellness of Youth

Part Compiler's Comments

Preamble: The preamble attached to Ch. 260, L. 2013, provided: "WHEREAS, the Centers for Disease Control and Prevention estimates that as many as 3.9 million sports-related and recreation-related concussions occur in the United States each year; and

WHEREAS, youth athletics are commonplace throughout the state and it is in the best interest of participating youth that uniform concussion policies and procedures apply across the state; and

WHEREAS, the Centers for Disease Control and Prevention has created uniform policies and procedures regarding the nature and risk of concussions, including the effects of continuing to play after sustaining a concussion, that are consistent with current medical knowledge."

Short Title: Section 1, Ch. 260, L. 2013, provided: "[Sections 1 through 5] [20-7-1301 through 20-7-1304] may be cited as the "Dylan Steigers Protection of Youth Athletes Act"."

Effective Date: Section 7, Ch. 260, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 22, 2013.

20-7-1301. Purpose — intent — immunity.

Compiler's Comments

2017 Amendment: Chapter 331 inserted (2)(b) concerning liability of entities acting individually and not on behalf of state or political subdivision; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017."

20-7-1302. Definitions.

Compiler's Comments

2017 Amendment: Chapter 331 in definition of licensed health care professional at end inserted "consistent with current medical knowledge"; in definition of organized youth athletic activity near beginning substituted "organized or sponsored by a school district, nonpublic school, or youth athletic organization" for "sponsored by a school or school district" and inserted (b) regarding exceptions; inserted definition of youth athletic organization; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017."

20-7-1303. Youth athletes — concussion education requirements.

Compiler's Comments

2017 Amendment: Chapter 331 in (1) in first sentence near beginning inserted "nonpublic school, or youth athletic organization" and after "procedures to inform" deleted "athletic trainers" and in second sentence near end after "current medical knowledge" deleted "and guidelines provided by the U.S. department of health and human services, centers for disease control and prevention"; in (2) in first sentence near end substituted "official designated by the school district, nonpublic school, or youth athletic organization" for "official designated by the school or school district" and after "youth athletic activities" deleted "for the subsequent school year" and inserted last sentence limiting applicability of form; in (3) in first sentence inserted "nonpublic schools, and youth athletic organizers", in second sentence after "Each coach" deleted "athletic trainer", and at end substituted "each year" for "each school year"; in (4) near beginning inserted "nonpublic schools, and youth athletic organizations"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017."

20-7-1305. Short title.

Compiler's Comments

Effective Date: Section 7, Ch. 405, L. 2021, provided: "[This act] is effective July 1, 2021."

Severability: Section 5, Ch. 405, L. 2021, was a severability clause.

20-7-1306. Designation of athletic teams.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

Effective Date: Section 7, Ch. 405, L. 2021, provided: "[This act] is effective July 1, 2021."

Severability: Section 5, Ch. 405, L. 2021, was a severability clause.

20-7-1307. Cause of action.

Compiler's Comments

Effective Date: Section 7, Ch. 405, L. 2021, provided: "[This act] is effective July 1, 2021."

Severability: Section 5, Ch. 405, L. 2021, was a severability clause.

20-7-1310. Youth suicide awareness and prevention training.

Compiler's Comments

2017 Amendment: Chapter 256 inserted (5) requiring establishment of policies, procedures, or plans related to suicide prevention and response; and inserted (6) providing immunity. Amendment effective July 1, 2017.

Preamble: The preamble attached to Ch. 351, L. 2015, provided: "WHEREAS, Montana's Suicide Awareness and Prevention Training Act is based on The Jason Flatt Act model legislation that has been adopted in over a dozen states, where this legislation has been implemented to positively impact hundreds of thousands of teachers and millions of students around the country."

Effective Date: Section 4, Ch. 351, L. 2015, provided: "[This act] is effective July 1, 2015."

Administrative Rules

ARM 10.55.714 Professional development.

ARM 10.55.720 Suicide prevention and response.

20-7-1311. Child sexual abuse awareness and prevention.

Compiler's Comments

Effective Date: Section 4, Ch. 218, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 20, 2017.

20-7-1315. First aid training in schools.

Compiler's Comments

2019 Amendment: Chapter 220 in (6) substituted "(a) emergency care providers" for former text that read: "(a) emergency medical technicians;

(b) paramedics"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: Section 3, Ch. 190, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 13, 2017.

Preamble: The preamble attached to Ch. 190, L. 2017, provided: "WHEREAS, the Legislature finds that protecting citizens from serious injury and death is a compelling state interest; and

WHEREAS, sudden cardiac arrest is a leading cause of death in the United States with only a 7-9% survival rate; and

WHEREAS, bystander CPR can greatly increase survival rates of sudden cardiac arrest; and

WHEREAS, training all high school graduates in CPR will add thousands of trained rescuers to the population each year; and

WHEREAS, this training requires minimal time and cost; and

WHEREAS, numerous individuals and organizations are willing to support schools in providing this training."

20-7-1316. Child sex trafficking prevention.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

20-7-1317. Electronic directory photograph repository — use in search for missing child only — annual opt-in notice required.

Compiler's Comments

Effective Date: Section 6, Ch. 250, L. 2019, provided: "[This act] is effective July 1, 2019."

20-7-1321. Employment assistance for current or former school employees, contractors, and volunteers engaged in sexual misconduct prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 167, L. 2023. Amendment effective April 19, 2023.

Severability: Section 38, Ch. 167, L. 2023, was a severability clause.

Effective Date: Section 9, Ch. 305, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 10, Ch. 305, L. 2019, provided: "[This act] applies to incidents occurring on or after [the effective date of this act]." Effective May 7, 2019.

Preamble: The preamble attached to Ch. 305, L. 2019, provided: "WHEREAS, present law does not adequately protect students aged 16 or older from predatory adults in positions of authority over them; and

WHEREAS, protecting students from sexual predators is of paramount concern to the State of Montana; and

WHEREAS, in 2015 Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA) through the Every Student Succeeds Act, Pub. L. No. 114-95; and

WHEREAS, as amended, section 8546 of the ESEA (20 U.S.C. 7926) requires states as well as state and local education agencies receiving federal funds to adopt policies to prohibit the aiding and abetting of sexual abuse by school employees, contractors, and agents; and

WHEREAS, job search assistance and favorable job recommendations enable offenders to continue to victimize new students, sometimes for years."

Severability: Section 8, Ch. 305, L. 2019, was a severability clause.

20-7-1322. Penalty.

Compiler's Comments

Effective Date: Section 9, Ch. 305, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Applicability: Section 10, Ch. 305, L. 2019, provided: "[This act] applies to incidents occurring on or after [the effective date of this act]." Effective May 7, 2019.

Preamble: The preamble attached to Ch. 305, L. 2019, provided: "WHEREAS, present law does not adequately protect students aged 16 or older from predatory adults in positions of authority over them; and

WHEREAS, protecting students from sexual predators is of paramount concern to the State of Montana; and

WHEREAS, in 2015 Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA) through the Every Student Succeeds Act, Pub. L. No. 114-95; and

WHEREAS, as amended, section 8546 of the ESEA (20 U.S.C. 7926) requires states as well as state and local education agencies receiving federal funds to adopt policies to prohibit the aiding and abetting of sexual abuse by school employees, contractors, and agents; and

WHEREAS, job search assistance and favorable job recommendations enable offenders to continue to victimize new students, sometimes for years."

Severability: Section 8, Ch. 305, L. 2019, was a severability clause.

20-7-1323. Short title.

Compiler's Comments

Effective Date: Section 6, Ch. 369, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

20-7-1324. Definitions.

Compiler's Comments

Effective Date: Section 6, Ch. 369, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

20-7-1325. Online protections for pupils.

Compiler's Comments

Effective Date: Section 6, Ch. 369, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

20-7-1326. Pupil records — online privacy protections.

Compiler's Comments

Effective Date: Section 6, Ch. 369, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

20-7-1330. Graduation requirements for youth who experience disruption in education — legislative intent.

Compiler's Comments

Effective Date: Section 3, Ch. 80, L. 2021, provided: "[This act] is effective on passage and approval." Approved March 26, 2021.

20-7-1335. School marshal program — qualifications.

Compiler's Comments

Effective Date: Section 7, Ch. 541, L. 2021, provided: "[This act] is effective July 1, 2021."

20-7-1336. School marshal duties and responsibilities.

Compiler's Comments

Effective Date: Section 7, Ch. 541, L. 2021, provided: "[This act] is effective July 1, 2021."

20-7-1337. School marshal program — trustees' duties.

Compiler's Comments

Effective Date: Section 7, Ch. 541, L. 2021, provided: "[This act] is effective July 1, 2021."

20-7-1338. Law enforcement notification.

Compiler's Comments

Effective Date: Section 7, Ch. 541, L. 2021, provided: "[This act] is effective July 1, 2021."

Part 14

Cultural Integrity Commitment Act

Part Compiler's Comments

Termination Provision Repealed: Section 4, Ch. 562, L. 2021, repealed sec. 10, Ch. 442, L. 2015, and sec. 1, Ch. 171, L. 2019, which terminated this part June 30, 2023. Effective July 1, 2021.

Extension of Termination Date: Section 1, Ch. 171, L. 2019, amended sec. 10, Ch. 442, L. 2015, by extending the termination date imposed by that section to June 30, 2023. Effective April 18, 2019.

Effective Date: Section 9, Ch. 442, L. 2015, provided that this section is effective on passage and approval. Approved May 6, 2015.

Termination: Section 10, Ch. 442, L. 2015, provided: "[This act] terminates June 30, 2019."

20-7-1403. Definitions.

Compiler's Comments

2021 Amendment: Chapter 240 in definition of Indian language after "any of the languages of" substituted "a federally recognized Indian tribe in Montana" for "the tribes located on the seven Montana reservations and the Little Shell Chippewa tribe". Amendment effective April 19, 2021.

20-7-1404. Indian language immersion programs — funding — flexibility.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 8 inserted (7) concerning matching funds; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 275 in (4) near beginning deleted brackets around "language". Amendment effective October 1, 2017.

Code Commissioner Correction: In (4) the code commissioner inserted the bracketed word "language" for consistent use of terminology.

Part 15
Montana Advanced Opportunity Act

Part Compiler's Comments

Effective Date: Section 8, Ch. 279, L. 2019, provided that this part is effective July 1, 2019.

20-7-1503. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 574, L. 2023. Amendment effective July 1, 2023.

20-7-1506. Incentives for creation of advanced opportunity programs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 574, L. 2023. Amendment effective July 1, 2023.

Administrative Rules

ARM 10.54.1010 Deadlines for applications and annual reports.

20-7-1510. Credit for participating in work-based learning partnerships.

Compiler's Comments

Effective Date: Section 13, Ch. 247, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

Part 16
Transformational Learning

20-7-1601. Forms of personalized learning — legislative intent.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 307, L. 2023, in (1) near middle of first sentence substituted "proficiency-based learning as defined in subsection (2) of this section" for "proficiency under 20-9-311"; inserted (2) providing definitions of proficiency and proficiency-based learning; and made minor changes in style. Amendment effective July 1, 2023.

Section 4, Ch. 580, L. 2023, in (1) near middle of first sentence before "under 20-7-118" substituted "remote instruction" for "offsite instruction". Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 580, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

2021 Amendment: Chapter 247 near beginning of first sentence inserted "forms of personalized learning authorized under Montana law, including but not limited to work-based learning pursuant to 20-7-510, proficiency under 20-9-311, determinations of course equivalency by an elected board of trustees under 20-3-324(18), offsite instruction under 20-7-118, and", near beginning of second sentence after "provision of and participation in" substituted "forms of personalized learning" for "transformational learning", and near middle of third sentence after "pupil participating in" substituted "forms of personalized learning referenced in this section" for "transformational learning"; and made minor changes in style. Amendment effective April 19, 2021.

Termination Provision Repealed: Section 10, Ch. 247, L. 2021, amended sec. 7, Ch. 402, L. 2019, which terminated this section June 30, 2027. Effective April 19, 2021.

Severability: Section 12, Ch. 247, L. 2021, was a severability clause.

Effective Date: Section 6, Ch. 402, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 9, 2019.

Termination: Section 7, Ch. 402, L. 2019, provided: "[This act] terminates June 30, 2027."

20-7-1602. Incentives for creation of transformational learning programs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 307, L. 2023. Amendment effective July 1, 2023.

Transition: Section 3, Ch. 307, L. 2023, provided: "The board of public education or the board's designee shall review the applications of school districts with first-time applications that are unfunded and on the waiting list on [the effective date of this act] [July 1, 2023] to determine whether the district's application meets the requirements under 20-7-1602(2) as amended by [this act]. If a district's application does not meet the requirements, the board shall remove the district from the waiting list. A district removed from the waiting list may reapply."

2021 Amendments — Composite Section: Chapter 203 in (3) at beginning deleted "On an annual basis"; in (4) inserted introductory clause; in (4)(a) at beginning inserted "on an annual basis," near end of first sentence substituted "a lottery system draw" for "date received", and inserted last three sentences concerning the procedure for the lottery system draw; in (4)(b) in second full sentence near middle substituted "in the year in which the request for a funding increase is received and augmented with a lottery system" for "in the order of date received"; in (4)(c) inserted reference to 5-11-210 and at end substituted "as submitted in the annual report and strategic plan operating under approved and funded" for "operating under approved"; in (5)(a) at beginning deleted "Except as provided in subsection (4)(d)"; in (5)(b) near middle of first sentence substituted "by October 1 of each year of funding" for "no later than June 30 of fiscal year 2020 and by October 1 of each year beginning fiscal year 2021"; in (5)(c) at beginning deleted "For fiscal years 2020 and 2021"; deleted former (4)(d) that read: "(d) Applications qualified by the board of public education in fiscal year 2020 must be funded beginning in fiscal year 2020"; in (9)(b) substituted current definition of transformational learning aid for former definition (see 2021 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2021.

Chapter 261 in (4)(c) at beginning deleted "on or before September 15 of even-numbered years" and near beginning inserted reference to 5-11-210. Amendment effective April 20, 2021.

Chapter 203 in (4)(c) inserted "pursuant to 5-11-210", and Ch. 261 in (4)(c) inserted "in accordance with 5-11-210". The codifier chose the latter change.

Applicability: Section 3, Ch. 203, L. 2021, provided: "The lottery system created in [this act] applies to new applications and new requests for funding increases received on or after January 1, 2022. Applications and requests for funding increases that have already been received and qualified under the existing program and are currently on the wait list for funding will maintain their existing priority position for funding as long as the application or request for funding increase remains qualified."

Effective Date: Section 6, Ch. 402, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 9, 2019.

Termination: Section 7, Ch. 402, L. 2019, provided: "[This act] terminates June 30, 2027."

Administrative Rules

ARM 10.54.1010 Deadlines for applications and annual reports.

Part 17

Students With Special Needs Equal Opportunity Act

Part Compiler's Comments

Effective Date: Section 16, Ch. 616, L. 2023, provided that this part is effective July 1, 2023.

Transition: Section 13, Ch. 616, L. 2023, provided: "The legislature intends that this program be operational for the school year beginning July 1, 2024, and that the office of public instruction develop all necessary components of the program during the school year beginning July 1, 2023, to meet that intention."

Severability: Section 15, Ch. 616, L. 2023, was a severability clause.

Part 18

Early Literacy Targeted Interventions

Part Compiler's Comments

Effective Date: Section 11, Ch. 608, L. 2023, provided that this part is effective July 1, 2023.

Transition: Section 9, Ch. 608, L. 2023, provided: "(1) The board of public education, the office of public instruction, and the boards of trustees of school districts shall collaborate and prepare for the full implementation of [sections 1 through 4] [this part] in the school year beginning July 1, 2024. The legislature intends that the evaluation methodology be available for administration in the spring of 2024 to determine child eligibility.

(2) The legislature intends that school districts operating multiyear kindergarten programs in the school year beginning July 1, 2023, plan for the transition to early literacy targeted intervention programs under [sections 1 through 4] [this part] for the school year beginning July 1, 2024."

Part Administrative Rules

Title 10, chapter 54, subchapter 9, ARM Early literacy targeted interventions.

CHAPTER 8
MONTANA SCHOOL FOR THE DEAF AND BLIND

Chapter Compiler's Comments

Salary Schedule and Appropriation: Chapter 604, L. 1987, provided for a salary adjustment for certified or licensed faculty of the Montana School for the Deaf and Blind for the biennium ending June 30, 1989.

Chapter Administrative Rules

Title 10, chapter 61, ARM Montana School for the Deaf and Blind.

Part 1
General Provisions

Part Case Notes

Deaf and Blind School Employee Contracts Not Personal Services Contracts — Employees Entitled to Annual Leave and Holiday Pay Accrued: Employees of the Montana School for the Deaf and Blind signed standard form year-to-year employment contracts that granted them "all holidays and annual leave to which [the employee] is entitled under state law" and "all employee benefits to which [the employee] is entitled under the laws of the State of Montana". The employees were required to work evenings and to be on call much of the time. Nevertheless, the employees were required to complete time cards showing employment for only 8-hour days and were paid for only that time. The employees submitted a claim to the Board of Public Education for annual leave and holiday pay accrued but not paid and sued the Board when it refused to pay them. The Board defended, claiming that the employees' contracts were personal services contracts and that therefore the employees were exempt from the definition of an "employee" under 2-18-601. The Supreme Court held that the District Court properly granted summary judgment for the employees because the employees were not hired on an ad hoc basis because of the highly technical nature of their employment—rather, the employees are year-round employees given the benefit of the state group health plan and given grade and pay increases on state payroll accounting forms. The Supreme Court concluded that to hold otherwise would mean that all state employees are hired under personal services contracts and no state employee is entitled to annual leave and holiday pay, a construction that the Supreme Court determined would be unreasonable. Corwin v. Bd. of Pub. Educ., 272 M 14, 898 P2d 1227, 52 St. Rep. 589 (1995).

20-8-101. Montana school for deaf and blind — state-supported special school.

Compiler's Comments

2003 Amendment: Chapter 72 near middle of first sentence substituted "located in the city of Great Falls" for "formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls" and near end after "unit" substituted "and special school" for "and institution"; at end of second sentence deleted "prior to July 1, 1943"; and made minor changes in style. Amendment effective March 17, 2003.

1983 Amendment: In first sentence, deleted "state" before "school for the deaf and blind" and following "board of public education" deleted "with a local executive board to be appointed in the manner and to have the powers, authority, and duties granted to and required of that board by the provisions of 20-25-303 and 20-25-304".

Administrative Rules

ARM 10.51.106 Agency functional chart.

20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 73 inserted (3) requiring tracking system; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 74 in (2) in last sentence near beginning substituted "may" for "shall" and deleted former last sentence that read: "The fee must be in an amount sufficient to cover the cost of services provided"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 537 in (2) inserted second through fourth sentences regarding programs for hearing and visually impaired children and fees for services; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning, before "school", substituted "day" for "boarding", inserted second sentence that read: "The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled", near middle of third sentence substituted "an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school" for "ordinary public school education and to teach such trades and vocations as will enable children attending such", and at end deleted former language that read: "Increased and additional facilities shall be provided from time to time for the more thorough and successful training of those who show a special aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and specialists employed for such purpose, and this requirement shall apply to both male and female pupils"; and made minor changes in phraseology.

1983 Amendment: At beginning of section, after "Montana" deleted "state"; near end of section, after "competent teachers and" substituted "specialists" for "foremen, permanently or temporarily".

20-8-103. Board of public education rules.

Compiler's Comments

1989 Amendment: At end, after "language", deleted "and must have taught 3 or more years in a school for the deaf"; and made minor changes in phraseology.

Administrative Rules

ARM 10.51.104 Responsibility assigned by statute.

Title 10, chapter 61, ARM Montana School for the Deaf and Blind.

20-8-104. Eligibility of children for admittance.

Compiler's Comments

2005 Amendment: Chapter 41 substituted present eligibility criteria for former language that read: "Upon proper application for admittance, as prescribed by the rules of the board of public education, and either pursuant to an individualized educational plan developed jointly by a child's local educational agency and the Montana school for the deaf and blind or by direct application by the child's parents, hearing impaired or visually impaired children who are not more than 21 years of age residing within the state of Montana and nonresident children who are not more than 21 years of age may be admitted to the Montana school for the deaf and blind if the child's local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child." Amendment effective March 24, 2005.

1995 Amendment: Chapter 291 near beginning, after "public education", substituted "and either pursuant to an individualized educational plan developed jointly by a child's local educational agency and the Montana school for the deaf and blind or by direct application by the child's parents, hearing impaired or visually impaired" for "deaf and blind", in two places increased age limit from 18 years to 21 years, and at end substituted "may be admitted to the Montana school for the deaf and blind if the child's local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child" for "who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school". Amendment effective March 30, 1995.

1983 Amendment: Near beginning of section, after "being made therefor" inserted "as prescribed by the rules of the board of public education".

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

20-8-106. Duration of attendance at school — suspension or expulsion — transfer.

Compiler's Comments

1995 Amendment: Chapter 291 in (1), after "21 years", substituted "if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child" for "unless the board of public education and superintendent determine that attendance at the school will not benefit the child"; in (2), after "superintendent", inserted "of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law"; and made minor changes in style. Amendment effective March 30, 1995.

1983 Amendment: Inserted (2) relating to transfer from the school to another educational placement.

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

20-8-107. Admission of nonresident children and advance payment of cost — Indian children.

Compiler's Comments

2005 Amendment: Chapter 151 inserted (5) providing that statutory requirements for the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind. Amendment effective April 8, 2005.

1995 Amendment: Chapter 291 in (1), at beginning, substituted "Hearing impaired or visually impaired" for "Deaf and blind"; inserted (2) regarding the negotiation for placement of out-of-state students at the school; in (3), after "residents", deleted "and wards of the United States"; inserted (4) regarding deposit and statutory appropriation of money paid by out-of-state institutions; and made minor changes in style. Amendment effective March 30, 1995.

1983 Amendment: Deleted last sentence of (2), which read: "The school for the deaf and blind is hereby authorized to collect reimbursement from the United States government for expenses incurred in providing services for Indian children who are wards of the United States government."

20-8-108. Provisions for indigent students.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-8-109. Time of regular school term.

Compiler's Comments

1983 Amendment: After "term of school shall" substituted "be as provided in 20-1-301" for "begin on the second Wednesday of September and close on the second Wednesday of June following, provided that the superintendent of such school, with the consent and approval of the board of public education, may provide for the opening of the school on another day and for the closing of the same on another day, provided that the term fixed shall be for a period of 9 months".

20-8-110. Property vested in school.

Compiler's Comments

1983 Amendment: Near middle of section, deleted "state" before "school for the deaf and blind"; near end of section, deleted "all donations, gifts, devises, or grants which have been heretofore or may hereafter be made by any person or corporation to said school" before "shall vest in the state".

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111, the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. (Decided prior to 1983 amendments.) 38 A.G. Op. 111 (1980).

20-8-111. Duty of board of public education as to property of school.

Compiler's Comments

1997 Amendment: Chapter 422 near beginning of first sentence, after "education", deleted "has a statutory appropriation, as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: Near beginning of first sentence, after "public education", inserted "has a statutory appropriation, as provided in 17-7-502, and".

1983 Amendment: In first sentence, after "shall" substituted "either directly or through a contract with a nonprofit corporation" for "have the power and it shall be its duty to"; inserted last sentence requiring donations, gifts, devises, or grants to the school to vest in the Board for the use and benefit of the school and its students; and made minor changes in phraseology.

Administrative Rules

Title 10, chapter 59, ARM School for the Deaf and Blind Foundation.

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111, the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. (Decided prior to 1983 amendments.) 38 A.G. Op. 111 (1980).

20-8-112. Expenditure of school moneys.

Compiler's Comments

1983 Amendment: Near middle of section, deleted "state" before "school for the deaf and blind".

Attorney General's Opinions

Gift to Private Nonprofit Corporation: Under 20-8-111 (before 1983 amendment), the Board of Public Education, in its discretion, may give money that has been donated for the use and benefit of the Montana School for the Deaf and Blind to a private nonprofit corporation created and controlled by the Board and operated for the benefit of that school. However, the Board remains accountable for the money until it is used directly for the general support, maintenance, or improvement of the Montana School for the Deaf and Blind. 38 A.G. Op. 111 (1980).

20-8-113. Duties of superintendent of school for the deaf and blind.

Compiler's Comments

1983 Amendment: After "deaf and blind" substituted (1) through (5) relating to itemized general duties of the Superintendent (see 1983 Session Law for text) for "is hereby authorized to add to his present duties that of acting as combined employment placement officer and school field worker temporarily for the sake of economy in order to set up this office and operate same until such time as in his opinion evidence warrants employing a part-time employment officer and school field worker and part-time instructor"; and made minor changes in phraseology.

20-8-116. Employment placement — continuing education.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 291 in (1), near beginning of first sentence after "superintendent", inserted "of the Montana school for the deaf and blind or the superintendent's designee", near middle, after "employment for", substituted "hearing impaired or visually impaired persons in attendance" for "blind, deaf, and hard of hearing persons not in attendance", and at end, after "school", deleted "or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance" and at beginning of second sentence and at beginning of (2) inserted reference to the superintendent's designee; and made minor changes in style. Amendment effective March 30, 1995.

Chapter 546 in (1) and (1)(a) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995. The amendment in (1) was rendered void by Ch. 291.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1983 Amendment: At beginning of section, substituted "The superintendent shall" for "As employment placement officer, it shall be his duty to"; deleted "such" before "data and statistics"; after "suitable employment for" deleted "such" and inserted "blind"; at end of (1), substituted "by this part" for "under this law"; and inserted (2) relating to other educational offerings.

20-8-120. Communications skills required of certain employees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Statement of Intent: The statement of intent attached to SB 158 (Ch. 151, L. 1983) provided: "Sections 3 [20-8-104] and 5 [20-8-105] [now repealed] of the bill delegate rulemaking authority to the Board of Public Education. The board has already adopted rules in these areas of procedures for admission to the School for the Deaf and Blind (ARM 10.61.201) and of transfers into another educational placement (ARM 10.61.204). The committee would contemplate that the board republish these rules, citing the proper statutory authorities after SB 158 is enacted. The board would, of course, retain the power to amend these rules in the future in such manner as it deemed proper for the governance of the school.

Section 13 [20-8-120] gives the board authority to establish employment criteria in the area of communications skills for school staff who work with deaf children. Rules in this area should recognize that teachers need a high level of skills such as sign language in order to communicate to deaf pupils, while some custodial or administration employees may be able to work well for the school with a lower level of communications skills. The board should establish a relatively informal procedure for establishing compliance with its criteria, such as certification by the superintendent and one deaf adult, and it may reserve the right to grant waivers from its policy."

20-8-121. Transportation of students at school.

Compiler's Comments

1989 Amendment: Near middle of (1), after "residential", deleted "and boarding"; near beginning of (4), after "residential", deleted "and boarding", after "limited to" substituted "the number of round trips to the student's residence as specified in the school calendar approved by the board of public education" for "one round trip to the student's residence each month during such times as the school is in session", and near end of second sentence, after "provided", substituted "for travel in excess of the total number of trips approved" for "more than nine times"; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 396, L. 1987, provided: "A statement of intent is required for this bill because section 1 [20-8-121] provides for rulemaking by the board of public education with regard to the method of and reimbursement for transportation of residential and boarding students at the Montana school for the deaf and blind to and from the student's residence during the school year.

It is the intent of the legislature that the board of public education adopt rules that consider the most cost-effective and convenient method of providing for the transportation of each residential student at the school, within the limitations of the act."

CHAPTER 9
FINANCE

Chapter Compiler's Comments

State Guaranteed Tax Base Aid Adjustments for Protested Valuation: Section 1, Ch. 540, L. 2005, provided: "For any school district that has taxable valuation that was protested for tax year 2002 through 2004 that exceeds 10% of the district's taxable valuation in each respective year, upon resolution of the protest, the superintendent of public instruction shall compare the amount that the school district would have been eligible to receive, using the revised valuation, to the amount of guaranteed tax base aid that the district general fund actually received. If the calculation exceeds the amount of guaranteed tax base aid paid to the school district's general fund, the superintendent of public instruction shall request an appropriation for the difference."

Effective Date — Retroactive Applicability. Section 2, Ch. 540, L. 2005, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning after June 30, 2002."

Preamble: The preamble attached to Ch. 633, L. 1993, provided: "WHEREAS, it is the intent of the Legislature to enhance both student equity and taxpayer equity for Montana public K-12 education by restructuring the funding and budget mechanisms for school district general fund budgets; and

WHEREAS, for these purposes, the Legislature determines that the foundation program funding mechanism of the past 4 decades be replaced with a public school funding system designed to yield greater equalization of both district general fund budgets per-ANB and district taxpayer efforts within a reasonable number of years; the Legislature has structured the base amount for school equity (BASE) funding program to contain components that can be modified to meet a number of state and school district objectives and economic realities but that will still maintain the essential elements of equalization as required by the Montana Constitution; and

WHEREAS, it is the intent of the Legislature that for the year of implementation of [this act], the Office of the Superintendent of Public Instruction focus first on implementing procedures and processes within [this act] and on assisting school districts to calculate and adopt adequate general fund budgets in compliance with [this act] and that, as soon as practical after the adoption of district final budgets, the Office of the Superintendent of Public Instruction implement essential rulemaking procedures; and

WHEREAS, the Legislature recognizes that school districts and the Office of the Superintendent of Public Instruction will need assistance in order to implement [this act] before the school fiscal year beginning July 1993 and intends that the Office of the Legislative Auditor provide available computer models and consultation, as necessary and as approved by the Legislative Audit Committee, to the Office of Public Instruction to ensure that a transition to the provisions of [this act] is accomplished with a minimum of delay and inconvenience to the districts; and

WHEREAS, the Legislature intends that the implementation of [this act] be accomplished with a minimum of additional reporting workload at the district and state level and that the Office of the Superintendent of Public Instruction, school districts, and county superintendents be strongly encouraged to implement electronic reporting and transmitting of data and information as soon as practical, using existing telecommunications networks, computer diskettes, or any other standardized means practicable; and

WHEREAS, in developing any request for proposals for software and data processing development, the superintendent of public instruction shall solicit input from school officials and organizations to accomplish the intent of [this act]."

Preamble: The preamble attached to Ch. 11, Sp. L. June 1989, provided: "WHEREAS, it is the intent of the Legislature to enhance equality of educational opportunity for students in the elementary schools and secondary schools of Montana by revising the school funding laws to provide greater equalization of the funding available to school districts and to promote equalization of school district expenditures per student. It is the further intent of the Legislature to preserve local control of the public school system, as guaranteed by Montana's Constitution.

For these purposes, the Legislature determines to equalize funding aid to the school districts through the foundation program [renamed 1993] for the school fiscal year ending June 30, 1991, in an amount equal to the following percentages of the total costs incurred by all the districts in the state in school fiscal year 1988: 90% of comprehensive insurance and 90% of general fund expenditures. The Legislature also determines to equalize funding for retirement costs by providing a guaranteed property tax mill value for those counties with a mill value per ANB less than the statewide mill value per ANB. The superintendent of public instruction is required to adopt rules to implement distribution of guaranteed tax base aid as provided in [sections 60 through 63] [20-9-366 through 20-9-369]. It is intended that the rules adopted ensure the eligibility of the requesting school districts and the accountability of the districts for the guaranteed tax base aid payments they receive.

The Legislature recognizes its responsibility to devise an equalized system of school funding and recognizes that measures in addition to the provisions in this bill are necessary to fully address equalization of funding and expenditures for transportation, retirement, capital improvements, and other needs of the districts. Because it is necessary to identify those factors that affect disparate expenditure patterns, to determine whether those factors are educationally relevant, and to develop data not currently available to devise methods of equitably funding those needs, the Legislature determines that a study should be conducted, as provided in [sections 53 through 59] [not codified], and that equitable funding methods for these needs should be addressed by the 52nd Legislature. It is not intended by the Legislature that the individual income tax surtax provide a long-term solution to the school equalization funding problems of Montana.

The Legislature acknowledges the constitutional guarantee of equal educational opportunity for each public school pupil in Montana. The Legislature also acknowledges the sound policy considerations for empowering local trustees to supervise and control the schools in the district, as required by the Montana Constitution. Therefore, to guarantee more equal expenditures per student in similarly sized schools throughout Montana, while also providing each district board of trustees the power to determine and meet the unique and individual needs of students and schools in the district, the Legislature determines that it is reasonable and necessary to establish a maximum general fund budget limitation for each district, except as provided in 20-9-315 [repealed 1993], of 135% of the district's foundation program [renamed 1993] amount. Because of different circumstances that exist from district to district, the Legislature finds that it is reasonable and necessary to permit that range of disparity in expenditures by similarly sized districts throughout the state.

The Legislature intends that the current system of funding county equalization with elementary and high school levies and other revenue sources be maintained without change in order to preserve the current method of providing equalized local support of schools. The statutory appropriation of all revenue earmarked to fund county equalization does not affect the manner in which that revenue is collected, controlled, and distributed to districts by the county. It is intended that a district eligible for federal funds under Title I of Public Law 81-874 will be able to maintain the local contribution rate as required by 20 U.S.C. 238(d)(3)(C) for continuing eligibility.

It is intended that while school districts may conduct more than 180 days of instruction, a school district may not receive foundation program [renamed 1993] support for more than 180 days of pupil instruction.

Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the Superintendent of Public Instruction is authorized to supervise school financial administration and to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the Board of Public Education has authority to require any reports it considers necessary. It is intended that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the Superintendent of Public Instruction adopt rules necessary to implement the requirement. The Superintendent of Public Instruction shall provide training and assistance to the districts as necessary to enable the districts to comply.

It is intended that the districts be required to file accurate and timely reports with the Superintendent of Public Instruction. Districts must be required to provide student and school district data as may be required by the Superintendent of Public Instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievement, and other appropriate educational factors necessary to enable the Legislature to assess the equality of educational opportunity being provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the Superintendent of Public Instruction conduct training and provide forms for the personnel responsible for completing reports. Whenever possible, the Superintendent of Public Instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the Legislature.

State equalization aid and county equalization money may be withheld from school districts, as provided by 20-9-344, that do not comply with accounting and reporting requirements.

It is intended that the Superintendent of Public Instruction employ additional personnel during fiscal year 1990 and fiscal year 1991, not to exceed the appropriation, for the purpose of establishing standard accounting and reporting practices in the public school districts and for implementing the additional provisions of this bill.

The Legislature determines that if county equalization revenue is deficient because of noncollected tax payments, state equalization aid may be provided to offset the delinquency."

Chapter Case Notes

Failure of Legislature to Define Quality Education — Inability of Court to Determine That Education System Adequately Funded: The District Court held that the state system of funding public education was unconstitutional under Art. X, sec. 1(3), Mont. Const., but did not violate the equal protection clause in Art. II, sec. 4, Mont. Const. On appeal, the Supreme Court held that because the Legislature has not defined what "quality" means, it was not possible to conclude that the current funding system was designed to provide a quality education. Although deferring to the Legislature to provide a definition of a quality education, given the unchallenged findings of the District Court regarding Art. X, sec. 1(3), Mont. Const., the Supreme Court nevertheless concluded that whatever definition the Legislature devises, the current system was not sufficiently grounded in principles of quality to be considered constitutional. Because the unconstitutionality of the present funding system was affirmed, the Supreme Court held that the District Court need not have addressed the equal protection issue, so the District Court was directed to vacate its conclusion that the present system did not violate equal protection. Columbia Falls Elementary School District No. 6 v. St., 2005 MT 69, 326 M 304, 109 P3d 257 (2005). In Stroebe v. St., 2006 MT 19, 331 M 23, 127 P3d 1051 (2006), plaintiffs also challenged the constitutionality of Montana's system of funding public schools. The District Court granted the state's motion for summary dismissal on grounds that the equitable funding challenge was not currently justiciable. On appeal, the Supreme Court noted that plaintiffs' issues had been previously addressed in Columbia Falls, id., and that the circumstances under which plaintiffs brought the present case had sufficiently changed under Columbia Falls, so that rendering another decision while the funding system was undergoing legislative reform would not only interfere with the Columbia Falls decision but would decide a question that was essentially moot. The equitable funding challenge was therefore not currently justiciable, and the appeal was dismissed.

Public School Funding System Unconstitutional: The guarantee of equality of educational opportunity applies to each person in the state and is binding on all branches of government, whether at the state, local, or school district level. As a result of the failure to adequately fund the foundation program (renamed 1993), thereby forcing an excessive reliance on permissive levies, the state failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed under the Montana Constitution. Spending disparities among Montana school districts further resulted in a denial of equality of educational opportunity. Therefore, the 1985-86 system of funding public elementary and secondary schools was a violation of Art. X, sec. 1, Mont. Const. (See 1989 and 1993 amendments.) School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Chapter Attorney General's Opinions

Allocation of Proceeds Under Settlement Agreement: Proceeds under a settlement agreement may be allocated in proper portion to any appropriately established building reserve fund of school districts within a county. The proceeds may not be allocated to any building fund of those school districts. 41 A.G. Op. 67 (1986).

Attendance Unit on Hutterite Colony Premises — Establishment — Closure — Finance: A school district board of trustees may establish a separate attendance unit on the premises of a Hutterite colony located in the district. Closure of an attendance unit on the premises of a Hutterite colony is a matter within the discretion of the board of trustees of the school district involved, and the trustees have no authority to make an agreement to the contrary. The colony may effectively close an attendance unit by failing to renew the lease agreement if no similar space is available for its continued operation. Operational costs of an attendance unit must be budgeted and financed in the manner provided by law. Any agreement between the school district and the colony for private financing would be unenforceable. 38 A.G. Op. 26 (1979).

Chapter Law Review Articles

Classroom v. Courtroom: Is the Right to Education Fundamental?, Harper, 51 Mont. L. Rev. 509 (1990).

Interpretations of the Montana Constitution: Education, Goetz, 51 Mont. L. Rev. 340 (1990).

Montana's State School Trust Lands, Wiles, 38 Pub. Land & Resources L. Rev. 149 (2017).

Full State Funding of Education as a State Constitutional Imperative, Reynolds, 60 Hastings L.J. 749 (2009).

Leaving Equality Behind: New Directions in School Finance Reform, Enrich, 48 Vand. L. Rev., 100 (1995).

Rethinking Statewide Taxation of Nonresidential Property for Public Schools, Stark, 102 Yale L.J. 805 (1992).

Chapter Collateral References

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Part 1
School Budgets

20-9-101. Application of budget system for districts and counties.

Compiler's Comments

2003 Amendment: Chapter 276 near middle of first sentence after "school districts" inserted "to county funds supporting school district transportation and retirement obligations"; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

20-9-102. General supervision of school budgeting system.

Administrative Rules

Title 10, chapter 10, ARM Special accounting practices.

ARM 10.15.101 Definitions.

Title 10, chapter 20, ARM Average number belonging (ANB).

Title 10, chapter 21, ARM Guaranteed tax base aid (GTBA).

Title 10, chapter 22, ARM Spending and reserve limits.

Title 10, chapter 23, ARM Permissive and voted amounts — levies.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-103. School budget form.

Compiler's Comments

1989 Amendment: Near middle of (2), after "district may", inserted "in addition". Amendment effective July 1, 1989.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the state Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-104. General fund operating reserve.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 640, L. 2023. Amendment effective July 1, 2023.

2019 Amendment: Chapter 270 in (4) and (9) substituted "remitted under 7-15-4286(3) or 7-15-4291" for "remitted under 7-15-4291". Amendment effective October 1, 2019.

Termination Provision Repealed: Section 1, Ch. 247, L. 2019, repealed sec. 29, Ch. 418, L. 2011, and sec. 38, Ch. 400, L. 2013, which terminated the 2011 amendments to this section June 30, 2020. Effective October 1, 2019.

Applicability: Section 6, Ch. 270, L. 2019, provided: "[This act] applies to targeted economic development districts with a tax increment provision created on or after [the effective date of this act]." Effective October 1, 2019.

Saving Clause: Section 5, Ch. 270, L. 2019, was a saving clause.

2015 Amendment: (Temporary version) Chapter 405 in (4) at beginning inserted exception clause and inserted "including any portion attributable to a tax increment remitted under 7-15-4291"; in (5) at beginning inserted exception clause; inserted (9) regarding an exception provision concerning a 15% fund balance limit; and made minor changes in style. Amendment effective May 5, 2015.

(Version effective July 1, 2020) In (4) inserted "including any portion attributable to a tax increment remitted under 7-15-4291"; in (5) at beginning inserted exception clause; inserted (9) regarding an exception provision; and made minor changes in style.

Transition: Section 4, Ch. 405, L. 2015, provided: "(1) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] [May 5, 2015] shall prepare a transition plan.

(2) (a) The transition plan must be limited to paying contractual obligations that were incurred prior to [the effective date of this act] [May 5, 2015] when the increment was anticipated as a funding source for the contract when the contract was executed. In order to qualify as an obligation, there must be a written signed contract meeting all elements of 28-2-102 between a school district and a third party. Evidence of a contract does not include the listing of a capital project on a list or plan that was created before [the effective date of this act] [May 5, 2015].

(b) (i) If the obligation relates to paying bonded indebtedness, a district may utilize the remittance for the life of the bond issue.

(ii) If the obligation relates to other contracts, a district may utilize the increment to pay for the contracted project until the end of the contract.

(3) For the purpose of subsection (2), a contract does not include the agreement with a local government pursuant to 7-15-4291.

(4) If a portion of the increment does not satisfy the conditions of subsection (2), it must be expended according to the provisions of [sections 1 through 3] [7-15-4251, 20-9-104, and 20-9-141]."

Applicability: Section 6, Ch. 405, L. 2015, provided: "(1) Except as provided in subsection (2), [this act] applies to tax increment financing districts created after December 31, 1979.

(2) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] [May 5, 2015] is subject to the provisions of [section 4] [a transition section]."

2013 Amendment: (Temporary version) Chapter 329 deleted former (5) that read: "(5) For fiscal year 2012, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state to be deposited in the state general fund"; in (5) at beginning deleted "Beginning in fiscal year 2013"; inserted (5)(b) concerning school facility and technology account; deleted former (6)(b) and (6)(c) that read: "(b) 5% of the excess amount must be remitted to the state to be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the excess amount must be deposited in the county school oil and natural gas impact fund provided for in 20-9-518"; inserted (8) excluding certain amounts from expenditures applied against budget authority; deleted former (9) that read: "(9) Prior to June 30, 2011, a school district may transfer any general fund money in excess of 15% of the fiscal year 2011 general fund budget that is not needed to fund the budget to any budgeted fund considered appropriate by the trustees"; and made minor changes in style. Amendment effective July 1, 2013.

(Version effective July 1, 2020) Chapter 329 inserted (5) concerning excess unreserved fund balance; inserted (8) excluding certain amounts from expenditures applied against budget authority; and made minor changes in style.

Applicability: Section 10, Ch. 329, L. 2013, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2013."

Extension of Termination Date: Section 38, Ch. 400, L. 2013, amended sec. 29, Ch. 418, L. 2011, by extending the termination date imposed by Ch. 418 to June 30, 2020. Effective May 6, 2013.

2011 Amendment — Code Commissioner Correction: Chapter 418 at end of (4) inserted "up to an amount not exceeding 15% of a school district's maximum general fund budget"; inserted (5) and (6) relating to amounts of reserve above 15% going to various accounts and funds; inserted (9) relating to transfers prior to June 30, 2011; and made minor changes in style. Amendment effective May 13, 2011, and terminates June 30, 2016.

Chapter 418 in (6) inserted an erroneous reference to remittance of unreserved fund balance "Beginning in fiscal year 2013". However, the sections creating a state account and county fund to which the remittance would flow are effective July 1, 2013, pursuant to sec. 28(2), Ch. 418, L. 2011. To meet the intent of remitting the unreserved fund balance for the applicable fiscal year, the erroneous reference was changed to "July 1, 2013" pursuant to sec. 49, Ch. 19, L. 2011. In a letter dated April 20, 2012, the code commissioner notified the office of public instruction and the department of revenue that the code commissioner correction made to this section was being retracted, and the language was changed back to "fiscal year 2013".

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2001 Amendment: Chapter 237 deleted former (5)(b) that read: "(b) a district was entitled to as a general bonus payment prior to July 1, 1994"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1999 Amendment: Chapter 554 deleted former (5)(a)(iv) that read: "(iv) received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1995 Amendments: Chapter 18 at end of (3) deleted "except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in 20-9-514"; and at beginning of (5) deleted "For fiscal year 1994 and subsequent fiscal years".

Chapter 451 inserted (5)(a)(iv) regarding severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 506 inserted (5)(b) that read: "(b) any amount a district was entitled to as a general bonus payment prior to July 1, 1994"; and made minor changes in style. Amendment effective April 15, 1995.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 35 at end of (4), after "20-9-141(1)(b)", deleted "(iii)". Amendment effective July 1, 1994.

Chapter 36 in (5), after "less than", deleted "one or more of the following"; deleted former (5)(b) that read: "(b) any amount received as a general bonus payment under 20-6-401"; and made minor changes in style. Amendment effective July 1, 1994.

Applicability: Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

Saving Clause: Section 5, Ch. 36, Sp. L. November 1993, was a saving clause.

1993 Amendment: Chapter 633 in (1), in second sentence after "(5)", substituted "and (6)" for "through (7)"; in (3) substituted "BASE budget levy, the over-BASE budget levy, or the additional" for "permissive levy provided by 20-9-145 or to reduce the voted" and after "20-9-353" inserted exception clause; deleted former (5)(a) providing that limitation is not applicable to "any amount received under Public Law 81-874"; and deleted (7) that read: "(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401." Amendment effective July 1, 1993.

Contingent Effective Date: Section 11, Ch. 633, L. 1993, deleted the version of this section that was effective on occurrence of contingency.

Effective Date — Retroactive Applicability: Section 59(2), Ch. 633, L. 1993, provided: "(2) [Section 11] [20-9-104] is effective July 1, 1993, and the provisions of [section 11(3)] [20-9-104(3)] relating to excess reserves and Public Law 81-874 money apply retroactively, within the meaning of 1-2-109, to district general fund reserves for the school fiscal year beginning July 1, 1992."

1992 Special Session Amendments: Section 2, Ch. 6, Sp. L. July 1992, in (1), in second sentence, substituted "subsections (5) through (7)" for "subsections (5) and (6)" and near end substituted "10%" for "the following percentages"; deleted (1)(a) through (1)(c) limiting the general fund budget to 35% for a district not receiving state equalization aid, 30% for a district receiving aid equal to 25% or less of the foundation program schedule, and 20% for a district receiving aid equal to more than 25% of the foundation program schedule; at beginning of (3) deleted "Any unreserved fund balance that is equal to or less than the prior year's" and substituted "appropriated" for "used"; at beginning of (5) inserted reference to fiscal year 1994 and subsequent fiscal years; and inserted (7) concerning the 1993 fiscal year. Amendment effective July 24, 1992.

Section 12, Ch. 6, Sp. L. July 1992, in (1), in second sentence, substituted "subsections (5) through (7)" for "subsections (5) and (6)" and near end substituted "10%" for "the following percentages"; deleted (1)(a) through (1)(c) limiting the general fund budget to 35% for a district not receiving state equalization aid, 30% for a district receiving aid equal to 25% or less of the foundation program schedule, and 20% for a district receiving aid equal to more than 25% of the foundation program schedule; at beginning of (5) inserted reference to fiscal year 1994 and subsequent fiscal years; in (5)(a), at end, inserted "in the current school fiscal year"; and inserted (7) concerning unreserved balance as an excess amount due to receipt of P.L. 81-874 money.

Retroactive Applicability: Section 15(3), Ch. 6, Sp. L. July 1992, provided that the amendments in section 2 apply retroactively to school district general fund end-of-the-year fund balances for the school fiscal year ending June 30, 1992.

Contingent Effective Date — Applicability: Section 15(5)(a), Ch. 6, Sp. L. July 1992, provided that this section is effective on the date that the Superintendent of Public Instruction certifies to the Governor that written approval of this section has been received from the U.S. Department of Education and applies to the school fiscal year beginning July 1, 1993.

Section 13, Ch. 6, Sp. L. July 1992, provided that within 30 days of July 24, 1992, the Superintendent of Public Instruction shall request an opinion from the U.S. Department of Education as to whether this section complies with federal law for the use of P.L. 81-874 funds.

Termination: Section 15(5)(b), Ch. 6, Sp. L. July 1992, provided that the amendments made by section 2 are void on the date section 12 is effective.

1991 Amendment: In (1), in two places, and in (2) and (6), before "reserve", substituted "operating" for "cash"; in (1), in first sentence before "balance", substituted "fund" for "cash" and in second sentence changed subsection references; inserted (3) allowing use of certain unreserved fund balances to reduce the permissive or voted levy; in (4), after "end-of-the-year", substituted "fund" for "cash" and after "not" substituted "reserved under subsection (2) or reappropriated under subsection (3) is fund balance" for "earmarked for cash reserve purposes is cash"; in (5), at end, inserted "one or more of the following"; in (5)(a), after "received", deleted "during the current school fiscal year"; in (5)(b)(i), after "protested", substituted "in a prior school fiscal year" for "prior to July 1, 1990"; inserted (5)(b)(ii) regarding taxes received as a result of a tax audit; inserted (5)(b)(iii) regarding delinquent taxes; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: At beginning of second sentence of (1) inserted exception clause and near middle of second sentence substituted "the following percentages" for "35%"; inserted (1)(a) allowing 35% cash reserve for a district not receiving equalization aid; inserted (1)(b) allowing 30% cash reserve for a district receiving equalization aid of 25% or less of its foundation program entitlement; inserted (1)(c) allowing 20% cash reserve for a district receiving equalization aid of more than 25% of its foundation program entitlement; at beginning of (2) inserted "The amount held as cash reserve may"; inserted (3) providing exceptions to cash reserve limits; inserted (4) providing exception for amounts of $10,000 or less; and made minor changes in phraseology and form. Amendment effective July 1, 1990.

Attorney General's Opinions

Transfer of End-of-the-Year General Fund Balance Required: There is no basis for the conclusion that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts. Rather, school district trustees may transfer any portion of the end-of-the-year general fund balance, as that term is used in this section, into the compensated absence liability fund subject to the limitations in 20-9-512. 45 A.G. Op. 27 (1994).

20-9-115. Notice of final budget meeting.

Compiler's Comments

2011 Amendment: Chapter 152 near beginning substituted "August 10" for "August 4". Amendment effective April 10, 2011.

2001 Amendment: Chapter 376 near beginning after "Between" substituted "July 1" for "July 24", near middle after "stating the" inserted "date", and after "trustees will meet" deleted "on the second Monday in August"; and made minor changes in style. Amendment effective April 26, 2001.

1997 Amendments: Chapter 22 changed notice publication dates from July 10 to July 24 and from July 20 to August 4 and changed meeting date from fourth Monday in August to second Monday in August. Amendment effective July 1, 1997.

Chapter 42 substituted "second Monday in August" for "fourth Monday in August". Amendment effective March 12, 1997.

Chapter 211 near middle, after "in the district, stating" deleted "that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state". Amendment effective April 7, 1997.

1995 Amendment: Chapter 18 in second sentence substituted reference to fourth Monday in August for reference to fourth Monday in July; and made minor changes in style.

1989 Amendment: Near beginning of first sentence substituted clause relating to a newspaper having widest circulation in the district for "the official newspaper of the county"; and made minor changes in phraseology and punctuation.

20-9-116. Resolution of intent to increase nonvoted levy — notice.

Compiler's Comments

2021 Amendment: Chapter 245 deleted former (1)(c) that read: "(c) the building reserve fund under 20-9-502 and 20-9-503"; in (2)(b) after "publishing" and "posting" deleted "a copy of the resolution"; inserted (2)(b)(i) and (2)(b)(ii) listing resolutions to publish and post; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 6, Ch. 245, L. 2021, provided: "[This act] applies to notice requirements, school budgets, property tax levies, and state major maintenance aid calculations related to school fiscal years beginning on or after July 1, 2022."

2019 Amendment: Chapter 402 in (1) near beginning substituted "no later than March 31 of each fiscal year" for "no later than June 1 in fiscal year 2017 only and no later than March 31 in fiscal year 2018 and subsequent fiscal years"; inserted (1)(f) concerning the flexibility fund; in (2)(a) substituted "(1)(a) through (1)(f)" for "(1)(a) through (1)(e)"; and made minor changes in style. Amendment effective May 9, 2019, and terminates June 30, 2027.

Effective Date — Applicability — Retroactive Applicability: Section 15, Ch. 404, L. 2017, provided that: (1) this section is effective on passage and approval and applies to school district budgets beginning on or after July 1, 2017; and (2) the authority and requirement for notice under this section applies retroactively, within the meaning of 1-2-109, to levies noticed on or after January 1, 2017. Approved May 19, 2017.

20-9-121. County treasurer's statement of cash balances and bond information.

Compiler's Comments

2011 Amendment: Chapter 152 in (1), (2), and (3) near beginning substituted "July 20" for "July 10"; and made minor changes in style. Amendment effective April 10, 2011.

1997 Amendment: Chapter 211 in (3), at end, substituted "forward the information to each district" for "attach the district statements to the applicable district's preliminary budget". Amendment effective April 7, 1997.

1995 Amendment: Chapter 260 in (1), in first sentence after "maintained by the district", deleted "and the amount of the outstanding obligations against each fund"; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Increase in Preliminary Budget Limited to Amount of Bonds and Assessments in Treasurer's Statement: A County Superintendent may increase the preliminary budget amount in the debt service fund only to the amount of obligations for bonds and special improvement district assessments contained in the County Treasurer's statement pursuant to this section. 43 A.G. Op. 21 (1989).

20-9-122. Statement of district, city, and town valuations.

Compiler's Comments

2003 Amendment: Chapter 34 in (1) at beginning after "By the" substituted "first Monday of August" for "second Monday of July". Amendment effective February 18, 2003.

Retroactive Applicability: Section 9(4), Ch. 34, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified."

1993 Special Session Amendment: Chapter 27 in (1), near beginning after "revenue", substituted "shall deliver" for "or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of 15-8-705, also deliver" and at end substituted "property tax record" for "completed assessment book"; deleted former (2) that read: "(2) The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of 15-10-306, prepare a statement showing separately for each district and each city or town in his county the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk"; in (2), after "revenue", deleted "or its agent and the county clerk"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

20-9-130. District obligation for students in youth detention facility.

Compiler's Comments

2005 Amendment: Chapter 462 in second sentence at end inserted "or impact aid fund". Amendment effective April 28, 2005.

2001 Amendment: Chapter 237 at end of second sentence substituted "district's tuition fund" for "district's general fund". Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Effective Date: Section 8, Ch. 536, L. 1999, provided that this section is effective April 29, 1999.

20-9-131. Final budget meeting.

Compiler's Comments

2011 Amendment: Chapter 152 in (1) substituted "August 20" for "August 15"; in (2) near middle of first sentence substituted "August 25" for "the fourth Monday in August" and inserted provision regarding computation of levy requirement by county superintendent; in (3) near end substituted "3 days" for "5 days"; and made minor changes in style. Amendment effective April 10, 2011.

2005 Amendment: Chapter 462 in (2) in first sentence before "determine" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

2001 Amendment: Chapter 376 in (1) at beginning substituted "On or before August 15, on the date" for "On the second Monday in August"; inserted (3) requiring the trustees to deliver the budget to the county superintendent of schools within 5 days of the trustees' approval; and made minor changes in style. Amendment effective April 26, 2001.

1999 Amendment: Chapter 584 in (2) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 211 in (1), after "meet to consider", substituted "all budget information" for "the preliminary budget submitted to or prepared by the county superintendent, including all information". Amendment effective April 7, 1997.

1993 Amendment: Chapter 133 in (1) substituted reference to second Monday of August for reference to fourth Monday of July; in (2) substituted reference to fourth Monday of August for reference to second Monday of August; and made minor changes in style. Amendment effective July 1, 1993.

20-9-132. Final budget adjustment procedures.

Compiler's Comments

1997 Amendment: Chapter 211 near middle of first sentence, before "budget", deleted "preliminary", near middle of second sentence substituted "final budget" for "preliminary budget", and inserted last sentence regarding appropriations for wages or salary in the final budget; and made minor changes in style. Amendment effective April 7, 1997.

20-9-133. Adoption and expenditure limitations of final budget.

Compiler's Comments

2001 Amendment: Chapter 480 in (2) near middle of second sentence inserted "or transfers between different funds or between the final budget and a budget amendment"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1991 Amendment: In (1), near beginning of first sentence after "trustees", substituted "determine and set the amount of the budget for each budgeted fund" for "have caused the amount of an item of the budget for the district to be determined and set" and near end, before "the chairman", deleted "upon completion of all the items"; in (2), in first sentence, substituted "total amount of each fund's budget" for "amount of such appropriations", at end of second sentence substituted "20-9-208" for "law", in third sentence, after "subsection (3)", inserted "money of the district may not be used to pay", after "excess of" deleted "any of", and after "budget" substituted "established for each budgeted fund" for "appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district, and no money of the district shall ever be used to pay the same"; and made minor changes in style. Amendment effective April 23, 1991.

1987 Amendment: In (2) inserted "Except as provided in subsection (3)" in two places; and inserted (3) relating to bonded debt payments.

Case Notes

Approval of Budget Prerequisite to Issuing Warrants: Under former statute, where County Commissioners had refused to approve school district budget on the grounds that the district had not been legally created, which contention was found invalid by the court, although time for action on the budget and levy of taxes had passed, the board was compelled to act by mandamus since approval of the budget was a necessary prerequisite to the issuance of warrants. Because the district was valid and had funds available from other sources, it should be enabled to issue warrants to meet its expenses. State ex rel. School District v. Lensman, 108 M 118, 88 P2d 63 (1939).

Separation of Appropriation Items Required: Under former School District Budget Act, each item in the district's budget constituted an appropriation for a definite and specific purpose and could not be paid out for another, except that a part of an appropriation for one item might be transferred to another when it appears that there was an excess appropriation for the one and a deficiency in the other. State ex rel. McHose v. District Court, 95 M 230, 26 P2d 345 (1933).

20-9-134. Completion, filing, and delivery of final budgets.

Compiler's Comments

2021 Amendment: Chapter 351 in (2) at end substituted "August 15" for "September 1". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2011 Amendment: Chapter 152 in (1) substituted "September 15" for "the second Monday in September". Amendment effective April 10, 2011.

1999 Amendment: Chapter 343 at end of (1) substituted "the second Monday in September" for "September 1". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1995 Amendment: Chapter 260 deleted (3) that read: "(3) deliver a copy of the final budget for the district to the county treasurer on or before September 1"; and made minor changes in style. Amendment effective July 1, 1995.

Attorney General's Opinions

Appropriations to Community Colleges — Budget Procedure: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request which may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of 20-15-301, et seq. The General Appropriation Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

20-9-141. Computation of general fund net levy requirement by county superintendent.

Compiler's Comments

2023 Amendments — Composite Section: (Both versions) Section 2, Ch. 240, L. 2023, deleted former (2)(b) (see sec. 2, Ch. 240, L. 2023, for former text); and made minor changes in style. Amendment effective April 25, 2023.

(Version effective July 1, 2024) Section 6, Ch. 368, L. 2023 in (1)(d)(iii) at beginning substituted "after first applying anticipated tuition revenue to the BASE budget under subsection (2)(b), any remaining tuition payments" for "any tuition payments"; and inserted (2)(b) regarding inclusion of tuition payments for out-of-district pupils, not including excess tuition for a child with a disability, in the sum of the amount of funding available to reduce the district's BASE budget levy.

(Both versions) Section 5, Ch. 640, L. 2023, in (1)(e) near middle after "as provided in 20-9-303" deleted "and any additional financing as provided in 20-9-353"; and made minor changes in style. Amendment effective July 1, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

Section 8, Ch. 368, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2024."

2019 Amendments — Composite Section: Chapter 128 inserted (2)(b) incorporating the result of a formula related to any overpayment of the BASE budget levy in the prior year, if applicable, into the overall calculation made according to (2); and made minor changes in style. Amendment effective April 10, 2019.

Chapter 270 in (1)(b)(vi) and (1)(d)(ii) substituted "under 7-15-4286(3) or 7-15-4291" for "under 7-15-4291". Amendment effective October 1, 2019.

Applicability: Section 6, Ch. 270, L. 2019, provided: "[This act] applies to targeted economic development districts with a tax increment provision created on or after [the effective date of this act]." Effective October 1, 2019.

Saving Clause: Section 5, Ch. 270, L. 2019, was a saving clause.

2017 Special Session Amendment: Chapter 2 deleted former (1)(b)(v) that read: "(v) any portion of the combined fund block grant allocated to the district general fund by the trustees pursuant to 20-9-630"; and made minor changes in style. Amendment effective July 1, 2018.

2017 Amendment: Chapter 336 in (1)(a) after "sum of direct state aid" deleted "the natural resource development K-12 funding payment"; in (1)(b)(v) substituted current text regarding combined fund block grant for "school district block grants distributed under 20-9-630"; inserted (1)(b)(vi) regarding a coal-fired generating unit closure mitigation block grant; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2015 Amendment: Chapter 405 inserted (1)(b)(vi) concerning BASE levy budget; inserted (1)(d)(ii) concerning over-BASE budget levy; and made minor changes in style. Amendment effective May 5, 2015.

Transition: Section 4, Ch. 405, L. 2015, provided: "(1) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] [May 5, 2015] shall prepare a transition plan.

(2) (a) The transition plan must be limited to paying contractual obligations that were incurred prior to [the effective date of this act] [May 5, 2015] when the increment was anticipated as a funding source for the contract when the contract was executed. In order to qualify as an obligation, there must be a written signed contract meeting all elements of 28-2-102 between a school district and a third party. Evidence of a contract does not include the listing of a capital project on a list or plan that was created before [the effective date of this act] [May 5, 2015].

(b) (i) If the obligation relates to paying bonded indebtedness, a district may utilize the remittance for the life of the bond issue.

(ii) If the obligation relates to other contracts, a district may utilize the increment to pay for the contracted project until the end of the contract.

(3) For the purpose of subsection (2), a contract does not include the agreement with a local government pursuant to 7-15-4291.

(4) If a portion of the increment does not satisfy the conditions of subsection (2), it must be expended according to the provisions of [sections 1 through 3] [7-15-4251, 20-9-104, and 20-9-141]."

Applicability: Section 6, Ch. 405, L. 2015, provided: "(1) Except as provided in subsection (2), [this act] applies to tax increment financing districts created after December 31, 1979.

(2) A school district that has executed an agreement with a local government pursuant to 7-15-4291 on or before [the effective date of this act] [May 5, 2015] is subject to the provisions of [section 4] [a transition section].

2013 Amendment: Chapter 400 in (1)(a) inserted "the natural resource development K-12 funding payment". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 152 in (3) near middle substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

Permissive Levy: Section 24, Ch. 489, L. of 2009, provided: "If an appropriation for a 3% increase in the basic entitlement and per-ANB entitlement in each fiscal year is contained in [section 85] [not codified], then a school district may impose a permissive levy, calculated in accordance with 20-9-141, to fund the local share of the BASE budget." Effective May 14, 2009.

Over-BASE Budget Levy: Section 25, Ch. 489, L. 2009, provided: "If an appropriation for a 3% increase in the basic entitlement and per-ANB entitlement in each fiscal year is contained in [section 85] [not codified], then a district may impose an over-BASE budget levy, calculated in accordance with 20-9-141, to fund the over-BASE budget. Districts shall comply with voting requirements as provided in 20-9-353." Effective May 14, 2009.

2007 Amendment: Chapter 173 in (1)(a)(ii) at end after "20-9-353" deleted "including any additional funding for a general fund budget that exceeds the maximum general fund budget"; and made minor changes in style. Amendment effective April 10, 2007.

Retroactive Applicability: Section 5, Ch. 173, L. 2007, provided: "[Sections 1 and 2] [20-9-141 and 20-9-308] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections."

2005 Amendment: Chapter 130 in (1)(b)(v) substituted "20-9-630" for "section 244, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

2001 Amendments — Composite Section: Chapter 191 in (1)(b)(ii) at end inserted "as that section read on December 31, 1998"; in (1)(b)(iii)(A) inserted "61-3-537"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

(Version effective July 1, 2002) Chapter 464 deleted former (1)(b)(iv) that read: "(iv) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2)"; in (1)(d) at beginning substituted "Determine the sum of" for "Subtract" and after "subsection (1)(c)" inserted "and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2)"; at beginning of (1)(e) inserted "Subtract the amount determined in subsection (1)(d)"; and made minor changes in style.

(Both versions) Chapter 574 deleted former (1)(b)(ii) that read: "(ii) 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504"; deleted former (1)(b)(iii)(A) that read: "(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; substituted (1)(b)(vi) in temporary version and (1)(b)(v) in version effective July 1, 2002, concerning block grants for "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; deleted former (1)(b)(vii) that read: "(vii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702"; at end of (4) deleted "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 11(2), Ch. 464, L. 2001, provided: "[Section 5] [20-9-141] is applicable to budgets for the school fiscal year beginning on or after July 1, 2002."

Block Grants: Section 244, Ch. 574, L. 2001, provided: "(1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the biennial appropriation provided in [section 248(1)] [not codified] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office

of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.

(4) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year."

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1)(b)(iii)(A) inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made to subsection (1)(b)(ii)(B), which became subsection (1)(b)(iv) after the codification of the coordination provision contained in Ch. 584, L. 1999. Subsection (1)(b)(iv) was stricken by Ch. 9, Sp. L. May 2000. However, the substance of former subsection (1)(b)(ii)(B) was moved into subsection (1)(b)(ii)(A) of the 1999 MCA. Because Ch. 11, Sp. L. May 2000, inserted subsection (1)(b)(ii), the code commissioner has inserted the Ch. 515 amendment into subsection (1)(b)(iii)(A) to reflect the content of the change made to the original text of this section.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

2000 Amendment: Chapter 11 inserted (1)(b)(ii) relating to 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504; deleted former (1)(b)(ii)(D) that read: "(D) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1)"; deleted former (1)(b)(iv) that read: "(iv) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537, which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; and made minor changes in style. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

2000 Amendment: Chapter 11 inserted (1)(b)(ii) relating to 98% of actual amounts received in fiscal year 1999 for light vehicle taxes under 61-3-504; deleted former (1)(b)(ii)(D) that read: "(D) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1)"; deleted former (1)(b)(iv) that read: "(iv) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537, which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; and made minor changes in style. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendments — Composite Section: Pursuant to sec. 99(4), Ch. 51, L. 1999, in (1)(b)(iii) the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

Chapter 180 inserted (1)(b)(ii)(D) pertaining to reimbursements for unrealized motor vehicle tax revenue; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 inserted (1)(b)(ii)(A) regarding revenue from certain taxes and fees; inserted (1)(b)(ii)(B) concerning interest; inserted (1)(b)(ii)(C) regarding any other revenue; at beginning of (1)(b)(iii), (1)(b)(iv), (1)(b)(v), and (1)(b)(vii) inserted "anticipated"; in (1)(b)(iv) after "under" deleted references to 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, and 67-3-204 and after "61-3-537" inserted "which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources"; inserted (1)(b)(vi) regarding anticipated revenue from coal gross proceeds and property tax reimbursements; deleted former (1)(b)(ii)(D) that read: "(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4)"; deleted former (1)(b)(ii)(F) that read: "(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid"; deleted former (1)(b)(iii) that read: "(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703"; in (2)(b) inserted "current total" and after "district" inserted "as certified by the department of revenue under 15-10-202"; at end of (4) inserted "and property tax reimbursements under 15-1-111, 15-1-112, and section 167, Chapter 584, Laws of 1999"; and made minor changes in style. Amendment effective May 10, 1999.

The amendments to this section made by sec. 1, Ch. 561, L. 1999, were rendered void by sec. 170(3), Ch. 584, L. 1999, a coordination section.

The amendments to this section made by sec. 106, Ch. 584, L. 1999, were rendered void by sec. 170(3), Ch. 584, L. 1999, a coordination section.

Applicability: Section 6, Ch. 180, L. 1999, provided: "[This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 389 at end of (1)(b)(ii)(A), after "20-5-323", inserted exception clause regarding excess tuition. Amendment effective April 25, 1997.

Chapter 496 in (1)(b)(ii)(B), after "revenue from", deleted "property", after "61-3-504" deleted "(2)", and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (1)(b)(ii)(C) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601"; deleted (1)(b)(iii)(A) that read: "(A) pursuant to subsection (4), anticipated revenue from local government severance taxes as provided in 15-36-112"; in (4), after "fiscal year from", deleted "local government severance taxes, as provided in 15-36-112, and from"; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (1)(b)(ii)(B) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendments: Chapter 9 in (1)(b)(ii)(C), after "new production", inserted "production from horizontally completed wells, and incremental production". Amendment effective December 17, 1993.

Chapter 35 deleted former (1)(b)(ii)(D) and (1)(b)(ii)(E) that read: "(D) revenue from local government severance taxes as provided in 15-36-112;

(E) revenue from coal gross proceeds under 15-23-703"; inserted (1)(b)(iii) allowing school districts to use anticipated revenue from local government severance taxes and coal gross proceeds taxes to determine revenue available for property tax reduction in support of district general fund budgets; inserted (4) requiring the Department of Revenue to calculate and report anticipated local severance taxes and coal gross proceeds revenue to County Superintendents; and made minor changes in style. Amendment effective July 1, 1994.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Applicability: Section 3, Ch. 35, Sp. L. November 1993, provided that this section applies to school district general fund budgets for the school fiscal year beginning July 1, 1994.

1993 Amendments: Chapter 133 in (3), near middle, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 325 deleted former (1)(b)(iv) that read: "anticipated or reappropriated state impact aid received under the provisions of 20-9-304". Amendment effective July 1, 1993.

Chapter 563 at end of (1)(b)(ii)(A) substituted "20-5-321 through 20-5-323" for "20-5-303, 20-5-307, 20-5-312, and 20-5-313".

Chapter 633 in (1)(a) substituted "sum of direct state aid and the special education allowable cost payment for the district" for "amount established by the schedules in 20-9-316 through 20-9-321"; in (1)(a)(i) substituted "BASE budget" for "foundation program"; in (1)(a)(ii) and (1)(c), before "general fund", deleted "additional"; in (1)(a)(ii), after "provisions of", substituted "20-9-308" for "20-9-145" and substituted "funding for a general fund budget that exceeds the maximum general fund budget" for "levies authorized by the electors of the district"; substituted (1)(b)(i) and (1)(b)(ii) concerning determining property tax reduction for former language that read: "(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104"; in (1)(b)(ii)(B), at beginning, deleted "anticipated or reappropriated"; in (1)(b)(ii)(C), (1)(b)(ii)(D), (1)(b)(ii)(E), and (1)(b)(ii)(G), at beginning, deleted "anticipated"; in (1)(b)(ii)(F), before "interest", deleted "anticipated interest to be earned or reappropriated"; in (1)(b)(ii)(H), after "revenue", deleted "anticipated by the trustees to be" and before "school" deleted "ensuing"; in (1)(c), after "district", substituted "up to the BASE budget amount" for "as the permissive amount under the provisions of 20-9-145" and before "levy" substituted "BASE budget" for "permissive net"; in (1)(d), after "met by", inserted "an over-BASE budget amount", before "20-9-353" inserted "any additional financing as provided in", and after "determine" substituted "any" for "the"; in (2), after "general fund", deleted "permissive net" and after "requirement" inserted "for any amount that does not exceed the BASE budget amount for the district"; in (3), before "general fund", deleted "general fund permissive net levy requirement and the additional" and after "general fund" inserted "net"; and made minor changes in style. Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 267 in (1)(b)(vi), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

Chapter 767 in (1)(a)(ii) inserted reference to 20-9-145; in (1)(b)(iii) substituted "balance" for "cash"; at end of (1)(b)(xi) inserted "excluding any guaranteed tax base aid"; in (1)(c), at beginning, inserted "Notwithstanding the provisions of subsection (2)" and at end substituted "any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement" for "the total requirement determined in subsection (1)(a)"; inserted (1)(d) requiring subtraction of remaining amount from any additional funding requirement to be met by a district levy; inserted (2) requiring County Superintendent to calculate the number of mills to finance the general fund permissive net levy requirement according to the given formula; in (3) inserted reference to subsection (1)(d) and after "general fund" inserted "permissive net levy requirement and the additional general fund"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Section 21, Ch. 11, near beginning of (1)(a), before "funding", deleted "total of the"; deleted former (1)(a)(ii) relating to the permissive levy as provided in 20-9-352; at beginning of (1)(a)(ii), before "general fund", inserted "additional"; in (1)(b)(v), before "property taxes", deleted "vehicle", after "property taxes" inserted "and fees", and in list of sections inserted references to 23-2-517, 23-2-803, 61-3-521, and 67-3-204; inserted (1)(b)(x) referring to revenue from corporate license taxes from financial institutions; and made minor changes in phraseology. Amendment effective July 1, 1990.

Section 83, Ch. 11, inserted (1)(b)(vii) relating to anticipated revenue from local government severance taxes; inserted (1)(b)(viii) relating to anticipated revenue from coal gross proceeds; and made minor changes in phraseology. Amendment effective August 11, 1989.

1989 Amendment: In (1)(b)(v) inserted "or reappropriated". Amendment effective July 1, 1989. Amendment effective and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 611 in (1)(b)(v), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (1)(b)(vi), before "new production", inserted "interim production and".

1985 Amendments: Chapter 110 near beginning of (1)(a) after "total of" inserted "the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:"; in (1)(a)(iii) at beginning, inserted "any general fund budget amount adopted by the trustee of the district under the provisions of 20-9-353, including" and at end, deleted "under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program"; near end of (1)(c) before "requirement" deleted "levy".

Chapter 265, in (1)(b)(iv) and (1)(b)(v) inserted "or reappropriated"; and in middle of (1)(b)(vii) inserted "or reappropriated interest earned".

Chapter 695 inserted (1)(b)(vi) relating to net proceeds taxes for new production under 15-23-601.

1983 Amendment: Inserted (1)(b)(v) relating to motor vehicle fees and reimbursement under 61-3-532 and 61-3-536.

20-9-142. Fixing and levying taxes by board of county commissioners.

Compiler's Comments

2011 Amendment: Chapter 152 at beginning of first sentence substituted provision regarding first Tuesday in September or within 30 calendar days after receiving certified taxable values for "On the fourth Monday in August" and in second sentence near beginning inserted reference to 7-6-4036. Amendment effective April 10, 2011.

2005 Amendment: Chapter 462 in second sentence at beginning deleted "Subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 at beginning of second sentence inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 133 at beginning substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendment: At end of first sentence deleted "and any emergency budget adopted by the district during the previous school fiscal year" and at end of second sentence deleted "and any emergency budget of the district"; and made minor change in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1986 Amendment: Near middle of second sentence after "within the district", deleted "except as provided in subsection (2)"; and deleted former (2) that read: "(2) (a) The taxable value of property which is the subject of a protest and which remains under protest on the first Monday in August of the current year may be excluded from the district's taxable valuation if the taxable value of such property remaining under protest exceeds 5% of the district's taxable valuation in computing the mill levies to fund the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year.

(b) If tax money that was collected on property excluded under subsection (2)(a) is not required to be refunded to the taxpayer from the protest fund at the conclusion of a protest proceeding, such money shall be used to reduce subsequent property tax levies. The district shall calculate such levies by crediting the revenue from released protest funds directly to the revenue section of the budget and not to the cash reserves. If the crediting of such revenue reduces to zero the amount necessary to be raised by tax levy, the county treasurer shall refund on behalf of the district any excess protest fund revenue to the taxpayers. If a taxpayer is delinquent in the payment of prior taxes, the county treasurer may offset the delinquency rather than make a refund. A copy of the calculations made in fixing the tax levies under this subsection and calculations of any refunds must be delivered to the legislative auditor, the office of public instruction, and the department of revenue."

Revenue Oversight Committee Bill: Chapter 26, Sp. L. June 1986, was introduced by request of the Revenue Oversight Committee. See committee report entitled "Property Tax Delinquencies, Tax Sales, and Tax Deeds". Mont. Leg. Council (Dec. 1986).

1985 Amendment: Near middle of second sentence inserted exception clause; and inserted (2) (see 1986 amendment for text).

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in this section requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

20-9-143. Allocation of federal funds in lieu of property taxation.

Compiler's Comments

1997 Amendment: Chapter 22 near middle substituted "impact aid, as provided in 20 U.S.C. 7701, et seq." for "Title I of Public Law 81-874"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 633 after "United States" substituted "must be deposited in the impact aid fund established in 20-9-514" for "may be allocated to the various operating budgets of the district by the trustees". Amendment effective July 1, 1993.

Public Law Reference: Title I of Public Law 81-874, referred to in this section, is compiled in the U.S.C. as Title 20, § 236, et seq.

Case Notes

Factoring of "874" Money Into Equalization Formula: A state may factor Pub. L. No. 81-874 revenue into its school finance equalization system only if the system meets the federal definition of an equalized program, subject to the determination of the Secretary of Education. School District v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. 38 A.G. Op. 97 (1980).

20-9-151. Budgeting procedure for joint districts.

Compiler's Comments

2011 Amendment: Chapter 152 in (3) at end of second sentence substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "not later than the Friday immediately preceding the fourth Monday in August". Amendment effective April 10, 2011.

2005 Amendment: Chapter 462 in (3) in first sentence near beginning after "law" deleted "and subject to 15-10-420" and in second sentence near end before "Monday" substituted "fourth" for "second". Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-9-152. Fixing and levying taxes for joint districts.

Compiler's Comments

2013 Amendment: Chapter 62 in (1) after "Thursday" inserted "after the first Tuesday". Amendment effective July 1, 2013.

2011 Amendment: Chapter 152 in (1) substituted "by the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday in August". Amendment effective April 10, 2011.

2005 Amendment: Chapter 462 in (1) near middle before "Monday" substituted "fourth" for "second" and after "shall" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 28, 2005.

1999 Amendment: Chapter 584 in (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-9-161. Definition of budget amendment for budgeting purposes.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 53, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2017 Code Commissioner Correction: Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (6)(b) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

2011 Amendment: Chapter 418 in (6)(b) inserted last sentence concerning reporting of budget amendments; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

1999 Amendment: Chapter 554 deleted former (5)(d) that read: "(d) local government severance tax payments for calendar year 1995 production as provided in 15-36-325(7)"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendment: Chapter 22 in (5)(e), at end after "district", deleted "as a result of the protested taxes". Amendment effective July 1, 1997.

1995 Amendment: Chapter 451 inserted (5)(d) concerning local government severance taxes; in (5)(e) inserted "or (5)(d)"; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1991 Amendment: In introductory clause substituted "budget amendment" for "emergency" and after "budgeting" substituted "means an amendment to an adopted budget of the district for the following reasons" for "shall be"; in (1), near beginning after "district", deleted "over the immediately preceding school fiscal year" and near middle substituted "current" for "then-current"; inserted (5) including as a reason for a budget amendment various tax-related conditions; in (6), near beginning after "any other", substituted "unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district" for "reason of similar consequences that has been approved by the superintendent of public instruction upon petition by the trustees of the district or by the board of regents upon petition by the trustees of a community college district"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

Title 10, chapter 22, subchapter 2, ARM Budget amendments.

Case Notes

Judgment Debt as Emergency: A judgment secured by a teacher against a school district in December 1932 was not paid, and in August 1933 she instituted mandamus proceedings to compel payment. At that time the district, working under the former statutory budget system, had funds on hand no longer covered by appropriations made under the 1932-33 budget, to pay the claim. The District Court erred in dismissing mandamus proceeding, in that the claim of relatrix constituted an emergency which it was the duty of the board of trustees to meet by payment even though it had in the meantime attempted to utilize such funds in making up the budget for 1933-34. State ex rel. McHose v. District Court, 95 M 230, 26 P2d 345 (1933).

20-9-162. Authorization for budget amendment adoption.

Compiler's Comments

1993 Amendment: Chapter 633 in (1)(a), after "increase", deleted "that could not have been anticipated at the time of the adoption of the regular budget"; in (1)(b), at beginning, deleted "If a budget amendment for the reasons provided in 20-9-161(1) through (4) does not cause the district general fund budget to exceed the limitations in 20-9-315", inserted "pursuant to 20-9-161(2) through (6)", and after "resolution" deleted "as provided in 20-9-163"; inserted (1)(c) relating to budget amendment proclamation; in (2) substituted "proclamation" for "resolution"; in (3), after "submit", substituted "a budget amendment for an enrollment increase" for "the following"; deleted (3)(a) and (3)(b) that read: "(a) a budget amendment for the reasons provided in 20-9-161(5) and (6); and

(b) a budget amendment for any reason provided in 20-9-161(1) through (4) that causes the district general fund budget to exceed the limitations in 20-9-315"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), at beginning, substituted "Notwithstanding the provisions of subsections (2) and (3), a budget amendment" for "Emergency budgets", near middle, before "required", substituted "a budget amendment" for "emergency budgets", and at end substituted "October 1" for "December 31"; inserted (2) allowing approval of a budget amendment by resolution under certain circumstances; and inserted (3) requiring submission of a budget amendment under certain circumstances. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.

Compiler's Comments

2001 Amendment: Chapter 237 in (3) at beginning of second sentence deleted "If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1993 Amendment: Chapter 633 in (1), at beginning of first sentence, deleted "Notwithstanding the provisions of subsection (3)", after "necessary" inserted "because of an enrollment increase", after "may" inserted "petition the superintendent of public instruction to", and after "resolution" substituted "for" for "proclaiming", and at beginning of second sentence inserted "The petition must be signed" and after "majority" deleted "vote"; in (2), near beginning, substituted "petition must" for "budget amendment resolution must also" and near middle, after "budget amendment", substituted "the anticipated source of financing for the budget amendment, and the current year enrollment" for "and the time and place the board will meet for the purpose of considering and adopting a budget amendment for funds for the current school fiscal year"; deleted former (2) that read: "(2) If the trustees of a school district determine that the proposed budget amendment will cause the district general fund to exceed the limitations of 20-9-315 or is for the reasons provided in 20-9-161(5) and (6), the trustees shall petition the superintendent of public instruction for permission to adopt a resolution for a budget amendment. The petition must set forth in writing the reasons for the request, the district funds affected by the budget amendment, the estimated amount of money required for the budget amendment for each affected fund, the anticipated sources of financing for the budget amendment expenditures, and any other information required by the superintendent of public instruction. The petition must be signed by a majority of the trustees"; in (3), in first sentence after "amendment", inserted "because of increased enrollment" and inserted second and third sentences relating to adjustment of budget by Superintendent for enrollment increase; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; in (1), at beginning of first sentence, inserted "Notwithstanding the provisions of subsection (3)", near middle, before "vote of", substituted "majority" for "unanimous", and after "vote of" substituted "the trustees" for "all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding such meeting"; in (2), at beginning after "If the trustees", substituted present language regarding petition for a budget amendment for former language regarding petition for a resolution of emergency (see 1989 MCA for text); in (3), in first sentence after "instruction", deleted "or, in the case of a community college district, the board of regents" and in third sentence, after "instruction", substituted "authorizes" for "or the board of regents shall merely authorize"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

Title 10, chapter 22, subchapter 2, ARM Budget amendments.

20-9-164. Notice of budget amendment resolution.

Compiler's Comments

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-165. Budget amendment limitation, preparation, and adoption procedures.

Compiler's Comments

1997 Amendment: Chapter 211 in (1), in two places, and in (3) substituted "final budget" for "preliminary budget"; in (4), near beginning after "adopt a", deleted "preliminary"; and made minor changes in style. Amendment effective April 7, 1997.

1995 Amendment: Chapter 260 in (5), after "county superintendent", deleted "the county treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1), in second sentence before "setting", deleted "on the regular budget form" and in last sentence, at end after "item", deleted "as required on the budget form". Amendment effective July 1, 1993.

1991 Amendment: Throughout section substituted reference to budget amendment for reference to emergency; in (2)(a), near middle, substituted "enrollment increase" for "emergency" and near end, before "reserve", substituted "operating" for "cash"; deleted (2)(e) that read: "(e) In the case of a community college district, by budget amendment"; in (5) deleted second sentence that read: "In the case of a community college district, copies of the emergency budget shall be sent to the county superintendent, the county treasurer, and the board of regents"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: At end of (2)(e) deleted "in accordance with 20-15-302".

20-9-166. Financial support for transportation budget amendments and significant enrollment increases.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 240, L. 2023. Amendment effective April 25, 2023.

Termination Provision Removed: Section 7, Ch. 240, L. 2023, amended sec. 11, Ch. 551, L. 2021, to remove the termination of the amendments made to this section by Ch. 551, L. 2021. Effective April 25, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2021 Amendment: Chapter 551 in (1) deleted former first sentence that read: "Whenever a final budget amendment has been adopted for the general fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid", in second sentence at end inserted "for state transportation reimbursement", in third sentence at end substituted "state transportation reimbursement" for "increased state aid made in accordance with 20-9-314 and this section", in fourth sentence near middle after "the additional amount of" deleted "direct state aid or the", and in fifth sentence near end after "made available for" deleted "the general fund or"; inserted (2)(a) through (2)(e) providing requirements for financial support to school districts for increases in enrollment for fiscal years 2022 and 2023 related to the uncertainty created by covid-19 and requiring a district to deposit additional funds received into the miscellaneous programs fund; and made minor changes in style. Amendment effective May 14, 2021, and terminates June 30, 2023.

1999 Amendment: Chapter 343 near beginning of first sentence after "general fund" deleted "or the transportation fund" and at end after "state aid" deleted "or for state transportation reimbursement, or both"; inserted second sentence authorizing trustees to apply to superintendent of public instruction for increased transportation reimbursement payment when final transportation fund budget amendment adopted; and in fourth sentence substituted "direct state aid" for "state aid from the state" and at end inserted "or additional pupil transportation obligations". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 22 near end of first sentence substituted "direct state aid" for "the BASE funding program". Amendment effective July 1, 1997.

1995 Amendment: Chapter 509 in first and fourth sentences, after "aid from the state", deleted "public school equalization aid account". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in first sentence, after "enrollment", deleted "or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of first sentence substituted reference to budget amendment for reference to emergency budget and near middle, after "cost of an", substituted "amendment resulting from" for "emergency due to an", in second sentence substituted "adopt" for "publish", in third sentence inserted reference to 20-9-314, and in fourth sentence, before "increase", deleted "emergency caused by an"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-168. Emergency budget amendment tax levy.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 237 near middle of first sentence after "district may" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 574 near middle after "district may" deleted "subject to 15-10-420". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 near middle of first sentence inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1993 Amendment: Chapter 633 in first sentence, after "been", substituted "adopted by the board of trustees" for "approved by the superintendent of public instruction" and after "proceeds" inserted "and reserves". Amendment effective July 1, 1993.

Effective Date: Section 15(4), Ch. 6, Sp. L. July 1992, provided that this section is effective on passage and approval. Approved July 24, 1992.

Part 2
Administration of Finances

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Part Administrative Rules

Title 10, chapter 10, subchapter 3, ARM Special accounting practices.

Title 10, chapter 10, subchapter 4, ARM Generally accepted accounting principles (GAAP).

Title 10, chapter 10, subchapter 5, ARM Monthly and annual reports.

Part Attorney General's Opinions

Use of Adult Education and Transportation Funds Prohibited in New School Construction: Under the 2009 version of 20-9-208, the transfer of funds from one budgeted fund to another budgeted fund is restricted, particularly if the funding source is a property tax levy. Property taxes levied to support adult education and transportation funds may be transferred to the school flexibility fund as long as the transfer is within or directly related to the purposes for which the funds were raised, for example, to support adult education or transportation. A transfer of property taxes for any other purpose, such as constructing a new school, is invalid. Transferred funding sources cannot be converted to flex fund revenues or cash balances to cover expenditures authorized for flex fund purposes. A county or school board may demand an accounting to determine how funds were transferred, budgeted, and spent. If liability exists, a county, school board, or citizen with standing may pursue any remedy provided by law. 54 A.G. Op. 6 (2012).

Permissible Alternatives for Deposit — School District Funds: The permissible alternatives for deposit or investment of school district money are governed by 20-9-213(4). 42 A.G. Op. 25 (1987).

20-9-201. Definitions and application.

Compiler's Comments

2019 Amendment: Chapter 185 in (1)(b) substituted "custodial fund" for "agency fund". Amendment effective July 1, 2019.

2011 Amendment: Chapter 418 in (3) after "Except as" deleted "provided in subsection (3)(b) or as"; deleted former (3)(b) that read: "(b) If the trustees of a district determine that its tuition fund is inactive and will no longer be used, the trustees shall close the fund by transferring any cash and account balances to the district's miscellaneous programs fund if the tuition fund does not have a cash or fund balance deficit"; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2001 Amendments — Composite Section: Chapter 356 in (3)(a) in exception clause near beginning inserted reference to subsection (3)(b); inserted (3)(b) requiring trustees determining that a tuition fund is inactive and will not be used to close the fund and transfer any money in the fund to the district's miscellaneous programs fund; and made minor changes in style. Amendment effective April 23, 2001.

Chapter 480 in (3)(a) near end after "balances to" substituted "any fund considered appropriate by the trustees" for "the general fund". Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1995 Amendment: Chapter 493 in (1)(b), near end of second sentence after "endowment fund", inserted "litigation reserve fund". Amendment effective April 15, 1995.

Effective Date — Retroactive Applicability: Section 4, Ch. 493, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994." Effective April 15, 1995.

1993 Amendment: Chapter 633 in definition of nonbudgeted fund inserted "impact aid fund". Amendment effective July 1, 1993.

1991 Amendments: Chapter 568 in (1)(b) inserted "internal service fund, enterprise fund, agency fund"; and made minor change in style. Amendment effective April 23, 1991.

Chapter 767 in (1), in first sentence of introductory clause after "law", inserted "or by the superintendent of public instruction under the provisions of subsection (2)"; in (1)(a), in second sentence before "tuition", deleted "elementary" and deleted reference to leased facilities fund; in (1)(b), in second sentence after "miscellaneous", deleted "federal" and inserted reference to extracurricular fund, metal mines tax reserve fund, and endowment fund; in (2), at end of first sentence, deleted "except the extracurricular money realized from pupil activities"; inserted (3) regarding closure of an inactive fund; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Chapters 1 and 11 in definition of budgeted fund deleted "vocational-technical center fund"; in (2) inserted second sentence relating to recording receipt and disbursement of money in accordance with generally accepted accounting principles and in third sentence, after "authority", inserted "as prescribed by law"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Rules: Section 98(1)(b), Ch. 11, Sp. L. June 1989, provided: "The superintendent of public instruction may, prior to July 1, 1990, adopt rules and conduct training necessary to implement [section 22] [20-9-201]."

1987 Amendments: Chapter 135 in (1)(b) changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

Chapter 658 in (1)(a), before "vocational-technical", deleted "postsecondary".

Attorney General's Opinions

AFTER 1993 SCHOOL FINANCE REVISION

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of 20-10-147 over the general provisions of 20-9-208 and this section in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

PRIOR TO 1993 SCHOOL FINANCE REVISION

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. 38 A.G. Op. 97 (1980).

Use of School Bus Depreciation Fund: The trustees of a school district may pay for the cost of replacement of a bus or radio from a bus depreciation reserve fund established under 20-10-147 if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any such bus or radio, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle. 37 A.G. Op. 153 (1978).

20-9-203. Examination of district accounting records.

Compiler's Comments

2001 Amendment: Chapter 483 near middle of second sentence after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1991 Amendment: In first sentence, after "districts", deleted "that maintain a high school" and inserted second sentence requiring filing of the completed audit report; deleted former (2) that read: "(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor or the county treasurer if there is no county auditor shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the superintendent of public instruction, the county superintendent, and the county clerk and recorder"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

1985 Amendment: In (2)(c) inserted "the superintendent of public instruction".

1981 Amendments: Section 7, Ch. 274, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 20-9-203 . . . are transferred to the department of administration."

Chapter 573 deleted "annually by the department of community affairs" following "shall be audited" in (1).

20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 396, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 110 in (3)(a) increased contract amount from $50,000 to $80,000. Amendment effective March 28, 2013.

2011 Amendment: Chapter 418 in (4) substituted last sentence relating to purchase of supplies and services from Montana vendors for "The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids"; deleted former (5) that read: "(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected"; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2009 Amendment: Chapter 178 in (1)(b) at end inserted exception clause regarding officiating at athletic competitions. Amendment effective October 1, 2009.

2007 Amendment: Chapter 106 in (3)(a) after "whenever" deleted "the estimated cost of", after "supplies for the district" substituted "is necessary" for "exceeds the sum of $25,000", and after "contract" inserted reference to sums exceeding $50,000; and made minor changes in style. Amendment effective March 30, 2007.

2005 Amendments — Composite Section: Chapter 162 in (3) in first sentence near beginning after "provided in" substituted "subsections (4) and (7)" for "subsection (4)"; inserted (7) providing that subsection (3) does not apply to certain energy audits or energy performance contracts; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 574 in (3) in second sentence at beginning inserted exception clause; inserted (3)(h) relating to a project in which an alternative project delivery contract is used; and in (5) at beginning inserted exception clause and near end inserted "any or". Amendment effective October 1, 2005.

2001 Amendments — Composite Section: Chapter 75 in (3) in first sentence of introductory clause after "20-3-322(5)" inserted "or as provided in subsection (4) of this section" and in sixth sentence after "requirements" substituted "applicable to services performed for the benefit of the district under this section" for "of this subsection"; inserted (4) regarding a district's entry into a cooperative purchasing contract with one or more districts; and made minor changes in style. Amendment effective March 19, 2001.

Chapter 103 in first sentence in (3) increased amount from $15,000 to $25,000; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date — Applicability: Section 2, Ch. 75, L. 2001, provided: "[This act] is effective on passage and approval [approved March 19, 2001] and applies to bids let on or after [the effective date of this act]."

1999 Amendment: Chapter 368 at end of (3) inserted introductory language and (3)(a) through (3)(g) providing that this section's bidding requirements do not apply to engineers, surveyors, real estate appraisers, architects, health care providers, attorneys, consulting actuaries, private investigators, claims adjusters, and accountants. Amendment effective April 20, 1999.

Applicability: Section 2, Ch. 368, L. 1999, provided that this section applies to contracts bid on or after April 20, 1999.

1995 Amendment: Chapter 39 in (3), in first sentence, increased from $7,500 to $15,000 the amount in excess of which work done or purchase made must be by contract; and made minor changes in style. Amendment effective February 8, 1995.

1991 Amendment: At beginning of (3) inserted exception clause; and made minor changes in style. Amendment effective March 25, 1991.

1983 Amendment: In (3), increased the estimated cost cutoff point from $4,000 to $7,500; and inserted (5) allowing routine repair done by staff.

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 18-1-201, 20-10-125, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Transportation Contracts Not Within Statute: Section 1016, Rev. Codes 1935 (now repealed), did not require the trustees of a school district to call for bids for transportation of pupils. In re Transportation of School Children, 117 M 618, 161 P2d 901 (1945).

Transportation for Trustee's Child Not Within Statute: Statute was not violated by an agreement between the board of trustees and member thereof, upon closing a school, to furnish his children with transportation to or board, rent, and tuition at the location of the school to which they were transferred. State ex rel. Lien v. School District, 106 M 223, 76 P2d 330 (1938).

County High School Trustees: Section 1016, Rev. Codes of 1935 (now repealed), was inapplicable to county high school trustees. Missoula County Free High School v. Smith, 91 M 419, 8 P2d 800 (1932).

Taxpayer's Action Allowed: A taxpayer may maintain an action in behalf of a school district against its board of trustees to procure the cancellation of a contract for supplies alleged to have been fraudulently let by it. School District v. Richards, 62 M 141, 205 P 206 (1922).

Attorney General's Opinions

Sale and Installation of Carpet in School — Public Contractor's License Required: Title 37, ch. 71, which requires a person performing public construction work to have a public contractor's license, and ARM 8.115.301 (now repealed), which broadly construed the definition of public construction work, apply to persons or firms that contract to sell and install carpeting on school district property when the value of the contract exceeds $5,000. 43 A.G. Op. 67 (1990).

Public School District Trustee as Private School Employee — No Conflict of Interest: There is no direct link between being employed by a private school and acting as a trustee for a public school district. The mere fact that a school trustee is employed by a private school located in the public school district results in no inherent conflict of interest, ethical problem, or breach of fiduciary duty. 42 A.G. Op. 44 (1987).

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

Health Insurance Plan — No Requirement for Bid: A school district is not required by this section to let bids on employer-provided employee health plans. 40 A.G. Op. 37 (1984).

School Trustees — Conflict of Interest: It is unlawful for a corporate business in which a school board trustee is a minor stockholder to furnish supplies for the operation and maintenance of the school. 37 A.G. Op. 78 (1977). See also 34 A.G. Op. 31 (1972).

20-9-207. Documentation of expenditures.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.

Compiler's Comments

2013 Amendment: Chapter 329 in (2)(a)(i) substituted "subsections (2)(a)(ii) through (2)(a)(iv)" for "subsection (2)(a)(ii)"; inserted (2)(a)(iii) and (2)(a)(iv) prohibiting transfer from retirement or debt service fund; and in (2)(b) in two places before "federal law" deleted "state or". Amendment effective July 1, 2013.

Applicability: Section 10, Ch. 329, L. 2013, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2013."

2011 Amendment: Chapter 418 inserted (2)(a)(i)(B) relating to approval of qualified electors; inserted (4) relating to intent of section; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2001 Amendment: Chapter 480 in (2) at beginning of introductory clause substituted "Unless otherwise restricted by a specific provision of this title, transfers may" for "Transfers may not" and after "budget amendment" substituted "under the following circumstances" for "or between similar funds of different districts except as specifically provided by this title"; inserted (2)(a) providing authority for trustees to make transfers from one budgeted fund to another budgeted fund or between the final budget and a budget amendment, subject to certain requirements or restrictions; inserted (2)(b) pertaining to authority of trustees to make transfers from one nonbudgeted fund to another nonbudgeted fund, subject to certain restrictions or requirements; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

1993 Amendment: Chapter 633 in (2), in first sentence after "district", inserted "between the final budget and a budget amendment". Amendment effective July 1, 1993.

1991 Amendment: In (1), near middle, substituted reference to budget amendment for reference to emergency budget; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

ARM 10.10.320 Cash and budget transfers between school district funds.

Attorney General's Opinions

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of 20-10-147 over the general provisions of 20-9-201 and this section in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under this section, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. (See 2001 amendment.) A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.

Compiler's Comments

1995 Amendment: Chapter 260 in (1)(b), at end, deleted "and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction"; and in (2), after "for the next", deleted "ensuing". Amendment effective July 1, 1995.

1991 Amendment: In (1), near beginning after "regular", deleted "or emergency" and after "budget" inserted "or for a budget amendment"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1983 Amendment: Inserted (1)(b) allowing payment for previously ordered personal property.

20-9-210. Expenditure limitation of nonbudgeted fund.

Compiler's Comments

1991 Amendment: Deleted second sentence that read: "The cash balance of a nonbudgeted fund shall remain to the credit of such nonbudgeted fund from year to year unless a transfer is specifically authorized by this title"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-212. Duties of county treasurer.

Compiler's Comments

2015 Amendment: Chapter 262 in (8) near end after "in accordance with" deleted "7-6-2116"; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendments — Composite Section: Chapter 196 in (12) inserted third and fourth sentences requiring at least 30 hours' notice in advance of cash demands by a clerk of the district to meet certain transactions in excess of $50,000 and requiring assessment of a late fee for failure to meet the notice requirement. Amendment effective October 1, 2005.

Chapter 463 in (13) in first sentence near middle after "earned" deleted "and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7)". Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 257 in (11) and (13) substituted references to department of revenue for references to state treasurer; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 464 in (13) near middle of first sentence after "amount required for" substituted "tuition paid under the provisions of 20-5-324(6) or (7)" for "high school out-of-county tuition under the provisions of 20-9-334". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1999 Amendment: Chapter 102 in (9) substituted "when directed by the trustees of a district, invest the money of the district" for "invest the money of any district as directed by the trustees of the district". Amendment effective July 1, 1999.

1997 Amendment: Chapter 22 in (1)(a), after "tax", substituted "for elementary equalization" for "in support of the elementary BASE aid"; in (1)(b), after "basic", substituted "county tax for high school equalization" for "special tax for high schools in support of the high school BASE aid"; and in (12), near beginning, substituted "basic county taxes for elementary and high school equalization" for "basic county tax, the basic special tax". Amendment effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 260 in (4), at end, deleted "and properly endorsed by their holders"; in (10), after "the paid warrants", deleted "outstanding warrants" and inserted "interest distribution"; and in (11) substituted "program within a unit of the university system" for "center". Amendment effective July 1, 1995.

Chapter 308 in (11) substituted "education" for "center" and substituted "20-25-439" for "20-16-202"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1993 Amendments: Chapter 133 in (3), after "each", deleted "budgeted" and after "fund" deleted "included in the final budget of each district and for each nonbudgeted fund"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 633 in (1), at end of first sentence after "superintendent", inserted "or by the superintendent of public instruction"; in (1)(a) and (1)(b), at end, substituted "BASE aid" for "foundation programs"; in (2), at end, inserted "or the superintendent of public instruction"; deleted former (3) that read: "keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district"; in (3), at end after "fund", deleted "included in the final budget of each district and for each nonbudgeted fund established by each district"; in (12), near beginning after "county tax", deleted "in support of the elementary foundation programs and", after "special tax" substituted "the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules" for "in support of the high school foundation programs", and at end substituted "through (1)(d)" for "and (1)(b)"; in (13), after "20-9-333", deleted "for elementary and high school district foundation program support"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, inserted (14) concerning monthly remittance of county equalization revenue in repayment of a state advance for county equalization. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: At end of (1)(c) substituted "transportation schedules" for "county's high school transportation obligation". Amendment effective July 1, 1991.

1989 Special Session Amendment: In (1)(d) substituted "elementary and high school district retirement obligations" for "high school obligations to the retirement systems of the state of Montana"; deleted former (1)(e) relating to additional county tax for deficiency financing of elementary foundation programs; deleted former (1)(f) relating to additional county tax for deficiency financing of high school foundation programs; at end of (12), after "commissioners", inserted "under the provisions of 20-16-202"; inserted (13) establishing requirements for the investment of money received from the basic county taxes; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: Before "vocational-technical" deleted "postsecondary".

1985 Amendments: Chapter 438 in (10) at end inserted "within 3 working days of such direction".

Chapter 481 inserted (8) relating to sale of tax and revenue anticipation notes.

1983 Amendment: In (10) provided for monthly instead of quarterly reporting.

Administrative Rules

ARM 10.10.501 County Treasurer's financial reports.

Case Notes

Effect of Special Deposit Requirement: Effect of former statute requiring County Treasurer to keep school money as a "special deposit" was not to make the county a bailee thereof but was to constitute the deposit a general one kept in a special account for school purposes. State ex rel. School District v. McGraw, 74 M 152, 240 P 812 (1925).

20-9-213. Duties of trustees.

Compiler's Comments

2011 Amendment: Chapter 152 in (6) near middle of second sentence substituted "on or before August 15" for "not later than September 1". Amendment effective April 10, 2011.

2001 Amendment: Chapter 205 near middle of first clause of (1) after "fund" inserted "and account"; in (2) and (3) after "warrants" inserted "or checks, as applicable"; in (4) at end of third full sentence inserted "including those investments authorized by the board of investments under Title 17, chapter 6" and in fifth full sentence after "company" substituted "complying with" for "licensed to do business in Montana under"; and made minor changes in style. Amendment effective April 5, 2001.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

1999 Amendment: Chapter 102 in (4) in first sentence after "money of the district" inserted "or by directly investing the money of the district", substituted "identified in 7-6-202" for "authorized in 7-6-202", and near end substituted "that meets the criteria provided for in 7-6-213" for "as authorized in 7-6-213", in fourth sentence relating to investments under the state unified investment program inserted "with other school districts, or with any other political subdivision if the unified investment program is limited to investments", and at end inserted sentence requiring a school district that enters into a unified investment program with another school district or political subdivision to do so under the provisions governing interlocal cooperative agreements and educational cooperative agreements and sentence requiring a school district to either contract for investment services with a company licensed to do business in Montana or with the state board of investments. Amendment effective July 1, 1999.

1995 Amendments: Chapter 260 in (4), at end, inserted reference to unified investment program meeting requirements of subsection (4); and made minor changes in style. Amendment effective July 1, 1995.

Chapter 406 at end of first clause of (4) substituted "eligible securities, as authorized in 7-6-202" for "direct obligations of the United States government". Amendment effective April 13, 1995.

Applicability: Section 5, Ch. 406, L. 1995, provided: "This act does not apply to and does not require the sale of securities that were legal investments before [the effective date of this act] [effective April 13, 1995]. Upon the liquidation of an investment authorized prior to [the effective date of this act] [effective April 13, 1995], the proceeds must be invested pursuant to [this act]."

Saving Clause: Section 4, Ch. 406, L. 1995, was a saving clause.

1993 Amendments: Chapter 10 in (4), near end of first sentence after "FDIC", deleted "FSLIC"; and made minor changes in style.

Chapter 133 in (6), in first sentence, substituted reference to August 15 for reference to August 1 and in second sentence, after "submitted", inserted "not later than September 1"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (8), after "audited", deleted "biennially". Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

1989 Special Session Amendments: Chapters 1 and 11 in (1), before "rules", inserted "generally accepted accounting principles and the"; and inserted (5) relating to recordation of all transactions in appropriate accounts before accounts are closed. Amendment effective July 1, 1990.

Chapter 11 in (8) substituted "biennially as required by 2-7-503" for "annually as required by law"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1989 Amendment: In (4), near middle of first sentence, after "United States government", deleted "payable within 180 days from the time of investment, or" and at end of first sentence inserted "or in a repurchase agreement as authorized in 7-6-213". Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 1, Sp. L. June 1989, provided: "It is the intent of the legislature that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the superintendent of public instruction adopt rules necessary to implement this requirement. Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the superintendent of public instruction is authorized to supervise public school financial administration and is required to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the board of public education has authority to require any reports it considers necessary.

It is further intended that the districts be required to file accurate and timely reports with the superintendent of public instruction. Districts must be required to provide student and school district data as may be required by the superintendent of public instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievements, and other appropriate educational factors necessary to enable the legislature to assess the equality of educational opportunity provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the superintendent of public instruction provide training, forms, and assistance to the districts as necessary to enable the districts to comply with [this act]. Whenever possible, the superintendent of public instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the legislature.

It is intended that the superintendent of public instruction employ two additional full-time-equivalent personnel during fiscal year 1990 and three full-time-equivalent personnel during fiscal year 1991 for the purpose of establishing standard accounting and reporting practices in the public school districts."

1987 Amendment: At end of first sentence in (4) substituted "state" for "county in which the district is located; provided, however, that if no such bank, building and loan association, savings and loan association, or credit union is located in the county where the district is situated, such investment may be made in said banks or associations located in adjacent counties".

1985 Amendment: In (4) in two places, after "savings and loan association", inserted "or credit union"; near middle of (4) after "FSLIC", inserted "NCUA"; and made minor changes in phraseology.

1981 Amendment: Moved the language "direct obligations of the United States government, payable within 180 days from the time of investment, or in" from the proviso clause to the first part of (4) so as to allow the investment even if there are banks, building and loans, or savings and loans located in the county.

Case Notes

Warrants Drawn in Anticipation of Revenue — Legislative Intent: Although sections 964 and 1012, Rev. Codes of 1921 (now repealed), authorized school trustees to issue warrants in anticipation of school money from uncollected taxes to the extent of the sum levied, the Legislative Assembly did not extend the privilege of going on the pay-as-you-go plan to school districts, as it did to cities and towns. Farbo v. School District, 95 M 531, 28 P2d 455 (1933).

Attorney General's Opinions

Advancement of Annual Annuity Premium — Method of Recovery: A school district may advance the annual premium for a tax-sheltered annuity on behalf of its participating employees and then recover the amount advanced by means of salary withholding. 44 A.G. Op. 26 (1992).

Permissible Alternatives for Deposit — School District Funds: The permissible alternatives for deposit or investment of school district money are governed by subsection (4) of this section. 42 A.G. Op. 25 (1987).

School Contracts — Trustee's Delegation of Power to Superintendent: A School District Superintendent does not have the inherent power to enter a contract on behalf of the school district. A Superintendent is the executive officer of the board of trustees and in this capacity merely acts to execute policy adopted by the board. A school district board of trustees may delegate a portion of its exclusive power to contract to the Superintendent if the delegated power involves only the performance of administrative nondiscretionary acts. 40 A.G. Op. 41 (1984).

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

20-9-214. Fees.

Compiler's Comments

1991 Amendment: In (2) inserted reference to subsection (a) of subsection (1) and after "deposited in" inserted "the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1985 Amendment: Inserted (1)(b) relating to noneducation course or activity fee; and inserted (2) relating to deposit of fees.

20-9-215. Destruction of certain financial records.

Compiler's Comments

1983 Amendment: At end of section, changed "25 years" to "5 years".

20-9-221. Procedure for issuance of warrants.

Compiler's Comments

1995 Amendment: Chapter 260 in (1) deleted reference to budgeted fund or nonbudgeted fund; deleted (1)(b) that read: "(b) the warrant as a budget amendment warrant if it is drawn on a budget amendment"; in (3), at beginning of first sentence, substituted "may" for "shall" and after "issue warrants in" deleted "single copy or in triplicate copy", deleted former second and third sentences requiring trustees to take certain actions when warrants issued in single or triplicate copies (see 1995 Session Law for text), and near end substituted references to multiple copies for duplicate and triplicate copies; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1)(b) substituted reference to budget amendment warrant for reference to emergency warrant and substituted reference to budget amendment for reference to emergency budget; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: Deleted former (1)(b) that read: "(b) the appropriation item of the budgeted fund or the type of expenditure for a nonbudgeted fund on which the warrant is drawn". Amendment effective July 1, 1989.

20-9-231. Metal mines tax reserve fund.

Compiler's Comments

1999 Amendment: Chapter 144 in first sentence of (1) substituted "15-37-117(1)(e)" for "15-37-117(1)(f)". Amendment effective July 1, 1999.

The amendment to this section made by sec. 6, Ch. 552, L. 1999, was rendered void by sec. 12(2), Ch. 552, L. 1999, a contingent voidness provision.

1995 Amendment: Chapter 577 in (1) substituted reference to 15-37-117(1)(f) for reference to 15-37-117(1)(d). Amendment effective July 1, 1995.

1991 Amendment: Throughout section substituted reference to reserve fund for reference to reserve account; in (1), in last sentence, substituted "fund balance" for "cash balance"; inserted (4) requiring administration of the fund as a nonbudgeted fund; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Saving Clause: Section 22, Ch. 672, L. 1989, was a saving clause.

Effective Date — Retroactive Applicability: Section 23, Ch. 672, L. 1989, provided: "[This act] is effective on passage and approval [approved May 16, 1989] and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988."

20-9-235. Authorization for school district investment account.

Compiler's Comments

2019 Amendment: Chapter 166 in (5) at beginning substituted "Unless otherwise provided by law" for "Except for debt service money that the county treasurer is required by law to collect and report to the districts and state transportation reimbursement payments provided for in 20-10-141 and 20-10-142". Amendment effective July 1, 2019.

Effective Date — Applicability: Section 4, Ch. 166, L. 2019, provided: "[This act] is effective July 1, 2019, and applies to school fiscal years beginning on or after July 1, 2019."

2013 Amendment: Chapter 329 in (5) after "districts" inserted "and state transportation reimbursement payments provided for in 20-10-141 and 20-10-142". Amendment effective July 1, 2013.

Applicability: Section 10, Ch. 329, L. 2013, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2013."

2011 Amendment: Chapter 19 in (4)(a)(iv) at beginning deleted "except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 411 in (1) deleted former second sentence that read: "The trustees shall establish a separate account for each fund from which transfers are made"; in (4)(a)(ii) at end substituted "negotiated period of time" for "period of not less than 5 years"; and in (5) near beginning substituted "debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be" for "electronic transfers of BASE aid and state advances for county equalization" and at end deleted "under 20-9-346(3), the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account". Amendment effective October 1, 2003.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

Administrative Rules

Title 10, chapter 10, subchapter 6, ARM Investments.

20-9-236. Transfer of funds — improvements to school safety and security.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 348, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 245 in (1) at beginning after "school district" inserted "that has certified to the office of public instruction a current school safety plan or emergency operations plan pursuant to 20-1-401. Amendment effective July 1, 2021.

Applicability: Section 6, Ch. 245, L. 2021, provided: "[This act] applies to notice requirements, school budgets, property tax levies, and state major maintenance aid calculations related to school fiscal years beginning on or after July 1, 2022."

2019 Amendment: Chapter 253 in (1) near end after "improvements to school" inserted "and student"; in (1)(a) substituted current text for former text that read: "planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants"; inserted (1)(b) related to active shooter training, threat assessments, and restorative justice; and made minor changes in style. Amendment effective May 2, 2019.

2017 Amendment: Chapter 404 in (2) substituted "within 2 full school fiscal years after the funds are transferred" for "by June 30, 2019"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

Termination Provision Repealed: Section 11, Ch. 404, L. 2017, repealed sec. 12, Ch. 364, L. 2013, and sec. 3, Ch. 323, L. 2015, which terminated this section June 30, 2015.

2015 Amendment: Chapter 323 in (1) at beginning deleted "For fiscal year 2013 through fiscal year 2015 only"; in (2) substituted "June 30, 2019" for "June 30, 2015"; and made minor changes in style. Amendment effective April 27, 2015.

Extension of Termination Date: Section 3, Ch. 323, L. 2015, amended sec. 12, Ch. 364, L. 2013, by extending the termination date imposed by Ch. 364 to June 30, 2019. Effective April 27, 2015.

20-9-250. Innovative educational program account — revenue allocated — appropriations from account.

Compiler's Comments

Effective Date: Section 10, Ch. 558, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 18, 2023.

Applicability: Section 11, Ch. 558, L. 2023, provided: "[This act] applies to income tax years beginning after December 31, 2023."

Termination: Section 12, Ch. 558, L. 2023, provided that this section terminates December 31, 2029.

Part 3

Funding of Basic System of Quality Public Schools

Part Compiler's Comments

Audit During Biennium: Section 53, Ch. 633, L. 1993, provided: "(1) The legislative audit committee, in accordance with its constitutional authority to supervise legislative postaudits, shall ensure the independence of the audit of the office of the superintendent of public instruction conducted pursuant to Title 5, chapter 13, during the 1994-95 biennium. It is the intent of the legislature that the biennial financial compliance audit for the 2 fiscal years ending June 30, 1994, be contracted. To the extent that the legislative audit committee contracts with a private firm to conduct a portion of the audit or the entire audit, including audit work required to complete the statewide audit and the federal single audit, the total cost of all audit work during the biennium must be paid first from the line item appropriation to the office of the superintendent of public instruction for audit costs.

(2) There is appropriated from the general fund to the legislative auditor $40,000 for the biennium ending June 30, 1995, to be used if the line item appropriation to the office of the superintendent of public instruction is insufficient to pay the total audit costs."

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Interim Study: Section 63, Ch. 633, L. 1993, provided: "(1) The legislative council is requested to assign the revenue oversight committee, the legislative finance committee, or an appropriate interim committee to conduct an interim study of certain taxes and property valuation for the purpose of enhancing equalized school funding and of equalizing tax burdens among the state's school districts. The study should include but is not limited to:

(a) exploring the best means of including revenue from local government severance taxes, new and interim production of oil and natural gas, the "flat tax" on coal, corporation license taxes collected from financial institutions, and motor vehicle fees in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts; and

(b) identifying measures that would allow the value of all centrally assessed property to be included in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts.

(2) In conducting the study, the committee may request assistance from the:

(a) superintendent of public instruction;

(b) board of public education;

(c) department of revenue;

(d) representatives of local government entities, including the Montana association of counties and the Montana league of cities and towns;

(e) representatives of schools and teachers and other interested persons and organizations; and

(f) staff of the legislative council, legislative fiscal analyst, and the legislative auditor.

(3) If the legislative council does not assign an appropriate interim committee to conduct the study requested in this section, the superintendent of public instruction is requested to conduct the study and may request assistance from any of the entities referred to in subsection (2) or from any other entity having relevant knowledge, insight, or information."

Applicability Date Amended — Termination: Section 1, Ch. 573, L. 1989, provided: "This act is applicable during school fiscal years 1990 through 1995 in the following manner:

(1) one-fifth of the reduction in the maximum general fund budget resulting from the aggregation of ANB required by this act, as calculated from school attendance during school fiscal year 1990, applies in budgeting for school fiscal year 1991;

(2) two-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1991, applies in budgeting for school fiscal year 1992;

(3) three-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1992, applies in budgeting for school fiscal year 1993;

(4) four-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1993, applies in budgeting for school fiscal year 1994;

(5) 100% of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1994, applies in budgeting for school fiscal year 1995." Amendment effective April 20, 1989.

Section 4, Ch. 573, L. 1989, provided: "[This act] terminates on the effective date of a new equalized school funding system."

Part Administrative Rules

Title 10, chapter 20, ARM Average number belonging (ANB).

Title 10, chapter 21, ARM Guaranteed tax base aid (GTBA) and funding components.

Part Case Notes

PRIOR TO 1993 SCHOOL FINANCE REVISION

School Funding Lawsuit — District Court Opinion With Appeal Pending: A District Court decision rendered January 13, 1988, held unconstitutional the method of funding Montana's school system. The schools were to continue operating under existing statutes until October 1, 1989, to allow the Legislature time to correct the deficiencies. Helena Elementary School District No. 1 v. State of Montana, Cause No. ADV-85-370, First Judicial District, Lewis and Clark County. On appeal, the Montana Supreme Court affirmed in part the District Court decision, ruling that the state's failure to adequately fund the foundation program forced an excessive reliance on permissive levies and violated Art. X, sec. 1, Mont. Const., by denying equality of educational opportunity to each student. School District No. 1 v. St., 236 M 44, 769 P2d 684, 46 St. Rep. 169 (1989).

Constitutionality: Although enacted in anticipation of constitutional change, 20-9-301 (repealed 1993) did not become effective until after the effective date of the new constitution and is therefore constitutionally valid. State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974); certiorari denied, Straub v. Woodahl, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79 (1974).

Part Attorney General's Opinions

PRIOR TO 1993 SCHOOL FINANCE REVISION

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Budgeting for Seventh and Eighth Grade Students: The amount of general fund budget per ANB for the 7th and 8th grade students in an elementary school should be the same as that computed for the high school district within which the elementary school is located. 37 A.G. Op. 154 (1978).

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

Part Law Review Articles

Uniformity of Taxation and the Preservation of Local Control in School Finance Reform, Reynolds, 40 U.C. Davis L. Rev. 1835 (2007).

Riding the Third Wave of School Finance Litigation: Navigating Troubled Waters, Brooker, 75 UMKC L. Rev. 183 (2006).

Part Collateral References

K-12 School Funding: A 10-Year Review, Final Report of the 2015-2016 School Funding Interim Commission, Mont. Leg. Serv. Div. (2016).

Defining and Funding a Basic System of Free Quality Public Elementary and Secondary Schools, Final Report of the Quality Schools Interim Committee, Mont. Leg. Serv. Div. (2006).

20-9-302. School isolation.

Compiler's Comments

2001 Amendment: Chapter 105 in (1) at beginning inserted exception clause; in (2) in first sentence after "commissioners" deleted "(budget board)" and at beginning of second and third sentences substituted "board" for "budget board"; and made minor changes in style. Amendment effective July 1, 2001.

1981 Amendment: In (1), increased the time when enrollment must fall below the specified amount before a school is classified as an isolated school from 1 year to 2 consecutive years; changed the time for submitting an application from "May 1 each year" to "May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection" in the second sentence of (1).

Administrative Rules

Title 10, chapter 30, subchapter 1, ARM Isolation classification.

20-9-303. Nonisolated school BASE budget funding — special education funds.

Compiler's Comments

2005 Amendment: Chapter 208 in (2) near end of second sentence before "20-9-308" deleted "20-9-307 and". Amendment effective April 7, 2005.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

1993 Amendment: Chapter 633 deleted former (1) and (2) that read: "As used in this title, the term "foundation program" means the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and may not include expenditures from any other fund. It is financed by:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343;

(c) appropriations for special education; and

(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.

(2) The foundation program includes:

(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and

(b) payments in support of special education programs under 20-9-321"; in two places in (1) substituted "direct state aid" for "foundation program", substituted "BASE budget" for "schedule", after "shall" substituted "provide" for "participate in financing", and after "remaining one-half" inserted "of the direct state aid"; in (2), in first sentence before "may", substituted "program" for "accounting budget", in second sentence, after "from", inserted "and in addition to" and at end, after "fund", inserted "budgeting requirements provided in 20-9-307 and 20-9-308", deleted former third sentence that read: "Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title", and in last sentence, near beginning, substituted "amount" for "unexpended balance", after "education" substituted "allowable cost payments that is not matched with district funds, as required in 20-9-321, will" for "accounting budget carries over to the next year to", after "reduce" substituted "by a like amount" for "the amount of funding required to finance", and after "year's" substituted "allowable cost payment" for "foundation program amount"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Special Session Amendment: Near beginning of (1) substituted "means the minimum expenditures" for "shall mean the minimum operating expenditures, as established herein"; in (1)(a) inserted reference to 20-9-331 and 20-9-333; in (1)(b) inserted reference to 20-9-343; inserted (1)(c) relating to appropriations for special education; inserted (1)(d) relating to a district levy for a school not approved as an isolated school; deleted former first sentence of (2) providing that the dollar amount of the foundation program was 80% of the maximum-general-fund-budget-without-a-voted-levy limitation; inserted (2)(a) relating to the schedule amounts for general education programs; inserted (2)(b) relating to payments for special education programs; in first sentence of (3), after "20-9-302", substituted "may budget and spend" for "shall be 80% of"; near end of (4) substituted "foundation program amount" for "maximum-budget-without-a-vote"; and made minor changes in phraseology and form. Amendment effective July 1, 1990.

1981 Amendments: Chapter 317 deleted former subsection (1)(c) that read "when required, moneys from an additional state levy for a state deficiency".

Chapter 347 inserted "for 2 consecutive years" after "an elementary school having an ANB of nine or fewer pupils" in the second sentence of (2).

20-9-305. Proration and calculation of BASE funding program for joint district.

Compiler's Comments

1993 Amendment: Chapter 633 throughout section substituted "direct state aid" or "direct state aid amount" for "foundation program"; in (1), near beginning, substituted "direct state aid of a joint district must" for "foundation program shall"; in (2), near end of first sentence, substituted "BASE funding" for "foundation"; and made minor changes in style. Amendment effective July 1, 1993.

20-9-306. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 31, L. 2023, in definition of basic entitlement in (a)(i) and (a)(ii) at beginning substituted "$343,483 for fiscal year 2024 and $353,787" for "$326,073 for fiscal year 2022 and $334,453", in (a)(ii) in middle substituted "$17,175 for fiscal year 2024 and $17,690" for "$16,304 for fiscal year 2022 and $16,723", in (b)(i), (b)(ii), (c)(i)(A), and (c)(i)(B) at beginning substituted "$57,246 for fiscal year 2024 and $58,963" for "$54,344 for fiscal year 2022 and $55,741", in (b)(ii) and (c)(i)(B) in middle substituted "$2,863 for fiscal year 2024 and $2,949" for "$2,718 for fiscal year 2022 and $2,788", in (c)(ii)(A) and (c)(ii)(B) at beginning substituted "$114,493 for fiscal year 2024 and $117,928" for "$108,690 for fiscal year 2022 and $111,483", and in (c)(ii)(B) in middle substituted "$5,724 for fiscal year 2024 and $5,896" for "$5,434 for fiscal year 2022 and $5,574"; in definition of total American Indian achievement gap payment substituted "$235 for fiscal year 2024 and $242" for "$223 for fiscal year 2022 and $229"; in definition of total data-for-achievement payment substituted "$22.89 for fiscal year 2024 and $23.58" for "$21.73 for fiscal year 2022 and $22.29"; in definition of total Indian education for all payment substituted "$23.91 for fiscal year 2024 and $24.63" for "$22.70 for fiscal year 2022 and $23.28"; in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$7,840 for fiscal year 2024 and $8,075" for "$7,443 for fiscal year 2022 and $7,634" and in (b) and (c)(i) substituted "$6,123 for fiscal year 2024 and $6,307" for "$5,813 for fiscal year 2022 and $5,962"; in definition of total quality educator payment substituted "$3,566 for fiscal year 2024 and $3,673" for "$3,385 for fiscal year 2022 and $3,472"; and in definition of total special education allocation substituted "$293.74 for fiscal year 2024 and $302.55" for "$287.93 for fiscal year 2022 and $286.02". Amendment effective July 1, 2023.

Section 6, Ch. 640, L. 2023, in definition of over-BASE budget levy at end substituted "within the general fund budget limits established in 20-9-308 and calculated as provided in 20-9-141" for "below the maximum general fund budget for a district". Amendment effective July 1, 2023.

Applicability: Section 3, Ch. 31, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2021 Amendments — Composite Section: Chapter 23 in definition of basic entitlement in (a)(i) and (a)(ii) at beginning substituted "$326,073 for fiscal year 2022 and $334,453 for each succeeding fiscal year" for "$315,481 for fiscal year 2020 and $321,254 for each succeeding fiscal year", in (a)(ii) in middle substituted "$16,304 for fiscal year 2022 and $16,723 for each succeeding fiscal year" for "$15,774 for fiscal year 2020 and $16,063 for each succeeding fiscal year", in (b)(i), (b)(ii), (c)(i)(A), and (c)(i)(B) at beginning substituted "$54,344 for fiscal year 2022 and $55,741 for each succeeding fiscal year" for "$52,579 for fiscal year 2020 and $53,541 for each succeeding fiscal year", in (b)(ii) and (c)(i)(B) in middle substituted "$2,718 for fiscal year 2022 and $2,788 for each succeeding fiscal year" for "$2,630 for fiscal year 2020 and $2,678 for each succeeding fiscal year", in (c)(ii)(A) and (c)(ii)(B) at beginning substituted "$108,690 for fiscal year 2022 and $111,483 for each succeeding fiscal year" for "$105,160 for fiscal year 2020 and $107,084 for each succeeding fiscal year", and in (c)(ii)(B) in middle substituted "$5,434 for fiscal year 2022 and $5,574 for each succeeding fiscal year" for "$5,258 for fiscal year 2020 and $5,354 for each succeeding fiscal year"; in definition of total American Indian achievement gap payment substituted "$223 for fiscal year 2022 and $229 for each succeeding fiscal year" for "$216 for fiscal year 2020 and $220 for each succeeding fiscal year"; in definition of total data-for-achievement payment substituted

"$21.73 for fiscal year 2022 and $22.29 for each succeeding fiscal year" for "$21.03 for fiscal year 2020 and $21.41 for each succeeding fiscal year"; in definition of total Indian education for all payment substituted "$22.70 for fiscal year 2022 and $23.28 for each succeeding fiscal year" for "$21.96 for fiscal year 2020 and $22.36 for each succeeding fiscal year"; in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$7,443 for fiscal year 2022 and $7,634 for each succeeding fiscal year" for "$7,201 for fiscal year 2020 and $7,333 for each succeeding fiscal year" and in (b) and (c)(i) substituted "$5,813 for fiscal year 2022 and $5,962 for each succeeding fiscal year" for "$5,624 for fiscal year 2020 and $5,727 for each succeeding fiscal year"; and in definition of total quality educator payment substituted "$3,385 for fiscal year 2022 and $3,472 for each succeeding fiscal year" for "$3,275 for fiscal year 2020 and $3,335 for each succeeding fiscal year". Amendment effective July 1, 2021.

Chapter 60 in definition of total quality educator payment at end of introductory clause inserted "sum of" and inserted (b) concerning competitive base pay for teachers; and made minor changes in style. Amendment effective July 1, 2021.

Chapter 470 in definition of BASE aid inserted (h) concerning the special education allowable cost payment; inserted definition of total special education allocation; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 23, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

Section 4, Ch. 470, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

Preamble: The preamble attached to Ch. 60, L. 2021, provided: "WHEREAS, Montana's public school districts have made significant progress in increasing the average pay of teachers over the last 15 years; and

WHEREAS, in spite of such progress in increasing the average pay of teachers, school districts have not made comparable progress in increasing the base pay of early career teachers; and

WHEREAS, the success of efforts to recruit the next generation of high quality educators in Montana's public school districts will be served by providing more competitive base pay for teachers in Montana's public school districts; and

WHEREAS, incentives for public school districts and collective bargaining units to collaborate in increasing base pay will help improve efforts to recruit and retain the next generation of high quality educators in Montana's public school districts."

2019 Amendment: Chapter 24 in definition of basic entitlement in (a)(i) and (a)(ii) at beginning substituted "$315,481 for fiscal year 2020 and $321,254 for each succeeding fiscal year" for "$306,897 for fiscal year 2018 and $312,636 for each succeeding fiscal year", in (a)(ii) in middle substituted "$15,774 for fiscal year 2020 and $16,063 for each succeeding fiscal year" for "$15,345 for fiscal year 2018 and $15,632 for each succeeding fiscal year", in (b)(i), (b)(ii), (c)(i)(A), and (c)(i)(B) at beginning substituted "$52,579 for fiscal year 2020 and $53,541 for each succeeding fiscal year" for "$51,149 for fiscal year 2018 and $52,105 for each succeeding fiscal year", in (b)(ii) and (c)(i)(B) in middle substituted "$2,630 for fiscal year 2020 and $2,678 for each succeeding fiscal year" for "$2,558 for fiscal year 2018 and $2,606 for each succeeding fiscal year", in (c)(ii)(A) and (c)(ii)(B) at beginning substituted "$105,160 for fiscal year 2020 and $107,084 for each succeeding fiscal year" for "$102,299 for fiscal year 2018 and $104,212 for each succeeding fiscal year", and in (c)(ii)(B) in middle substituted "$5,258 for fiscal year 2020 and $5,354 for each succeeding fiscal year" for "$5,115 for fiscal year 2018 and $5,211 for each succeeding fiscal year"; in definition of total American Indian achievement gap payment substituted "$216 for fiscal year 2020 and $220 for each succeeding fiscal year" for "$210 for fiscal year 2018 and $214 for each succeeding fiscal year"; in definition of total data-for-achievement payment substituted "$21.03 for fiscal year 2020 and $21.41 for each succeeding fiscal year" for "$20.46 for fiscal year 2018 and $20.84 for each succeeding fiscal year"; in definition of total Indian education for all payment substituted "$21.96 for fiscal year 2020 and $22.36 for each succeeding fiscal year" for "$21.36 for fiscal year 2018 and $21.76 for each succeeding fiscal year"; in definition of total per-ANB entitlement in (a) substituted "$7,201 for fiscal year 2020 and $7,333 for each succeeding fiscal year" for "$7,005 for fiscal year 2018 and $7,136 for each succeeding fiscal year", in (b) substituted "$5,624 for fiscal year 2020 and $5,727 for each succeeding fiscal year" for "$5,471 for fiscal year 2018 and $5,573 for each succeeding fiscal year", in (c)(i) substituted "$5,624 for fiscal year 2020 and $5,727 for each succeeding fiscal year" for "$5,471 for fiscal year 2018 and $5,573 for each succeeding fiscal year", and in (c)(ii) substituted "$7,201 for fiscal year 2020 and $7,333 for each succeeding fiscal year" for "$7,005 for fiscal year 2018 and $7,136 for each succeeding fiscal year"; and in definition of total quality educator payment substituted "$3,275 for fiscal year 2020 and $3,335 for each succeeding fiscal year" for "$3,185 for fiscal year 2018 and $3,245 for each succeeding fiscal year". Amendment effective July 1, 2019.

Applicability: Section 5, Ch. 24, L. 2019, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2019."

2017 Amendments — Composite Section: Chapter 47 in definition of basic entitlement in (a)(i) and (a)(ii) at beginning substituted "$306,897 for fiscal year 2018 and $312,636 for each succeeding fiscal year" for "$300,000 for fiscal year 2016 and $305,370 for each succeeding fiscal year", in (a)(ii) in middle substituted "$15,345 for fiscal year 2018 and $15,632 for each succeeding fiscal year" for "$15,000 for fiscal year 2016 and $15,269 for each succeeding fiscal year", in (b)(i), (b)(ii), (c)(i)(A), and (c)(i)(B) at beginning substituted "$51,149 for fiscal year 2018 and $52,105 for each succeeding fiscal year" for "$50,000 for fiscal year 2016 and $50,895 for each succeeding fiscal year", in (b)(ii) and (c)(i)(B) in middle substituted "$2,558 for fiscal year 2018 and $2,606 for each succeeding fiscal year" for "$2,500 for fiscal year 2016 and $2,545 for each succeeding fiscal year", in (c)(ii)(A) and (c)(ii)(B) at beginning substituted "$102,299 for fiscal year 2018 and $104,212 for each succeeding fiscal year" for "$100,000 for fiscal year 2016 and $101,790 for each succeeding fiscal year", and in (c)(ii)(B) in middle substituted "$5,115 for fiscal year 2018 and $5,211 for each succeeding fiscal year" for "$5,000 for fiscal year 2016 and $5,090 for each succeeding fiscal year"; in definition of total American Indian achievement gap payment substituted "$210 for fiscal year 2018 and $214 for each succeeding fiscal year" for "$205 in fiscal year 2016 and $209 for each succeeding fiscal year"; in definition of total Indian education for all payment substituted "$21.36 for fiscal year 2018 and $21.76 for each succeeding fiscal year" for "$20.88 in fiscal year 2016 and $21.25 for each succeeding fiscal year"; in definition of total per-ANB entitlement in (a) and (c)(ii) near beginning substituted "$7,005 for fiscal year 2018 and $7,136 for each succeeding fiscal year" for "$6,847 for fiscal year 2016 and $6,970 for each succeeding fiscal year" and in (b) and (c)(i) substituted "$5,471 for fiscal year 2018 and $5,573 for each succeeding fiscal year" for "$5,348 for fiscal year 2016 and $5,444 for each succeeding fiscal year"; in definition of total data-for-achievement payment in middle substituted "$20.46 for fiscal year 2018 and $20.84 for each succeeding fiscal year" for "$20 for fiscal year 2016 and $20.36 for each succeeding fiscal year"; and in definition of total quality educator payment in middle substituted "$3,185 for fiscal year 2018 and $3,245 for each succeeding fiscal year" for "$3,113 in fiscal year 2016 and $3,169 for each succeeding fiscal year". Amendment effective July 1, 2017.

Chapter 275 renumbered definitions to put in alphabetical order; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 336 in definition of BASE aid deleted former (b) that read: "(b) the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10)"; deleted former definition that read: ""Natural resource development K-12 funding payment" means the payment of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 4, Ch. 47, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2015 Amendments — Composite Section: Chapter 8 in definition of BASE aid in (b) at beginning deleted "starting in fiscal year 2015"; in definition of maximum general fund budget at end inserted "the district's special education allowable cost payment multiplied by" and in (a) after "175%" deleted "of special education allowable cost payments"; in definition of natural resource development K-12 funding payment near beginning after "means the payment" deleted "starting in fiscal year 2015"; and made minor changes in style. Amendment effective July 1, 2015.

Chapter 60 in definition of basic entitlement in (a)(i) and (a)(ii) substituted "$300,000 for fiscal year 2016 and $305,370" for "$290,000 for fiscal years 2014 and 2015 and $300,000", in (a)(ii) substituted "$15,000 for fiscal year 2016 and $15,269" for "$12,000 for fiscal years 2014 and 2015 and $15,000", in (b)(i) and (b)(ii) substituted "$50,000 for fiscal year 2016 and $50,895" for "$40,000 for fiscal years 2014 and 2015 and $50,000", in (b)(ii) substituted "$2,500 for fiscal year 2016 and $2,545" for "$2,000 for fiscal years 2014 and 2015 and $2,500", in (c)(i)(A) and (c)(i)(B) substituted "$50,000 for fiscal year 2016 and $50,895" for "$40,000 for fiscal years 2014 and 2015 and $50,000", in (c)(i)(B) substituted "$2,500 for fiscal year 2016 and $2,545" for "$2,000 for fiscal years 2014 and 2015 and $2,500", in (c)(ii)(A) and (c)(ii)(B) substituted "$100,000 for fiscal year 2016 and $101,790" for "$80,00 for fiscal years 2014 and 2015 and $100,000", and in (c)(ii)(B) substituted "$5,000 for fiscal year 2016 and $5,090" for "$4,000 for fiscal years 2014 and 2015 and $5,000"; in definition of natural resource development K-12 funding payment in third sentence after "K-12 funding payment" deleted "must be determined as follows:

(a) for fiscal year 2015, $3 million; and

(b) for fiscal year 2016 and each subsequent year, the payment"; in definition of total American Indian achievement gap payment substituted "$205 in fiscal year 2016 and $209 for each succeeding fiscal year" for "$200"; in definition of total Indian education for all payment substituted "$20.88 in fiscal year 2016 and $21.25 for each succeeding fiscal year" for "$20.40"; in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$6,847 for fiscal year 2016 and $6,970" for "$6,555 for fiscal year 2014 and $6,691" and in (b) and (c)(i) substituted "$5,348 for fiscal year 2016 and $5,444" for "$5,120 for fiscal year 2014 and $5,226"; in definition of total data-for-achievement payment after "payment" deleted "calculated as" and after "20-9-325" inserted current text concerning payment calculation; in definition of total quality educator payment substituted "$3,113 in fiscal year 2016 and $3,169 for each succeeding fiscal year" for "$3,042"; and made minor changes in style. Amendment effective July 1, 2015.

Applicability: Section 5, Ch. 60, L. 2015, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2015."

2013 Amendment: Chapter 400 inserted definitions of natural resource development K-12 funding payment and total data-for-achievement payment; in definition of BASE aid inserted (b) concerning the natural resource development K-12 funding payment and (h) concerning the total data-for-achievement payment; in definition of BASE budget inserted "100% of the total data-for-achievement payment"; in definition of basic entitlement substituted (a)(i) and (a)(ii) for "(i) $256,003 for fiscal year 2012; and

(ii) $260,099 for each succeeding fiscal year", substituted (b)(i) and (b)(ii) for "(i) $23,033 for fiscal year 2012;

(ii) $23,402 for each succeeding fiscal year; and", in (c)(i) inserted "the district's" and substituted (c)(i)(A) and (c)(i)(B) for "(A) $23,033 for fiscal year 2012; and

(B) $23,402 for each succeeding fiscal year; plus", in (c)(ii) substituted current language for "for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A) $65,231 for fiscal year 2012; and

(B) $66,275 for each succeeding fiscal year"; in definition of maximum general fund budget after "gap payment" inserted "the total data-for-achievement payment"; in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$6,555 for fiscal year 2014 and $6,691" for "$6,343 for fiscal year 2012 and $6,444" and in (b) and (c)(i) substituted "$5,120 for fiscal year 2014 and $5,226" for "$4,955 for fiscal year 2012 and $5,034"; in definition of total quality educator payment substituted "multiplying $3,042 by the number" for "multiplying $3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year times the number"; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment — Coordination: Chapter 418 in definition of basic entitlement in (a)(i) substituted "$256,003 for fiscal year 2012" for "$246,085 for fiscal year 2010", in (a)(ii) substituted "$260,099" for "$253,468", in (b)(i) and (c)(i)(A) substituted "$23,033 for fiscal year 2012" for "$22,141 for fiscal year 2010", in (b)(ii) and (c)(i)(B) substituted "$23,402" for "$22,805", in (c)(ii)(A) substituted "$65,231 for fiscal year 2012" for "$62,704 for fiscal year 2010", in (c)(ii)(B) substituted "$66,275" for "$64,585"; and in definition of total per-ANB entitlement in (a) and in (c)(ii) substituted "$6,343 for fiscal year 2012 and $6,444" for "$6,097 for fiscal year 2010 and $6,280" and in (b) and (c)(i) substituted "$4,955 for fiscal year 2012 and $5,034" for "$4,763 for fiscal year 2010 and $4,906". Amendment effective May 13, 2011.

The amendment to this section made by sec. 15, Ch. 418, L. 2011, was rendered void by sec. 26, Ch. 418, L. 2011, a coordination section.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2009 Amendment: Chapter 486 in definition of basic entitlement in (a)(i) substituted "$246,085 for fiscal year 2010" for "$236,552 for fiscal year 2008", in (a)(ii) at beginning substituted "$253,468" for "$243,649", in (b)(i) and (c)(i)(A) substituted "$22,141 for fiscal year 2010" for "$21,290 for fiscal year 2008", in (b)(ii) and (c)(i)(B) at beginning substituted "$22,805" for "$21,922", in (c)(ii)(A) substituted "$62,704 for fiscal year 2010" for "$60,275 for fiscal year 2008", and in (c)(ii)(B) at beginning substituted "$64,585" for "$62,083"; in definition of total per-ANB entitlement in (a) and in (c)(ii) near beginning after "rate of" substituted "$6,097 for fiscal year 2010 and $6,280" for "$5,861 for fiscal year 2008 and $6,037" and in (b) and in (c)(i) near beginning after "rate of" substituted "$4,763 for fiscal year 2010 and $4,906" for "$4,579 for fiscal year 2008 and $4,716". Amendment effective July 1, 2009.

Applicability: Section 34(2), Ch. 486, L. 2009, provided: "(2) [Section 14] [amending 20-9-306] applies to school budgets for school fiscal years beginning on or after July 1, 2009."

Allocation and Distribution of Increased State Support for Schools: Section 63, Ch. 489, L. 2009, provided: "The superintendent of public instruction shall allocate and distribute the funds appropriated in [section 85] for Increase State Support for Schools With Education Stabilization Funds as follows:

(1) for fiscal year 2010:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2010 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act]; and

(2) for fiscal year 2011:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2011 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act]."

2007 Special Session Amendment: Chapter 1 in definition of basic entitlement in (a) at beginning deleted "$230,199", inserted (a)(i) and (a)(ii) specifying amounts for fiscal year 2008 and each succeeding fiscal year, in (b) at beginning deleted "$20,718" and inserted reference to 7th and 8th grade program, inserted (b)(i) and (b)(ii) specifying amounts for fiscal year 2008 and each succeeding fiscal year, in (c) at beginning deleted "the prorated entitlement", inserted reference to 7th and 8th grade program, and at end after "middle school" deleted "calculated as follows using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) substituted "for kindergarten through grade 6 elementary program" for "$20,718 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8", inserted (c)(i)(A) and (c)(i)(B) specifying amounts for fiscal year 2008 and each succeeding fiscal year, and in (c)(ii) substituted introductory clause and (c)(ii)(A) and (c)(ii)(B) relating to funding for junior high school program, 7th and 8th grade program, or middle school for "$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8"; in definition of total per-ANB entitlement in (a) substituted "$5,861 for fiscal year 2008 and $6,037 for each succeeding fiscal year" for "$5,704", in (b) after "junior high school" inserted reference to 7th and 8th grade program and substituted "$4,579 for fiscal year 2008 and $4,716 for each succeeding fiscal year" for "$4,456", in (c) after "junior high school" inserted reference to 7th and 8th grade program, and in (c)(i) near beginning substituted "$4,579 for fiscal year 2008 and $4,716 for each succeeding fiscal year" for "$4,456", and in (c)(ii) near beginning substituted

"$5,861 for fiscal year 2008 and $6,037 for each succeeding fiscal year" for "$5,704"; in definition of total quality educator payment substituted "$3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year" for "$2,000"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in definition of BASE aid inserted (c) concerning the total quality educator payment, (d) concerning the total at-risk student payment, (e) concerning the total Indian education for all payment, and (f) concerning the total American Indian achievement gap payment; in definition of BASE budget near middle inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; in definition of maximum general fund budget near end of introductory clause inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; and inserted definitions of total American Indian achievement gap payment, total at-risk student payment, total Indian education for all payment, and total quality educator payment. Amendment effective July 1, 2006.

(Former July 1, 2007, version) In definition of basic entitlement in (a) and (c)(ii) increased entitlement from $220,646 to $230,199, in (b) and (c)(i) increased entitlement from $19,859 to $20,718, and in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311"; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) and (c)(ii) increased rate from $5,371 to $5,704, and in (b) and (c)(i) increased rate from $4,031 to $4,456; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2005 Amendment: (Temporary version) Chapter 462 in definition of base budget before "140%" deleted "up to"; in definition of basic entitlement in (a) increased entitlement from $220,646 to $225,273, in (b) increased entitlement from $19,859 to $20,275, in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) increased the entitlement from $19,859 to $20,275, and in (c)(ii) increased the entitlement from $220,646 to $225,273; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) near beginning after "rate of" increased rate from $5,371 to $5,584, in (b) near middle after "rate of" increased rate from $4,031 to $4,366, in (c)(i) near beginning increased rate from $4,031 to $4,366, and in (c)(ii) near beginning increased rate from $5,371 to $5,584; and made minor changes in style. Amendment effective July 1, 2005, and terminates June 30, 2006.

(Version effective July 1, 2006) In definition of base budget before "140%" deleted "up to"; in definition of basic entitlement in (a) increased entitlement from $220,646 to $230,199, in (b) increased entitlement from $19,859 to $20,718, in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) increased the entitlement from $19,859 to $20,718, and in (c)(ii) increased the entitlement from $220,646 to $230,199; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) near beginning after "rate of" increased rate from $5,371 to $5,704, in (b) near middle after "rate of" increased rate from $4,031 to $4,456, in (c)(i) near beginning increased rate from $4,031 to $4,456, and in (c)(ii) near beginning increased rate from $5,371 to $5,704; and made minor changes in style. Amendment effective July 1, 2006, and terminates June 30, 2007.

Effective Date — Applicability: Section 24(4) provided: "(4) [Section 10] [20-9-306, temporary version] is effective July 1, 2005, and applies to school budgets for the school fiscal year beginning July 1, 2005."

Section 24(5), Ch. 462, L. 2005, provided: "(5) [Section 11] [20-9-306, version effective July 1, 2006] is effective July 1, 2006, and applies to school budgets for the school fiscal year beginning July 1, 2006."

2003 Amendments: (Temporary version) Chapter 550 in (2)(b) before "40%" deleted "up to"; in (6)(a) increased amount from $213,819 to $216,171; in (6)(b) increased amount from $19,244 to $19,456; in (6)(c)(i) increased amount from $19,244 to $19,456; in (6)(c)(ii) increased amount from $213,819 to $216,171; in (10)(a) increased amount from $5,205 to $5,262; in (10)(b) increased amount from $3,906 to $3,949; in (10)(c)(i) increased amount from $3,906 to $3,949; in (10)(c)(ii) increased amount from $5,205 to $5,262. Effective July 1, 2003, and terminates June 30, 2004.

(Version effective July 1, 2004) In (2)(b) before "40%" deleted "up to"; in (6)(a) increased amount from $213,819 to $220,646; in (6)(b) increased amount from $19,244 to $19,859; in (6)(c)(i) increased amount from $19,244 to $19,859; in (6)(c)(ii) increased amount from $213,819 to $220,646; in (10)(a) increased amount from $5,205 to $5,371; in (10)(b) increased amount from $3,906 to $4,031; in (10)(c)(i) increased amount from $3,906 to $4,031; in (10)(c)(ii) increased amount from $5,205 to $5,371. Effective July 1, 2004.

Effective Dates — Applicability: For temporary version, sec. 17(2), Ch. 550, L. 2003, provided: "[Section 2] [20-9-306] is effective July 1, 2003, and applies to school budgets for the school fiscal year beginning July 1, 2003."

For version effective July 1, 2004, sec. 17(3), Ch. 550, L. 2003, provided: "[Section 3] [20-9-306] is effective July 1, 2004, and applies to school budgets for the school fiscal years beginning on or after July 1, 2004."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

Contingency: Section 2, Ch. 556, L. 2001, was a coordination section. Subsection (1) provided: "If Senate Bill No. 495 is passed and approved and is not enjoined or determined to be unconstitutional by April 1, 2002, and if Senate Bill No. 390 is passed and approved, then section 20-9-306, MCA, must read as follows". Senate Bill No. 495 and Senate Bill No. 390 were passed and approved. The version set forth in subsection (1) is the version labeled: "Effective if contingency not met". Subsection (2) provided: "If Senate Bill No. 495 is enjoined or declared unconstitutional before April 1, 2002, then section 20-9-306, must read as follows". Subsection (2) contained two versions of this section. The first version is identical to the version in sec. 1, Ch. 556, L. 2001, the temporary version. The second version is the version labeled: "Effective on occurrence of contingency".

Effective Date — Applicability — Contingency: Section 3, Ch. 556, L. 2001, provided: "(1) [This act] is effective on passage and approval [approved May 2, 2001], and [section 1] [temporary version] applies to school fiscal years beginning July 1, 2001.

(2) If the contingency in [section 2(1)] occurs, [section 2(1)] [version effective if contingency not met] applies to school fiscal years beginning on or after July 1, 2002.

(3) If the contingency in [section 2(2)] occurs, the first version of 20-9-306 in [section 2(2)] [temporary version] applies to the school fiscal year beginning July 1, 2001, and the second version of 20-9-306 in [section 2(2)] [version effective on occurrence of contingency] applies to school fiscal years beginning on or after July 1, 2002." The contingencies in [section 2] did not occur by April 1, 2002, so the version labeled "Effective July 1, 2002, if contingency not met" became effective.

2001 Amendments — Composite Section: (Temporary version) Chapter 231 in definition of BASE aid in (b) near end before "40%" deleted "up to"; in definition of BASE budget near end before "140%" deleted "up to"; and in definition of maximum general fund budget near end substituted "175%" for "up to 153%". Amendment effective July 1, 2001, and terminates June 30, 2002.

(Versions effective July 1, 2002) In definition of maximum general fund budget near end substituted "the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%" for "up to 153% of special education allowable cost payments".

(Temporary version) Chapter 556 in (6)(a) and (6)(c)(ii) substituted "$209,873" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$18,889" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,109" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,834" for "$3,763". Amendment effective May 2, 2001.

(Version effective July 1, 2002, if contingency not met) In (6)(a) and (6)(c)(ii) substituted "$213,819" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$19,244" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,205" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,906" for "$3,763".

(Version effective July 1, 2002, on occurrence of contingency) In (6)(a) and (6)(c)(ii) substituted "$211,531" for "$206,000"; in (6)(b) and (6)(c)(i) substituted "$19,038" for "$18,540"; in (10)(a) and (10)(c)(ii) substituted "$5,149" for "$5,015"; and in (10)(b) and (10)(c)(i) substituted "$3,864" for "$3,763".

Effective Dates — Applicability: Section 3, Ch. 231, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] [20-9-306, temporary version] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning July 1, 2001.

(2) [Section 2] [20-9-306, version effective July 1, 2002] is effective July 1, 2002, and applies to school budgets for school fiscal years beginning on or after July 1, 2002."

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in definition of BASE aid in (a) in two places substituted "44.7%" for "41.8%" and in (b) in two places substituted "35.3%" for "38.2%"; in definition of basic entitlement in (a) and (c)(ii) substituted "$206,000" for "$200,000" and in (b) and (c)(i) substituted "$18,540" for "$18,000"; in definition of direct state aid in two places substituted "44.7%" for "41.8%"; and in definition of total per-ANB entitlement in (a) and (c)(ii) substituted "$5,015" for "$4,869" and in (b) and (c)(i) substituted "$3,763" for "$3,653". Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in definition of BASE aid in (a) in two places substituted "41.1%" for "40%" and in (b) substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; in definition of direct state aid in two places substituted "41.1%" for "40%"; and in definition of total per-ANB entitlement in (a) substituted "$4,821" for "$4,773", in (b) substituted "$3,529" for "$3,410", in (c)(i) substituted "$3,529" for "$3,410", and in (c)(ii) substituted "$4,821" for "$4,773". Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In definition of BASE aid in (a) in two places substituted "41.8%" for "40%" and in (b) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; in definition of direct state aid in two places substituted "41.8%" for "40%"; and in definition of total per-ANB entitlement in (a) substituted "$4,869" for "$4,773", in (b) substituted "$3,653" for "$3,410", in (c)(i) substituted "$3,653" for "$3,410", and in (c)(ii) substituted "$4,869" for "$4,773".

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1997 Amendment: (Temporary version) Chapter 437 in (6)(a) increased entitlement for each high school district from $191,000 to $200,000; in (6)(b) increased entitlement for each elementary school district or K-12 district elementary program from $17,190 to $18,000; in (6)(c)(i) increased amount to be multiplied by ratio from $17,190 to $18,000; in (6)(c)(ii) increased amount to be multiplied by ratio from $191,000 to $200,000; in (10)(a), in calculation for total per-ANB entitlement for high school district or K-12 district high school program, increased maximum rate from $4,680 to $4,726; in (10)(b), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program without approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,376; in (10)(c)(i), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,376 for first ANB for kindergarten through grade 6; and in (10)(c)(ii), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $4,680 to $4,726 for first ANB for grades 7 and 8. Amendment effective July 1, 1997, and terminates June 30, 1998.

(Version effective July 1, 1998) In (6)(a) increased entitlement for each high school district from $191,000 to $200,000; in (6)(b) increased entitlement for each elementary school district or K-12 district elementary program from $17,190 to $18,000; in (6)(c)(i) increased amount to be multiplied by ratio from $17,190 to $18,000; in (6)(c)(ii) increased amount to be multiplied by ratio from $191,000 to $200,000; in (10)(a), in calculation for total per-ANB entitlement for high school district or K-12 district high school program, increased maximum rate from $4,680 to $4,773; in (10)(b), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program without approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,410; in (10)(c)(i), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $3,343 to $3,410 for first ANB for kindergarten through grade 6; and in (10)(c)(ii), in calculation for total per-ANB entitlement for elementary school district or K-12 district elementary program with approved and accredited junior high school or middle school, increased maximum rate from $4,680 to $4,773 for first ANB for grades 7 and 8. Amendment effective July 1, 1998.

Effective Dates — Applicability: Section 5, Ch. 437, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 1997, and applies to school budgets for the school fiscal year beginning July 1, 1997.

(2) [Section 2] [20-9-306 — version effective July 1, 1998] is effective July 1, 1998, and applies to school budgets for school fiscal years beginning on or after July 1, 1998."

Termination: Section 6, Ch. 437, L. 1997, provided: "[Sections 1 and 3(2)] [20-9-306 — version effective July 1, 1997, and 20-9-375(2) — version effective July 1, 1997, now repealed] terminate June 30, 1998."

1993 Special Session Amendment: Chapter 38 in (6)(a) and (6)(c)(ii) decreased entitlement from $200,000 to $191,000; in (6)(b) and (6)(c)(i) decreased entitlement from $18,000 to $17,190; in (10)(a) and (10)(c)(ii) decreased per-ANB entitlement from $4,900 to $4,680; and in (10)(b) and (10)(c)(i) decreased per-ANB entitlement from $3,500 to $3,343. Amendment effective January 4, 1994.

Preamble: The preamble attached to Ch. 38, Sp. L. November 1993, provided: "WHEREAS, it is the intent of the Legislature to acknowledge and to support the constitutional role of the boards of trustees to supervise and control the public school districts of the state. However, it is also the intent of the Legislature to request that each board of trustees of a school district carefully review the district's expenditures for school administration, extracurricular activities, extracurricular athletics, and special education. The Legislature further requests that, as a result of this investigation, the boards of trustees consider and pursue the possibilities of consolidating school districts."

Required General Fund Budget Reduction: Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

Applicability: Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-308. BASE budgets and general fund budget limits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 240, L. 2023. Amendment effective April 25, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2019 Amendment: Chapter 128 in (1)(a) in second sentence substituted current text for "The trustees of a district may adopt a general fund budget up to the" and substituted current (1)(a)(i) and (1)(a)(ii) for "maximum general fund budget or the previous year's general fund budget, whichever is greater"; inserted (1)(b) regarding the procedure when anticipated enrollment increases are not realized for former (1)(b) that read: "(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget"; and made minor changes in style. Amendment effective April 10, 2019.

2013 Amendment: Chapter 400 in (1)(b) substituted "direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the" for "state funding for the"; in (2)(a) at beginning inserted exception clause, after "the district and" inserted "propose", and before "revenue" inserted "the highest"; inserted (2)(b) regarding intent to increase flexibility and efficiency of school boards; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 418 in (2) inserted "over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years". Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2007 Amendment: Chapter 173 in (1)(a) at end of first sentence deleted "and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district" and inserted second sentence concerning adoption of budget that is greater of maximum general fund budget or previous year's general fund budget; inserted (1)(b) concerning adding increase in state funding to previous year's budget; in (2) near beginning after "district" inserted "propose to" and near middle substituted "and to increase the over-BASE budget levy to support the general fund budget" for "but does not exceed the maximum general fund budget for the district"; deleted former (3) that read: "(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353"; and made minor changes in style. Amendment effective April 10, 2007.

Retroactive Applicability: Section 5, Ch. 173, L. 2007, provided: "[Sections 1 and 2] [20-9-141 and 20-9-308] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections."

2005 Amendments — Composite Section: (Temporary version) Chapter 190 in (3)(a)(i) in first sentence included subsection (3)(b) in exception clause; in (3)(a)(i) at beginning of second and third sentences (amendment in third sentence rendered void by Ch. 462 amendment) and in (3)(a)(ii) at beginning inserted exception clause; inserted (3)(b) providing that a school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005; and made minor changes in style. Amendment effective April 8, 2005, and terminates June 30, 2007.

Chapter 462 in (3)(a)(i) after second sentence deleted former introductory clause and (3)(a)(i)(A) through (3)(a)(i)(E) that read: "A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year"; in (3)(c) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Applicability: Section 2, Ch. 190, L. 2005, provided: "[This act] is effective on passage and approval [approved April 8, 2005] and applies to school budgets for the school fiscal year beginning July 1, 2005."

Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, now repealed, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendments — Composite Section: Chapter 146 deleted former (2)(b) that read: "(b) A general fund budget adopted under this subsection (2) may not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 237 in (3)(a)(i) near end of first sentence substituted "maximum general fund budget amount or the previous year's general fund budget" for "maximum general fund budget amount or up to 94% of the previous year's general fund budget" and at end of second sentence inserted "but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Effective Date — Applicability: Section 2, Ch. 146, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for the school fiscal year beginning on or after July 1, 2001."

1999 Amendment — Coordination Instruction: Section 10(2), Ch. 514, L. 1999, a coordination instruction, in (1) after "that" deleted "except as provided in subsection (2)", after "district" substituted "and" for "or", and after "provided in" deleted "section 3, Chapter 38, Special Laws of November 1993, and"; deleted former (2) that read: "(2) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) shall increase the general fund budget by at least:

(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;

(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;

(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or

(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;

(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per-ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).

(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353"; at end of (2)(a) after "20-9-353" deleted "for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes"; in (2)(b)(i) and (2)(b)(ii) after "budget" deleted "as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993"; deleted former (4)(a) that read: "(a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year"; inserted (3) authorizing district whose previous year's general fund budget exceeds current year's maximum general fund budget amount to adopt general fund budget up to greater of maximum general fund budget amount or 94% of previous year's general fund budget, providing schedule for 5-year reduction in adopted budget for district whose ANB for previous year exceeds ANB for current year by 30% of more, and authorizing district whose general fund budget was above maximum general fund budget in 1993 and whose general fund budget still exceeds district's maximum general fund budget each year after 1993 to adopt general fund budget that exceeds maximum general fund budget by the lesser of previous year's adopted budget or maximum general fund budget for current year plus over maximum budget amount adopted for previous year; at beginning of (3)(b) deleted "Except for the school fiscal year beginning July 1, 1994"; at beginning of (4) substituted "The BASE budget for the district must be financed by" for "Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with"; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 359, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

The amendment to this section made by Ch. 514, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1993 Special Session Amendment: Chapter 38 in (1), at beginning, deleted "For the school fiscal year beginning on July 1, 1993"; in (1)(b) inserted reference to section 3, Chapter 38, Special Laws of November 1993; in (2)(a), after "the school fiscal year", deleted "beginning on July 1, 1993"; substituted (2)(a)(i) requiring that trustees increase the general fund budget to mandatory growth levels and (2)(a)(ii) and (2)(b) requiring voter approval for any portion of the general fund budget that exceeds the mandatory growth levels for former language that read: "(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; but

(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year"; deleted former (2)(a)(ii)(A) that read: "(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993"; deleted former (2)(b) and (2)(c) that read: "(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).

(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.

(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget"; substituted (3) requiring voter approval for the over-BASE budget of a school district if the budget exceeds the previous year's general fund budget or the previous year's general fund budget per-ANB multiplied by the current year's ANB and providing that a general fund budget may not exceed the greater of 104% of the previous year's budget as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, or the previous year's budget per-ANB multiplied by the current year's ANB and as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, for former (3) that read: "(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:

(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or

(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.

(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a)"; in (4)(a) inserted "as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993"; in (4)(b), after "beginning", deleted "July 1, 1993"; and made minor changes in style. Amendment effective January 4, 1994.

Preamble: The preamble attached to Ch. 38, Sp. L. November 1993, provided: "WHEREAS, it is the intent of the Legislature to acknowledge and to support the constitutional role of the boards of trustees to supervise and control the public school districts of the state. However, it is also the intent of the Legislature to request that each board of trustees of a school district carefully review the district's expenditures for school administration, extracurricular activities, extracurricular athletics, and special education. The Legislature further requests that, as a result of this investigation, the boards of trustees consider and pursue the possibilities of consolidating school districts."

Required General Fund Budget Reduction: Section 3, Ch. 38, Sp. L. November 1993, provided: "Budget reduction — exceptions. (1) Except as provided in subsection (2), for calculating and adopting a general fund budget for the school fiscal year ending June 30, 1995, as provided in 20-9-306 and 20-9-308 for that school year, the trustees of a district shall deduct 4.5% from the general fund budget for the school fiscal year ending June 30, 1994.

(2) The deduction required under subsection (1):

(a) does not apply to a school district with a general fund budget that is below the BASE budget for the school fiscal year ending June 30, 1994; and

(b) may not cause a general fund budget of a school district to fall below the BASE budget for the school fiscal year ending June 30, 1994."

Applicability: Section 4, Ch. 38, Sp. L. November 1993, provided that this section applies to budgets for the school year beginning July 1, 1994.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

Contingent Termination: Section 64, Ch. 633, L. 1993, provided: "The bracketed language in [section 3] [20-9-308(7)], relating to excluding Public Law 81-874 receipts, is void on the date that the superintendent of public instruction certifies to the governor that, prior to January 1, 1995, a letter has been received from the United States department of education declaring that, after analysis of [this act], the bracketed language in [section 3] [20-9-308(7)] violates the provisions of the federal impact aid laws and will result in the loss of federal impact aid funds."

A letter was not received from the Department of Education. The Code Commissioner has removed the bracketed language because of the limited duration of the provision.

20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.

Compiler's Comments

2015 Amendment: Chapter 359 in (4) at beginning deleted "By July 1, 2007"; in (5) after "every 10 years" deleted "following April 7, 2005" and after "legislature shall" substituted requirement that a school funding commission reassess the funding formula for former (5)(a) and (b) that read: "(a) authorize a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, incorporate the results of those assessments into the state's funding formula"; and made minor changes in style. Amendment effective April 29, 2015.

Severability: Section 8, Ch. 208, L. 2005, was a severability clause.

Effective Date: Section 9, Ch. 208, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 7, 2005.

Collateral References

K-12 School Funding: A 10-Year Review, Final Report of the 2015-2016 School Funding Interim Commission, Mont. Leg. Serv. Div. (2016).

20-9-310. Oil and natural gas production taxes for school districts — allocation and limits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 240, L. 2023. Amendment effective April 25, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2021 Amendment: Chapter 27 inserted (5)(b) concerning retention of oil and natural gas production taxes by districts in nonoperating status; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 3, Ch. 27, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2017 Amendments — Composite Section: Chapter 173 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 336 in (3) at end substituted "guarantee account provided for in 20-9-622" for "state school oil and natural gas distribution account provided for in 20-9-520"; deleted former (4) that read: "(4) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518"; and made minor changes in style. Amendment effective July 1, 2017.

Termination Provision Modified: Section 20, Ch. 336, L. 2017, amended sec. 7, Ch. 433, L. 2015, by changing the termination date of the 2015 amendments to this section from June 30, 2019, to June 30, 2017. Effective May 4, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2015 Amendments — Composite Section: (Temporary version) Chapter 432 in (1)(b) substituted "2016" for "2017"; in (4)(b)(iii) substituted current text concerning proportional distribution to counties for "25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518"; in (5) substituted current text concerning budget and allocation for former (5) through (7) that read: "(5) Subject to the limitation in subsection (1) and except as provided in subsection (7), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) oil and natural gas production taxes received by the district must be deposited in the general fund until the limit under subsection (5)(a) is reached; and

(c) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) Except as provided in subsection (7), 50% of the oil and natural gas production taxes deposited in the general fund pursuant to subsection (5)(a) must be applied to the BASE budget levy. Remaining oil and natural gas production taxes deposited in the general fund may be applied to either the BASE budget levy or the over-BASE budget levy at the discretion of the board of trustees.

(7) The provisions of subsections (5) and (6) do not apply to the following:

(a) a district that has a maximum general fund budget of less than $1 million;

(b) a district whose oil and gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(c) a district that has a maximum general fund budget of $1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which subsections (5) and (6) of this section would otherwise apply; or

(d) a district that has issued outstanding oil and natural gas revenue bonds. Any funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period"; and made minor changes in style. Amendment effective May 5, 2015.

(Version effective July 1, 2016) In (4)(c) substituted text concerning proportional distribution to counties for former text (see note for (4)(b)(iii) under temporary version) (rendered void by Ch. 433); in (5) substituted current text for former (5) through (7) (see note under temporary version); and made minor changes in style.

(Temporary version) Chapter 433 in (1)(b) substituted "2016" for "2017"; and in (4)(b)(iii) substituted current text concerning proportional distribution to counties for "25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518". Amendment effective May 5, 2015.

(Version effective July 1, 2016) In (4) substituted current text for former text that read: "(4) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518"; and made minor changes in style. Amendment effective July 1, 2016, and terminates June 30, 2019.

2013 Amendment — Code Commissioner Correction: (Temporary version) Chapter 400 in (1)(a) at beginning inserted exception clause; inserted (1)(b) setting maximum amount retained for certain districts and years; and made minor changes in style. Amendment effective May 6, 2013, and terminates June 30, 2016.

(Version effective July 1, 2016) Chapter 400 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2016. The code commissioner in (7)(d) substituted "this section" for "this subsection (7)" because subsection (7) does not allocate any funds.

(Both versions) Chapter 400 in (3) inserted last sentence concerning deposit of excess funds; in (4) substituted current language for "For fiscal year 2012, any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) must be deposited in the guarantee account as provided in 20-9-622"; in (5) inserted "and except as provided in subsection (7)"; deleted former (5)(a) through (5)(c) that read: "(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement"; in (5)(a) at beginning deleted "for each succeeding fiscal year" and substituted "25%" for "55%"; in (5)(b) substituted "limit under subsection (5)(a)" for "budgeted amount"; inserted (6) through (8) concerning deposit of oil and natural gas production taxes; deleted former (7) that read: "(7) Beginning in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in 20-9-518"; and made minor changes in style.

Deletion of Termination Date: Section 38, Ch. 400, L. 2013, amended sec. 29, Ch. 418, L. 2011, by removing the June 30, 2016, termination date for this section.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Code Commissioner Correction: Chapter 418 in (7) inserted an erroneous reference to the retention of oil and natural gas production taxes "Beginning in fiscal year 2013". However, the sections creating a state account and county fund to which the retained taxes would flow are effective July 1, 2013, pursuant to sec. 28(2), Ch. 418, L. 2011. To meet the intent of remitting the retained taxes for the applicable fiscal year, the erroneous reference was changed to "July 1, 2013" pursuant to sec. 49, Ch. 19, L. 2011. In a letter dated April 20, 2012, the code commissioner notified the office of public instruction and the department of revenue that the code commissioner correction made to this section was being retracted, and the language was changed back to "fiscal year 2013".

Effective Date — Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section is effective on passage and approval and applies to school fiscal year 2012. Chapter 418, L. 2011, was enacted into law without the Governor's signature on May 13, 2011.

Termination: Section 29, Ch. 418, L. 2011, provided that this section terminates June 30, 2016.

Administrative Rules

Title 10, chapter 11, ARM Oil and gas production taxes.

20-9-311. Calculation of average number belonging (ANB) — 3-year averaging.

Compiler's Comments

2023 Amendments — Composite Section: Section 5, Ch. 580, L. 2023, in (4)(e)(i) inserted last sentence regarding concurrent enrollment and attribution of fractional enrollment first to a pupil's nonresident district; in (8)(a)(iii) near beginning after "not to aggregate when" substituted "geographic barriers" for "conditions" and near middle after "other obstacles to travel" deleted "or when any other condition exists"; in (10)(a) near middle substituted "in-person or remote instruction" for "onsite or offsite instruction"; in (11)(a) near end inserted "or an offsite instructional setting"; in (11)(g) near middle of first sentence substituted "remote delivery methods" for "electronic or offsite delivery methods" and at end of first sentence deleted "while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district"; in (11)(g)(iii) at beginning substituted "must be enrolled in the educational program or course" for "attend school in the district"; inserted (11)(g)(iv) regarding receipt of remote instruction; and made minor changes in style. Amendment effective July 1, 2023.

Section 7, Ch. 608, L. 2023, in (4)(e)(i) at beginning inserted exception clause; inserted (4)(e)(ii) providing that a participant in a jumpstart program may be counted as 1¼ enrollment for ANB purposes and providing directions to the district; and made minor changes in style. Amendment effective July 1, 2024.

Applicability: Section 7, Ch. 580, L. 2023, provided: "[This act] applies to school years and years of attendance beginning on or after July 1, 2023."

Transition: Section 9, Ch. 608, L. 2023, provided: "(1) The board of public education, the office of public instruction, and the boards of trustees of school districts shall collaborate and prepare for the full implementation of [sections 1 through 4] [Title 20, chapter 7, part 18] in the school year beginning July 1, 2024. The legislature intends that the evaluation methodology be available for administration in the spring of 2024 to determine child eligibility.

(2) The legislature intends that school districts operating multiyear kindergarten programs in the school year beginning July 1, 2023, plan for the transition to early literacy targeted intervention programs under [sections 1 through 4] [Title 20, chapter 7, part 18] for the school year beginning July 1, 2024."

2021 Amendments — Composite Section: Chapter 18 inserted (7)(b) regarding a pupil who has reached 19 years of age; and made minor changes in style. Amendment effective February 23, 2021.

Chapter 269 inserted (13) concerning when October and February enrollment counts may include individuals who were not enrolled or were enrolled part time, concerning how each completed extracurricular activity may be counted, and defining extracurricular activity; and made minor changes in style. Amendment effective July 1, 2021.

Chapter 406 inserted (7)(b) and (7)(c) regarding which students may and may not be included in the ANB calculations; inserted (7)(d) encouraging collaboration with agencies and programs that serve adults with developmental disabilities in meeting the goals of a student's transition plan"; and made minor changes in style. Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 18, L. 2021, provided: "WHEREAS, the ages at which children are required to be admitted to public schools and the ages at which trustees may admit children at the trustees' discretion are established in 20-5-101, MCA;

WHEREAS, eligibility for inclusion in average number belonging calculations is governed in 20-9-311, MCA; and

WHEREAS, if trustees, at their discretion, enroll an individual 19 years of age or older, that individual needs to be defined as a pupil so that other school laws apply."

2015 Amendment: Chapter 157 in (1)(a) near beginning and throughout (8) substituted "regularly enrolled pupils" for references to regularly enrolled full-time pupils; in (1)(a) near middle before "on the first Monday in February" deleted "on the first Monday in December of the prior school fiscal year and to a count of regularly enrolled pupils" and near end substituted "divide the sum by two" for "divide the sum by three"; and made minor changes in style. Amendment effective April 1, 2015.

Applicability: Section 3, Ch. 157, L. 2015, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2015."

2013 Amendment: Chapter 400 in (1)(a) substituted "the first Monday in December" for "February 1", inserted "and to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year", and substituted "three" for "two"; in (4)(a) and (4)(b) at beginning inserted exception clause; inserted (4)(d) regarding exception when a pupil demonstrates proficiency in content; in (8)(b), (8)(c), and (8)(d) at beginning inserted "when"; in (8)(d) substituted "been designated as nonaccredited" for "not been accredited" and inserted "because of failure to meet the board of public education's assurance and performance standards"; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2009 Amendment: Chapter 137 in (11)(h) after "attending" inserted "the Montana youth challenge program or"; inserted (12) requiring a school district to calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment for ANB purposes; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 4, Ch. 137, L. 2009, provided that this section applies to school fiscal years beginning on or after July 1, 2010.

2007 Special Session Amendment: Chapter 1 in (1) near end of introductory clause inserted "for each budget unit"; in (4)(a) at beginning deleted "Except as provided in subsection (5)"; in (4)(a)(i) near beginning substituted "180" for "181"; in (4)(d) near beginning substituted "kindergarten through grade 12" for "grades 1 through 12"; substituted (5) concerning district transitioning to full-time kindergarten for former (5) that read: "(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes"; in (7) substituted "preschool pupils" for "prekindergarten pupils"; in (8) near end inserted "the ANB is calculated as a separate budget unit"; in (8)(a)(i) near middle after "must be calculated" substituted "as a separate budget unit" for "separately"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Special Session Amendment: (Version effective July 1, 2006) Chapter 4 in (12)(a) and (12)(b) near middle after "ensuing" inserted "school fiscal"; and made minor changes in style. Amendment effective July 1, 2006.

(Version effective July 1, 2007) Inserted (12) providing method of calculating a district's maximum general fund budget for elementary, high school, or K-12 districts that have been in existence for 3 or more years; and inserted (13) defining 3-year ANB and providing a method of calculating the 3-year ANB.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2005 Amendments — Composite Section: Chapter 138 in (1)(b) substituted "sum of 180" for "sum of the pupil-instruction"; and in (3) substituted "less than the minimum aggregate hours" for "less than 180 school days". Amendment effective July 1, 2005.

Chapter 215 substituted (4) establishing number of hours that count toward various levels of enrollment for former (4) that read: "(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day"; in (5) near beginning after "enrollment" substituted "in a program that provides 360 or more aggregate hours of pupil instruction per school year" for "at a regular session of the program for at least 2 hours of either a morning or an afternoon session" and deleted former second sentence that read: "The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil"; inserted (10) regarding access to school programs; and inserted (11) establishing conditions for including an eligible enrolled pupil for ANB purposes. Amendment effective July 1, 2005.

(Temporary version) Chapter 462 in (1) in introductory clause after "computed" inserted "for each budget unit"; in (8) near end after "except that" inserted "the ANB is calculated as a separate budget unit"; in (8)(a)(i) near middle after "calculated" substituted "as a separate budget unit" for "separately"; inserted (12) providing method of calculating a district's maximum general fund budget for elementary, high school, or K-12 districts that have been in existence for 3 or more years; and inserted (13) defining 3-year ANB and providing a method of calculating the 3-year ANB. Amendment effective April 28, 2005, and terminates June 30, 2007.

Chapter 510 in (8)(a)(iv) at beginning of first sentence after "more" deleted "elementary" and after "provisions of" substituted "20-6-422 or 20-6-423" for "20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Preamble: The preamble attached to Ch. 510, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that the consolidation statutes be clarified to eliminate any barriers to the voluntary consolidation of school districts; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 Legislative Session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

Effective Date — Applicability: Section 4, Ch. 215, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006."

Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, now repealed, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 252 in (8)(a)(iv) at end inserted "Each district shall retain a percentage of its basic entitlement for 3 additional years as follows"; and inserted (8)(a)(iv)(A) through (8)(a)(iv)(C) regarding basic entitlement percentages. Amendment effective July 1, 2001.

1999 Amendment: Chapter 343 in (1)(a) substituted "next school day" for "nearest school day"; deleted former (9) that read: "(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction"; in (9) substituted "semiannual reports" for "annual reports", after "attendance" inserted "absence, and enrollment", and after "students" deleted "and special education students"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendments: Chapter 212 inserted (8)(a)(iv) relating to consolidation or annexation of districts; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 430 in (3), after "days", substituted "under 20-9-806" for "under 20-9-804"; deleted introductory clause at beginning of second sentence of (5) that read: "If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Retroactive Applicability: Section 2, Ch. 212, L. 1997, provided: "[This act] is effective July 1, 1997, and applies retroactively, within the meaning of 1-2-109, to a district that is consolidated or annexed on or after January 1, 1997."

1993 Amendment: (Temporary version) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB", and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be" and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the count calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (9)(a)(i) through (9)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; in (9)(d), near end, substituted "BASE funding" for "foundation"; inserted (11) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 substituted (1)(a) and (1)(b) describing computation for former language providing that ANB is computed "by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180"; deleted former (2) that read: "(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes"; inserted (2) allowing up to 7 pupil-instruction-related days to be included in ANB calculation; in (3), after "total", inserted "ANB" and deleted second sentence that read: "For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days"; in two places in (4) and once in (5) substituted "enrollment" for "attendance"; in first sentence of (5), before "a regular", deleted "or absence from" and after "one-half" substituted "pupil for ANB purposes" for "day attended or absent as the case may be" and in last sentence, after "but", deleted "in no case may" and after "ANB" inserted "for a kindergarten student may not"; in (6), after "days", substituted "the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count" for "including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school"; inserted (7) prohibiting enrollment of prekindergarten pupils from being included in ANB calculations; substituted (8)(a)(i) through (8)(a)(iii) relating to school location for aggregation of enrollment for former language that read: "(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes"; inserted (10) requiring districts to provide Superintendent with annual attendance reports; and made minor changes in style. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

1991 Amendment: In (3)(a)(i), after "town", substituted "located in the district and 3 miles from any other" for "or from another" and near end substituted "separately" for "individually"; and inserted (3)(a)(ii) regarding calculation when a school is located more than 3 miles from any other school and no incorporated territory is involved in the district. Amendment effective March 29, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 250, L. 1991, provided: "A statement of intent is necessary for this bill to clarify that the superintendent of public instruction shall promulgate rules that prescribe procedures for the aggregation of the average number belonging of pupils in school districts for foundation program [renamed 1993] purposes. The authority for rulemaking to secure compliance with school budgeting laws is granted the superintendent of public instruction in 20-9-102 and 20-9-201. The rules must address the various circumstances concerning location of school districts and the schools within those districts."

Applicability: Section 3, Ch. 250, L. 1991, provided: "[This act] is applicable during school fiscal years 1992 through 1996 in the following manner:

(1) one-fifth of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1992;

(2) two-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1993;

(3) three-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1994;

(4) four-fifths of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1995;

(5) 100% of the reduction in the foundation program [renamed 1993] schedule amount resulting from the aggregation of ANB required by [this act] and as calculated under the provisions of 20-9-311(1), applies in budgeting for school fiscal year 1996."

1989 Special Session Amendment: Inserted third sentence of (1) limiting ANB calculation to 180 pupil-instruction days and 7 pupil-instruction-related days and in fifth sentence, after "under", deleted "20-7-117 prior to January 1, 1974, or pursuant to". Amendment effective August 11, 1989.

1989 Amendment: In two places in first sentence of (1) inserted "second semester of the preceding school fiscal year and the first semester of the"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1987 Amendment: Substituted introductory clause of (3), (3)(a), and (3)(b) relating to the aggregate average number belonging, except when a school is more than 3 miles beyond city or town limits and when junior high students are considered as high school students for former introductory clause of (3), (3)(a), and (3)(b) that read: "(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated individually for each school, except that when:

(a) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(b) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town".

Applicability: Section 3, Ch. 498, L. 1987, provided: "This act is applicable to the ANB calculated on the attendance during the school fiscal year 1988-89, and used for budgeting for the school fiscal year 1989-90, and thereafter."

Administrative Rules

Title 10, chapter 20, ARM Average number belonging (ANB).

Attorney General's Opinions

Aggregation of Number of All School District Pupils in Calculation of ANB — Exceptions: For purposes of calculating ANB, school districts shall aggregate the numbers of full-time pupils in all schools in the district except when a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or when a school of the district is located more than 3 miles from another school of the district. 43 A.G. Op. 66 (1990).

Pupil-Instruction-Related Days Counted in ANB: Pupil-instruction-related days may be counted in computing the ANB number pursuant to administrative regulation interpreting 20-1-304. 37 A.G. Op. 160 (1978).

20-9-313. Circumstances under which regular average number belonging may be increased.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 240, L. 2023. Amendment effective April 25, 2023.

Applicability: Section 10, Ch. 240, L. 2023, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2023."

2007 Special Session Amendment: Chapter 1 in (1)(e) in introductory clause inserted "kindergarten"; in (1)(e)(i) after "public instruction" inserted "for the purpose of implementing a half-time kindergarten program as provided in 20-1-301"; inserted (1)(e)(ii) concerning number of 5-year-old children residing in the district for implementing a full-time kindergarten program; inserted (2) making section inapplicable to expansion of half-time kindergarten; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

1999 Amendment: Chapter 343 in middle of (6) after "enrollment" deleted "or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1993 Amendment: Chapter 466 deleted former (6) that read: "(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year)." Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 466, L. 1993, provided: "A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

1989 Amendment: Near beginning, after "school", deleted "for a given school fiscal year"; in three places in (6) inserted "fiscal"; near end of (7) inserted "fiscal"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Applicability: Section 12, Ch. 337, L. 1989, provided: "[This act] is effective July 1, 1989, and applies to school budgets and foundation program [renamed 1993] support for school fiscal years beginning after June 30, 1990."

1981 Amendment: Inserted "or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the twelfth grade" at the end of the first sentence in (7).

Administrative Rules

ARM 10.20.102 Calculation of average number belonging (ANB).

20-9-321. Allowable cost payment for special education.

Compiler's Comments

2019 Amendment: Chapter 9 in (3) in introductory clause substituted "school district or special education cooperative" for "school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992"; in (3)(d), (4)(a)(iv), (4)(b)(ii) in three places, and (4)(b)(iv) following references to cooperatives deleted references to joint boards; and made minor changes in style. Amendment effective October 1, 2019.

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in (2) substituted "20-9-311" for "20-9-311(12)". Amendment effective July 1, 2006.

(Former July 1, 2007, version) Inserted (1) defining ANB as the current year ANB; inserted (2) providing that the 3-year average ANB does not apply to special education cost payment calculations; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2005 Amendment: Chapter 462 inserted (1) defining ANB as the current year ANB; inserted (2) providing that the 3-year average ANB does not apply to special education cost payment calculations; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Applicability: Section 24(1), Ch. 462, L. 2005, provided: "(1) [Sections 1 and 12 through 15] [20-5-323, 20-9-308, 20-9-311, 20-9-314, now repealed, and 20-9-321] are effective on passage and approval [approved April 28, 2005] and apply to school budgets for the school fiscal years beginning on or after July 1, 2005."

2001 Amendment: Chapter 145 in (1)(d) at beginning substituted "an amount for cooperatives" for "weighted cost factors for cooperatives"; deleted former (1)(e) that read: "(e) district and cooperative expenditure reports"; inserted (2)(a) providing formula for distribution of special education allocation; in (2)(b) after "allowable cost payments" inserted "outlined in subsection (2)(a)"; in (2)(b)(i) after "instructional block grant" inserted "limit prescribed in subsection (2)(a)(i)"; in (2)(b)(ii) in first sentence near beginning after "education-related services block grant" inserted "limit prescribed in subsection (2)(a)(ii)", at end of second sentence inserted "or to a cooperative or joint board that meets the requirements of 20-7-457", and deleted last sentence that read: "If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d)"; deleted former (3) that read: "(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services"; inserted (2)(b)(iii) regarding reimbursement for additional special education costs; inserted (2)(b)(iv) regarding distributions under subsection (2)(a)(iv); in (4) in second sentence at end deleted "but the district is not required to match the weighted funding factors"; deleted part of former (7) that read: "(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 145, L. 2001, provided: "WHEREAS, state funding for special education has not kept pace with school districts' required special education expenditures, which has caused a financial shift under the formula from providing districts with block grants to reimbursing districts for disproportionate special education costs; and

WHEREAS, this financial shift has made a school district's funding level less predictable, and those districts receiving reimbursements for disproportionate costs have not been adequately compensated for extraordinarily high special education costs; and

WHEREAS, a revision of the current special education funding formula is necessary to stabilize the proportion of the state appropriation for special education that is distributed through block grants and for special education cooperative administration and travel."

Effective Date — Applicability: Section 3, Ch. 145, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school budgets for fiscal school years beginning on or after July 1, 2001."

1993 Amendment: (Temporary version) Chapter 633 in (1) and (2) substituted "allowable cost payment" for "foundation program amount"; at end of (1)(c) substituted "this section" for "20-9-315 through 20-9-321"; in (2) deleted second sentence that read: "The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4)"; in (3), in first sentence after "district", substituted "general fund budget" for "foundation program" and deleted third and fourth sentences that read: "However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year"; in (4)(a) substituted "subsection (3)" for "subsection (4)"; and deleted (6) and (7) that read: "(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district." Amendment effective July 1, 1993.

(Version effective July 1, 1994) Chapter 633 in (1) substituted "allowable cost payment" for "foundation program amount" and after "total" substituted remainder of language in (1) relating to special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, for former language that read: "estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program"; in (1)(a) substituted "district ANB student count as established pursuant to 20-9-311 and 20-9-313" for "estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431"; in (1)(b) substituted "a per-ANB amount for the special education instructional block grant" for "the number of pupils expected to be enrolled in the program"; inserted (1)(c) relating to special education related services block grant; inserted (1)(d) relating to weighted cost factors; inserted (1)(e) relating to expenditure reports; in (1)(f), after "instruction", deleted "for budget justification purposes and" and at end substituted "this section" for "20-9-315 through 20-9-321"; substituted (2) relating to special education allowable cost payments for former (2) that read: "The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district"; deleted former (3) through (7) that read: "(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).

(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(5) (a) The special education contingency funds in subsection (4):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.

(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.

(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total

foundation program amount for the district"; inserted (3) requiring Superintendent to annually determine per-ANB special education instructional and special education related services block grant amounts; inserted (4) requiring rulemaking by Superintendent; inserted (5) requiring district to provide 25% local match for special education; inserted (6) requiring Superintendent to determine actual district match and providing unmatched portions to revert to state; and inserted (7) relating to district eligibility for special education reimbursement. Amendment effective July 1, 1994.

Effective Date — Retroactive Applicability: Section 59(3), Ch. 633, L. 1993, provided: "(3) [Sections 23 and 33] [20-9-321 and 20-9-311] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993."

1991 Amendments: Chapter 249 inserted (3) allowing deposit and management of certain allowable costs in a separate account; inserted (5) regarding special education contingency fund appropriation and use; in (6) inserted reference to subsection (4); and made minor change in style. Amendment effective July 1, 1991.

Chapter 767 in (4), in third sentence before "provisions", substituted reference to budget amendment for reference to emergency budget, changed subsection reference to 20-9-161, before "added" inserted "funded in the miscellaneous programs fund by other revenue sources and", and after "school year" inserted "under the provisions of 20-9-147". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: Throughout section substituted "foundation program amount" for "maximum-budget-without-a-vote amount"; in (3) substituted "foundation program" for "maximum-budget-without-a-vote"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1983 Amendment: In first sentence of (3), after "prescribed in this part" deleted ", then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5)"; at end of first sentence of (3) inserted "must be funded from any legislative appropriation for contingency financing for special education."; inserted second sentence of (3) relating to deposit of contingency funds; and at beginning of third sentence of (3) inserted "However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs for the given year".

Administrative Rules

ARM 10.10.310 Unobligated tuition money in the miscellaneous programs fund.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-9-324. Incentives for school districts meeting legislative goal for competitive base pay of teachers in public school districts — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 515, L. 2023. Amendment effective July 1, 2023.

Effective Date: Section 4, Ch. 60, L. 2021, provided: "[This act] is effective July 1, 2021."

Preamble: The preamble attached to Ch. 60, L. 2021, provided: "WHEREAS, Montana's public school districts have made significant progress in increasing the average pay of teachers over the last 15 years; and

WHEREAS, in spite of such progress in increasing the average pay of teachers, school districts have not made comparable progress in increasing the base pay of early career teachers; and

WHEREAS, the success of efforts to recruit the next generation of high quality educators in Montana's public school districts will be served by providing more competitive base pay for teachers in Montana's public school districts; and

WHEREAS, incentives for public school districts and collective bargaining units to collaborate in increasing base pay will help improve efforts to recruit and retain the next generation of high quality educators in Montana's public school districts."

20-9-325. Data-for-achievement payment.

Compiler's Comments

2015 Amendment: Chapter 60 in (1) in second sentence substituted "calculated as provided in 20-9-306" for "the district's ANB, calculated in accordance with 20-9-311, multiplied by:
(a) $10 for fiscal year 2014;
(b) $15 for fiscal year 2015; and
(c) $20 for fiscal year 2016 and subsequent fiscal years". Amendment effective July 1, 2015.

Applicability: Section 5, Ch. 60, L. 2015, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2015."

Effective Date — Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years. Approved May 6, 2013.

20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.

Compiler's Comments

2021 Amendment: Chapter 470 in (1) after "data-for-achievement payment" inserted "the per-ANB amount used to calculate the total special education allocation in 20-9-306". Amendment effective July 1, 2021.

Applicability: Section 4, Ch. 470, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2013 Amendment: Chapter 400 in (1) inserted "the data-for-achievement payment, and the general fund payments in 20-9-327 through 20-9-330"; and in (2) substituted "entitlements referenced in subsection (1)" for "basic and per-ANB entitlements". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

Effective Date — Applicability: Section 17(1), Ch. 550, L. 2003, provided: "[Section 1] [20-9-326] is effective July 1, 2004, and applies to school budgets for the fiscal years beginning on or after July 1, 2005."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

20-9-327. Quality educator payment.

Compiler's Comments

2023 Amendments — Composite Section: Section 9, Ch. 685, L. 2023, in (2)(c) near middle inserted "as defined in 1-1-201"; and made minor changes in style. Amendment effective October 1, 2023.

Section 16, Ch. 713, L. 2023, in (3)(b) in list of statutory references after "37-17-302" substituted "37-24-301, 37-25-302, 37-39-308, 37-39-309, or 37-39-310" for "37-22-301, 37-23-201, 37-24-301, or 37-25-302"; and made minor changes in style. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2021 Amendment: Chapter 339 in (1)(a)(iv) before "correctional facilities" deleted "state youth" and in (2)(c) before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

Termination Provision Repealed: Section 4, Ch. 562, L. 2021, repealed sec. 10, Ch. 442, L. 2015, and sec. 1, Ch. 171, L. 2019, which terminated this section June 30, 2023. Effective July 1, 2021.

2019 Amendments — Composite Section: Chapter 344 in (2)(c) substituted "Pine Hills youth correctional facility and the facility under contract with the department of corrections for female youth" for "Pine Hills and Riverside youth correctional facilities". Amendment effective July 1, 2019.

Extension of Termination Date: Section 1, Ch. 171, L. 2019, amended sec. 10, Ch. 442, L. 2015, by extending the termination date imposed by that section to June 30, 2023. Effective April 18, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

2015 Amendment: Chapter 442 inserted (3)(c) regarding American Indian language and culture specialist and Indian language immersion program; and made minor changes in style. Amendment effective May 6, 2015, and terminates June 30, 2019.

2007 Special Session Amendment: Chapter 1 in (3) substituted "calculated as provided in 20-9-306, using" for "$2,000 times"; in (3)(b)(i) inserted reference to 37-17-302 and 37-22-301; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2007 Amendments — Composite Section: Chapter 94 in (1)(b) near beginning after "requirements of" deleted "20-7-453 and"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 354 inserted (1)(a)(v) regarding youth challenge program; inserted (2)(d) regarding quality educator payments for the youth challenge program; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-328. At-risk student payment.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 54, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2013 Amendment: Chapter 118 in (3) substituted "September 15 of even-numbered years" for "September 15, 2010" and at end deleted "using fiscal year 2006 data as a baseline". Amendment effective October 1, 2013.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-329. Indian education for all payment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 718, L. 2023. Amendment effective July 1, 2023.

Applicability: Section 7, Ch. 718, L. 2023, provided: "The new reporting requirements under [section 4(4)] [20-9-329(4)] apply to Indian education for all funds distributed in fiscal years starting on or after July 1, 2023."

2007 Special Session Amendment: Chapter 1 in (2) substituted "is calculated as provided in 20-9-306 and is a component of the BASE budget of the district" for "is the greater of $100 for each district or $20.40 for each ANB, calculated as provided in 20-9-311, for each fiscal year"; and inserted (4) concerning nondiversion of Indian education for all funds. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-330. American Indian achievement gap payment.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 55, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2013 Amendment: Chapter 118 in (4) substituted "September 15 of even-numbered years" for "September 15, 2010" and at end deleted "using fiscal year 2006 data as a baseline". Amendment effective October 1, 2013.

2007 Special Session Amendment: Chapter 1 in (2)(a) substituted "calculated as provided in 20-9-306, using the number of American Indian students" for "$200 for each American Indian student". Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

Collateral References

American Indian Student Achievement in Montana Public Schools: Features of the Achievement Gap and Policy Prescriptions, Report to the Quality Schools Interim Committee, Lohse & Ockert (2005).

20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 772, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 542 in (1) near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521, 61-3-527" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2003 Amendment: Chapter 41 in (2)(a) after "funds" deleted "distributed to a county and". Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 191 in (2)(h) after "anticipated revenue from" deleted "property taxes and" and after "61-3-529" deleted "61-3-537, 61-3-570"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 257 in (1)(b) substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Chapter 574 deleted former (2)(h) that read: "(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and in (2)(h) deleted references to 61-3-504 and 61-3-527 and inserted reference to 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made in subsection (2)(i), which became subsection (2)(h) after the codification of Ch. 554, L. 1999.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 554 deleted former (2)(h) that read: "(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (1), near beginning of first sentence after "basic", inserted "county" and near end, after "purposes of", substituted "elementary equalization" for "local"; in (2)(a) substituted "elementary county equalization fund" for "common school fund"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence near middle, and in (2)(i), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(g) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (2)(h) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 509 in (1), in second sentence, and in (1)(b) substituted "state general fund" for "state special revenue fund" and after "fund" deleted "state equalization aid account". Amendment effective July 1, 1995.

Chapter 580 in (1) and (2)(i) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (2)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1), in second sentence, substituted "elementary foundation programs of the school districts" for "foundation programs of the elementary school districts"; in (1)(b), after "levy", inserted "and other revenue" and after "required to" substituted "repay a state advance for county equalization" for "finance the difference determined in subsection (1)(a)"; deleted (1)(c) concerning increased state equalization aid to offset a deficiency in foundation program funding; in (2) substituted "elementary foundation program" for "elementary district foundation programs" and substituted "20-9-335" for "20-9-334"; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (2)(g), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

1989 Special Session Amendments: Section 35, Ch. 11, in (1) increased levy from 28 mills to 33 mills and near middle substituted "property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicles subject to taxation under 61-3-504(2)"; in (1)(a), after "subtracted from the", deleted "sum of the county elementary transportation obligation and the"; inserted (1)(c) relating to county deficiency and increased state equalization aid; in (2)(e) substituted "including federal forest reserve funds allocated under the provisions of 17-3-213" for "established by the county levy required by this section"; in (2)(h) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; and made minor changes in phraseology. Amendment effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Section 84, Ch. 11, inserted (2)(f) relating to coal gross proceeds; at end of (2)(g) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 557 in middle of (2)(c), after "law", inserted "except money paid to a justice's court".

Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(e), after "money", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(g) concerning anticipated revenue from vehicle property taxes.

Chapter 655 in (2)(f), before "new production", inserted "interim production and".

1985 Amendments: Chapter 50 in (1)(b) changed "June 1" to "June 20".

Chapter 265 in (2)(e) after "anticipated", inserted "or reappropriated".

Chapter 552 in (1)(b) after "determined above", substituted language of remainder of subsection relating to immediate deposit of surplus funds to the state by the County Treasurer for "the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set".

Chapter 695 inserted (2)(f) relating to net proceeds taxes for new production.

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 413 deleted former (2)(a), which read: "the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of 17-3-213"; and made minor changes in style.

Chapter 418 substituted, in first sentence of (1), "28 mills" for "25 mills"; and in (1)(b) after "basic levy", changed "of 25 mills" to "prescribed by this section".

Chapter 699 inserted, in (2)(e), "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Interim Committee Bill: SB 94 (Ch. 418, L. 1983) was introduced by request of the Joint Subcommittee on Education, although it was substantially amended during the legislative process. See committee report, Montana Legislative Council, 1982.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

Attorney General's Opinions

Allocation of County Share of Taylor Grazing Act Funds: Pursuant to 17-3-222 and this section, a county must allocate its share of funds provided by the federal government to the state under the Taylor Grazing Act, 43 U.S.C. 315i, in the proportion of 50% to the county general fund and 50% to the equalization account of the elementary BASE funding program. 46 A.G. Op. 27 (1996).

Allocation of Justice's Court Fines and Costs: Section 46-18-235 provides a specific use for money collected as fines; therefore, fines and costs collected in Justice's Court and paid to the County Treasurer by the Justice of the Peace should be credited to the county general fund pursuant to 46-18-235 rather than to the equalization of the elementary district foundation programs (renamed 1993) of the county pursuant to the general use provision of 20-9-331. 41 A.G. Op. 39 (1985).

Forfeited Appearance Bonds — Credited to Elementary School District Foundation: Forfeited appearance bonds should be credited by the County Treasurer to the equalization of the county elementary school district foundation programs (renamed 1993) in the same manner as fines are credited under 20-9-331. This is the general method practiced as shown by audits of local government units. 38 A.G. Op. 96 (1980).

20-9-332. Fines and penalties proceeds for elementary county equalization.

Compiler's Comments

1997 Amendment: Chapter 22 in first sentence substituted "elementary county equalization fund" for "county elementary equalization fund"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Near beginning of first sentence, after "title", substituted "except those collected by a justice's court" for "shall be collected by the action of a court of competent jurisdiction and" and near middle of second sentence, after "superintendent of the county", deleted "in which each court or justice of the peace shall have jurisdiction"; deleted former (1) that read: "(1) during the month of September, each justice of the peace shall report all fines imposed and collected during the preceding year, indicating the type of violation and the date of collection"; and made minor changes in phraseology and punctuation.

1983 Amendment: At end of first sentence, changed "20-9-331(2)(d)" to "20-9-331(2)(c)" to reflect subsection renumbering incidental to deletion of 20-9-331(2)(a).

Section Not Codified: Section 75-8301, R.C.M. 1947, provided that "Whenever the masculine gender is used in this Title, it shall be understood also to mean the feminine gender." This section has not been codified in this code because it is redundant with the general provisions of 1-2-105. This section has not been repealed and is still valid law. Citation may be made to sec. 485, Ch. 5, L. 1971.

Attorney General's Opinions

Allocation of Justice's Court Fines and Costs: Money which has been collected as fines and costs in Justice's Court and paid to the County Treasurer by the Justice of the Peace and which remains after the specific allocations made in this section should be credited to the county general fund pursuant to 46-18-235. 41 A.G. Op. 39 (1985).

20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 772, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 542 in (1) near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521, 61-3-527" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 191 in (2)(e) after "anticipated revenue from" deleted "property taxes and" and after "61-3-529" deleted "61-3-537, 61-3-570"; and made minor changes in style. Amendment effective April 3, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 191 void.

Chapter 257 in (1)(b) substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Chapter 574 deleted former (2)(e) that read: "(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-529, 61-3-537, 61-3-570, and 67-3-204"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and in (2)(e) deleted references to 61-3-504 and 61-3-527 and inserted reference to 61-3-570. Amendment effective November 7, 2000. The amendment made by Ch. 515 was originally made in subsection (2)(f), which became subsection (2)(e) after the codification of Ch. 554, L. 1999.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 554 deleted former (2)(e) that read: "(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 22 in (1), near beginning of first sentence, substituted "basic county tax" for "basic special tax for high schools" and near end, after "purposes of", substituted "high school equalization" for "local"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence, and in (2)(f), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(d) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (2)(e) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 509 in (1), in second sentence, and in (1)(b) substituted "state general fund" for "state special revenue fund" and after "fund" deleted "state equalization aid account". Amendment effective July 1, 1995.

Chapter 580 in (1) and (2)(f) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (2)(d), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

Name Change — Short Form Amendment: Section 55(1), Ch. 633, L. 1993, directed the Code Commissioner to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program" in this section.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1)(b), after "levy", inserted "and other revenue" and after "required to" substituted "repay a state advance for county equalization" for "finance the difference determined in subsection (1)(a)"; deleted (1)(c) concerning increased state equalization aid to offset a deficiency in foundation program funding; in (2) substituted "high school foundation program" for "high school district foundation programs" and substituted "20-9-335" for "20-9-334"; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (2)(d), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

1989 Special Session Amendments: Section 36, Ch. 11, in (1) increased levy from 17 mills to 22 mills and near middle substituted "property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicles subject to taxation under 61-3-504(2)"; in (1)(a) substituted reference to subsection (2) for reference to subsections (2)(a) and (2)(b); inserted (1)(c) relating to county deficiency and increased state equalization aid; at end of (2)(b) substituted "including federal forest reserve funds allocated under the provisions of 17-3-213" for "established by the county levy required by this section"; in (2)(e) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; and made minor changes in phraseology. Amendment effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Section 85, Ch. 11, inserted (2)(c) relating to gross proceeds from coal; at end of (2)(d) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1987 Amendments: Chapter 611 in (1), near end of first sentence after "county", inserted exception clause; in (2)(b), after "moneys", deleted "including anticipated or reappropriated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536"; and inserted (2)(d) concerning anticipated revenue from vehicle property taxes.

Chapter 655 in (2)(c), before "new production", inserted "interim production and".

1985 Amendments: Chapter 50 in (1)(b) changed "June 1" to "June 20".

Chapter 265 in (2)(b) after "anticipated", inserted "or reappropriated".

Chapter 299 in (2)(a) after "county treasurer's", substituted "accounts for the various sources of revenue" for "account for deposit of the proceeds from the levy".

Chapter 552 in (1)(b) after "determined above", substituted language of remainder of subsection relating to immediate deposit of surplus revenue to the state by the County Treasurer for "the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set".

Chapter 695 inserted (2)(c) relating to net proceeds taxes for new production.

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 418 substituted, in first sentence of (1), "17 mills" for "15 mills"; in (1)(b) after "basic levy", changed "for 15 mills" to "prescribed by this section".

Chapter 699 inserted, in (2)(b), "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Interim Committee Bill: SB 94 (Ch. 418, L. 1983) was introduced by request of the Joint Subcommittee on Education, although it was substantially amended during the legislative process. See committee report, Montana Legislative Council, 1982.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

20-9-335. Formula for apportionment of county equalization money.

Compiler's Comments

2005 Amendment: Chapter 463 in (2) at end after "aid" deleted "after the deduction of the county's obligation for tuition paid under the provisions of 20-5-324(6) and (7)". Amendment effective July 1, 2005.

2001 Amendment: Chapter 464 in (2) after "county's obligation for" substituted "tuition paid under the provisions of 20-5-324(6) and (7)" for "high school out-of-county tuition". Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1997 Amendment: Chapter 22 in (1), after "available in the", substituted "elementary and high school county equalization funds" for "basic county tax account and in the basic special tax for high schools account". Amendment effective July 1, 1997.

1993 Amendment: Chapter 633 in (1) substituted "superintendent of public instruction" for "county superintendent"; in (1)(a), in two places, and in (1)(b), (2), and (4) substituted "direct state aid" for "foundation program"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, in (1), at beginning, deleted "After making such deductions prescribed in 20-9-334", after "shall" substituted "calculate the apportionment of revenue" for "apportion the remaining amount of moneys", after "tax account" deleted "to the several public elementary districts of the county", and after "schools account" deleted "to the several public secondary districts of the county in proportion to their needs under the foundation program"; in (1)(a) substituted "elementary foundation program" for "programs of the public elementary districts" and after "total" substituted "elementary foundation program of all districts in the county" for "amount of the foundation programs of all public elementary districts"; in (1)(b), near beginning, substituted "elementary foundation program amount of each district" for "foundation program amount of each public elementary district" and at end substituted "school district" for "public elementary district"; in (2) substituted "the high school foundation program after the deduction of the county's obligation for high school out-of-county tuition" for "public secondary districts"; in (3) substituted "calculations" for "apportionment"; in (4) substituted "reported" for "apportioned", after "source of revenue" substituted "for financing the elementary and high school foundation program payments" for "in calculating the financing of the public elementary and secondary district foundation program" and deleted last sentence concerning use of apportionment procedure in computing estimated revenue for budgeting; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1985 Amendment: Deleted former (4) that read: "When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of 20-9-331(2)(d) or 20-9-333(2)(a)."

1983 Amendment: Near end of (4) changed "20-9-331(2)(e)" to "20-9-331(2)(d)" to reflect subsection renumbering incidental to deletion of 20-9-331(2)(a).

Case Notes

Distribution Nondiscriminatory: Provisions of foundation program (renamed 1993) dealing with distribution of state education funds on a per-student basis, with smaller schools receiving somewhat more per student than larger schools, is rational and does not discriminate against taxpayers of any single county. State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974); certiorari denied, Straub v. Woodahl, 419 US 845, 42 L Ed 2d 73, 95 S Ct 79 (1974).

20-9-336. School equalization and property tax reduction account — uses.

Compiler's Comments

Effective Date: Section 9, Ch. 772, L. 2023, provided: "[This act] is effective July 1, 2023."

20-9-341. Definition of interest and income money.

Compiler's Comments

2009 Amendment: Chapter 465 in (1) inserted "Subject to deductions made under 77-1-109" and in (1)(c) after "school lands" deleted "after any deductions that may be made under the provisions of Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 122 in (2) at end inserted "after any deductions made under 77-1-108". Amendment effective July 1, 1999.

1997 Amendment: Chapter 42 in (1) substituted "interest and income money" for "interest and income moneys"; and made minor changes in style. Amendment effective March 12, 1997.

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1992 Special Session Amendment: Chapter 14 in (1)(c), after "leasing of", inserted "or sale of timber from". Amendment effective February 4, 1992.

Termination: Section 6, Ch. 14, Sp. L. January 1992, provided that this section terminates June 30, 1993.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

Law Review Articles

Montana's State School Trust Lands, Wiles, 38 Pub. Land & Resources L. Rev. 149 (2017).

20-9-342. Deposit of interest and income money by state board of land commissioners.

Compiler's Comments

2017 Amendment: Chapter 336 in (2) at beginning deleted "Subject to subsection (3)"; deleted former (3) that read: "(3) The excess interest and income revenue must equal at least $1 million in order to be distributed pursuant to subsection (2). Excess interest and income revenue of $1 million or less must be carried forward and added to the excess interest and income revenue in the next ensuing school fiscal year and distributed in accordance with 20-9-622(2)"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2013 Amendment: Chapter 400 in (1) after "20-9-622" deleted "for state equalization aid" and inserted last sentence concerning use of money for state equalization aid; inserted (2) through (4) regarding deposit of excess interest and income revenue; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 93 after "land commissioners shall" deleted "annually", near middle substituted "fiscal year" for "calendar year", inserted "and June", and near end substituted "before the close of the fiscal year" for "following the calendar year". Amendment effective July 1, 2011.

Saving Clause: Section 3, Ch. 93, L. 2011, was a saving clause.

2009 Amendment: Chapter 377 at beginning inserted exception clause; and made minor changes in style. Amendment effective April 28, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

2002 Amendment: Chapter 10 in middle substituted "into the guarantee account, provided for in 20-9-622" for "into a subfund of the state general fund"; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendment: Chapter 554 near middle after "year into" inserted "a subfund of". Amendment effective July 1, 2001.

1995 Amendment: Chapter 509 substituted "state general fund" for "state special revenue fund" and after "aid" deleted "provided for by 20-9-343"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-343. Definition of and revenue for state equalization aid.

Compiler's Comments

2021 Amendment: Chapter 371 deleted former (1)(b) that read: "(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium"; in (2) at end deleted "and negotiated payments authorized under 20-7-420(3)"; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 8, Ch. 371, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2017 Amendment: Chapter 404 in (1)(a) and in (2) substituted "state debt service assistance" for "state reimbursement for school facilities". Amendment effective May 19, 2017.

Applicability: Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

2013 Purported Amendment — Line-Item Veto: Chapter 325, L. 2013, purported to amend this section as follows: in (3)(a) substituted "20-9-516(3)(a)" for "20-9-516(2)(a)". The governor removed this section from the bill in a line-item veto issued April 26, 2013.

2009 Amendment: Chapter 377 at end of (1)(a) deleted "and grants for school technology purchases"; at end of (2) deleted "and school technology purchases"; deleted former (3) that read: "From July 1, 2001, through June 30, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:
(a) interest and income money described in 20-9-341 and 20-9-342; and
(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342"; in (3) at beginning deleted "Beginning July 1, 2003"; in (3)(a) substituted "20-9-516(2)(a)" for "subsection (4)(a)(ii)"; deleted former (4)(a)(ii) that read: "an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533"; and made minor changes in style. Amendment effective April 28, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

2002 Amendment — Coordination: Section 5(1), Ch. 10, Sp. L. August 2002, a coordination section, provided that if [this act] (House Bill No. 7) and House Bill No. 4 are both passed and approved and both bills contain a section amending 20-9-343, then the coordination instruction in House Bill No. 4 is void and the amendments to this section are those contained in sec. 5, House Bill No. 7. House Bill No. 4 was passed and approved as Ch. 3, Sp. L. August 2002. Section 5, Ch. 10, at beginning of (3) inserted "From July 1, 2001, through June 30, 2003" and after "paid" substituted "into the guarantee account provided for in 20-9-622" for "into a subfund of the state general fund"; at beginning of (3)(a) deleted "(i) subject to subsection (3)(a)(ii)"; deleted former (3)(a)(ii) that read: "(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533"; inserted (4) requiring certain money to be paid into the guarantee account for public schools beginning July 1, 2003; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

2001 Amendments — Composite Section: Chapter 237 in (1)(a) near beginning after "schools for" deleted "the purposes of payment of systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program" and near end after "facilities" deleted "matching funds for the systemic initiative for Montana mathematics and science grant"; deleted former (1)(c) that read: "(c) the Montana educational telecommunications network as provided in 20-32-101"; in (2) near beginning after "purposes of" deleted "systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program" and near end after "20-7-420(3)" deleted "the Montana educational telecommunications network"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 554 in (3) in introductory clause substituted "money must be paid into a subfund of the state general fund" for "must be paid into the state general fund" and at end inserted "as indicated"; in (3)(a)(ii) near end substituted "to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes" for "to be appropriated for purposes"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendments: Chapter 509 in (1), after "means", deleted "the account in the state special revenue fund that receives" and after "section" deleted "plus any legislative appropriation of money from other sources"; in (2), near beginning after "spend", inserted "throughout the biennium", after "appropriated" deleted "from the state equalization aid account as required", and at end, after "network", deleted "throughout the biennium, and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant"; in (3), near beginning, substituted "state general fund" for "state equalization aid account"; deleted former (3)(a) that read: "(a) money allocated to state equalization from the collection of the severance tax on coal"; deleted former (3)(b) that read: "(b) money received from the treasurer of the United States as the state's share of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended"; deleted (3)(d) that read: "(d) money received from the state equalization aid levy under 20-9-360"; deleted (3)(e) that read: "(e) income from the lottery, as provided in 23-7-402"; deleted (3)(f) that read: "(f) the surplus revenues collected by the counties for BASE funding program support according to 20-9-331 and 20-9-333"; in (3)(b) substituted "interest and income money described in 20-9-341 and 20-9-342" for "money in the state equalization aid account in the state special revenue fund"; deleted (4) that read: "(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account"; deleted (5) that read: "(5) Any surplus revenue in the state equalization aid account at the end of a fiscal year must be transferred to the general fund"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 517 at end of (1)(a) inserted "and grants for school technology purchases"; in (2), after "network", deleted "throughout the biennium, and for the biennium beginning July 1, 1993" and at end inserted "and school technology purchases"; at beginning of (3)(a)(i) inserted "subject to subsection (3)(a)(ii)"; inserted (3)(a)(ii) relating to money from timber harvests on common school trust lands appropriated for purposes of 20-9-533; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments — Composite Section: Chapter 375 inserted (1)(b) including negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; in (2) inserted "negotiated payments authorized under 20-7-420(3)"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 593 deleted former (3)(a) that read: "money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501"; deleted former (3)(b) that read: "(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501"; deleted (3)(j) that read: "(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704"; and made minor changes in style. Amendment effective July 1, 1994.

Chapter 633 in (1), in first sentence, substituted "account" for "money deposited" and after "fund" inserted "that receives revenue"; in (1)(a) after "payment of", substituted language dealing with systems development and related costs resulting from enacted legislation to administer enumerated functions for "guaranteed tax base aid and equalization of the foundation program"; in (2), after "appropriated", substituted "from the" for "for", after "aid" inserted "account", after "purposes of" substituted language dealing with systems development and related costs resulting from enacted legislation for changes in certain functions for "guaranteed tax base aid, the foundation", and after "biennium" inserted remainder of subsection relating to equipment purchases for state match for science grant; in (3), before "state", deleted "state special revenue fund for" and before "public" substituted "account for the" for "to"; and in (5), after "account", substituted "at the end of a fiscal year must be transferred to the general fund" for "in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium". Amendment effective July 1, 1993.

Style changes in (1) and (2) were slightly different. In each case, the codifier chose the most appropriate.

1991 Amendments: Chapter 622 near end of (1) (inserted as (1)(b) in temporary version) and (2) inserted reference to Montana educational telecommunications network; and made minor changes in style. Amendment effective April 24, 1991.

Chapter 729 inserted (1)(b) concerning filing fees for school district audits; in (2), after "required", substituted "by subsection (1)(a)" for "for guaranteed tax base aid and foundation program purposes"; and made minor changes in style. Amendment effective July 1, 1991, and terminates June 30, 1993.

Chapter 787 at end of (3)(j) deleted reference to subsection (2) of 17-5-704. Amendment effective July 1, 1991.

Code Commissioner Explanation: The amendments enacted by sec. 5, Ch. 622, L. 1991, and the temporary amendment of the section by secs. 1 and 3, Ch. 729, L. 1991, were composited. In (2), instead of repeating language on the Montana telecommunications network, reference was made to subsection (1)(b) to maintain the consistency of the subsection.

Coordination Instruction: Section 3, Ch. 729, L. 1991, was a coordination instruction that voided the substantive amendments to this section contained in sec. 1, Ch. 729, L. 1991, and replaced them as reflected in the 1991 amendment note.

Termination: Section 5, Ch. 729, L. 1991, provided: "[This act] terminates June 30, 1993."

1989 Special Session Amendment: Near end of (1) inserted "payment of guaranteed tax base aid and"; deleted former first sentence of (2) requiring appropriation of equalization aid in a single sum for the biennium; substituted (2) relating to expenditure of guaranteed tax base aid and equalization aid for former language that read: "The superintendent of public instruction has authority to spend such appropriation, together with the earmarked revenues provided in subsection (3), as required for foundation program purposes throughout the biennium"; at beginning of (3)(a) deleted "31.8% of all" and at end inserted "as provided by 15-1-501"; at beginning of (3)(b) deleted "25% of all money"; at beginning of (3)(c) and (3)(d) deleted "100% of the"; deleted former (3)(f) that read: "(f) income from the education trust fund account"; inserted (3)(f) relating to the state equalization aid levy; inserted (3)(g) relating to income from the lottery; inserted (3)(i) relating to investment income; inserted (3)(j) relating to income and earnings from the coal severance tax funds; inserted (4) relating to investment by the Board of Investments; and made minor changes in phraseology. Amendments to subsections (1) and (3) through (5) effective July 1, 1990. Amendments to subsection (2), relating to guaranteed tax base aid and state equalization aid, effective August 11, 1989.

1987 Amendments: Chapter 370 at beginning of (3)(c) substituted "the amount provided in 15-35-108" for "10%" (not codified, redundant with Ch. 662 amendment); at end of (3)(g) deleted "shall be paid into the same state special revenue fund"; and at end of (4) deleted "[or may be transferred to the state permissive account if revenues in that fund are insufficient to meet the state's permissive amount obligation]".

Chapter 662 in (1), (3)(a), (3)(b), (3)(d), and (3)(e) changed "moneys" to "money"; in (3)(c) changed "10%" to "100%", after "of the" substituted "money allocated to state equalization" for "moneys received", and after "coal" deleted "under chapter 35 of Title 15"; and in (3)(f) substituted "education trust" for "local impact and education trust".

Chapter 666 in (3)(a) changed "25%" to "31.8%"; and near end of (3)(b), after "corporation license", inserted "and income".

Effective Date — Applicability: Section 11, Ch. 666, L. 1987, provided: "(1) This act, except section 8, is effective on passage and approval [approved May 22, 1987].

(2) Section 8 is effective July 1, 1987.

(3) Unless otherwise specified or required by a particular section of this act, sections 1 through 7 apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986."

Severability: Section 13, Ch. 662, L. 1987, was a severability section.

Void Amendment: The amendment in sec. 1, Ch. 2, L. 1987, was voided by sec. 12, Ch. 662, L. 1987.

1986 Amendment: In (3)(d) increased from 62½% to 100% the portion of oil and gas royalties allocated to state equalization aid.

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

1981 Amendment: Chapter 317 inserted (2) relating to a single biennial appropriation; and inserted (4) relating to use of surplus revenue in the equalization aid account.

Inconsistent Language: Chapter 540, L. 1981, entitled "An Act to simplify utilization of funds available for financing the foundation program and permissive portions of public school budgets; amending sections 20-9-345, 20-9-351, and 20-9-352 [20-9-352 repealed effective July 1, 1990 — sec. 94, Ch. 11, Sp. L. June 1989], MCA" purported to abolish the permissive levy account by deleting all references to that account in the three sections amended. For this reason and because sec. 1 of Ch. 540 deleted from 20-9-345 language requiring that unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the year be transferred to the state permissive school levies earmarked revenue account, the Code Commissioner has placed brackets around similar language in subsection (4), which was added by Ch. 317, L. 1981, to indicate that this language is apparently inconsistent with the elimination of the state permissive account.

Federal Statute: The Mineral Lands Leasing Act, referred to in this section, is compiled in the U.S.C. as Title 30, § 181, et seq.

20-9-344. Duties of board of public education for distribution of BASE aid.

Compiler's Comments

2019 Amendment: Chapter 66 in (5)(a) substituted "November" for "October"; in (5)(b) substituted "January" for "December"; and in (5)(c) near beginning substituted "December" for "November". Amendment effective July 1, 2019.

2017 Amendment: Chapter 336 in (5)(a), (5)(b), and (5)(e) deleted "the total natural resource development K-12 funding payment"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2013 Amendment: Chapter 400 in (2)(b) inserted "because of failure to meet the board of public education's assurance and performance standards"; in (5)(a) and (5)(b) inserted "(vi) the total data-for-achievement payment; and

(vii) the total natural resource development K-12 funding payment"; in (5)(e) at end inserted "the total data-for-achievement payment, and the total natural resource development K-12 funding payment"; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

Allocation and Distribution of Increased State Support for Schools: Section 63, Ch. 489, L. 2009, provided: "The superintendent of public instruction shall allocate and distribute the funds appropriated in [section 85] for Increase State Support for Schools With Education Stabilization Funds as follows:

(1) for fiscal year 2010:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2010 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act]; and

(2) for fiscal year 2011:

(a) recalculate the basic entitlement and per-ANB entitlement by multiplying the basic entitlement and per-ANB entitlement for fiscal year 2011 in 20-9-306 by 1.02;

(b) calculate the BASE budget, maximum general fund budget, direct state aid, and guaranteed tax base aid for each school district using the recalculated basic and per-ANB entitlements; and

(c) distribute K-12 BASE aid to school districts in accordance with the payment schedule in 20-9-344 from the appropriations in House Bill No. 2 and [this act]."

2005 Special Session Amendment: Chapter 4 in (5)(a), (5)(b), and (5)(e) inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; and made minor changes in style. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2003 Amendment: Chapter 114 in (1)(b) after "superintendents" deleted "budget boards"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 308 in (5)(e) after "year" deleted "one-half of" and after "aid" deleted "and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30". Amendment effective July 1, 1999.

Applicability: Section 3, Ch. 308, L. 1999, provided: "[This act] applies to school fiscal years beginning after June 30, 1999."

1993 Amendment: Chapter 633 throughout section substituted "BASE" for "state equalization"; deleted former (1) that read: "The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101"; in (2), after "aid", deleted "or order the county superintendent of schools to withhold county equalization money"; in (5), before "aid", substituted "BASE" for "foundation program payment and guaranteed tax base"; in (5)(a) substituted "October" for "May", increased amount from "8%" to "10%", and substituted "direct state aid" for "foundation program payment"; inserted (5)(b) requiring 10% of BASE aid to be distributed from December to April; in (5)(c), after "county", inserted "that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134"; deleted former (6)(d)(i) that read: "(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district"; in (5)(e), after "year", inserted "one-half of", after "remaining" deleted "foundation program", and after "district" inserted "of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30"; in (6), after "distribution", deleted "of foundation program payments and guaranteed tax base aid" and substituted "subsection (5)" for "subsection (6)"; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendments — Composite Section: Chapter 1, Sp. L. July 1992, in (6)(a) substituted "July 31" for "July 15". Amendment effective July 13, 1992, and terminates June 30, 1993.

Chapter 6, Sp. L. July 1992, in (2) and (2)(a), after "aid", inserted "and state advances for county equalization"; in (2)(a), after "law", deleted "and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid"; at beginning of (6) inserted exception clause and substituted schedule of guaranteed tax base aid payments for former distribution of 20% by July 15 and subsequent monthly payments of at least 7% of the entitlement; and inserted (7) concerning timing of payments. Amendment effective July 24, 1992.

The amendment made by Ch. 6, Sp. L. July 1992, provides for a schedule of foundation program and guaranteed tax base aid payments. The Code Commissioner has not codified the amendment made by Ch. 1, Sp. L. July 1992, because it became ineffective on July 24, 1992, the effective date of the amendment made by Ch. 6, Sp. L. July 1992.

Coordination Instruction: Section 14(2), Ch. 6, Sp. L. July 1992, provided that if Ch. 6, Sp. L. July 1992, was passed and approved, then Senate Bill No. 1 [this section] was void August 1, 1993. Because the amendment made by Senate Bill No. 1 terminates June 30, 1993, the provision in sec. 14(2), Ch. 6, Sp. L. July 1992, is ineffective.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendments: Chapter 622 inserted (1)(b) relating to Montana educational telecommunications network. Amendment effective April 24, 1991.

Chapter 767 at end of (5) substituted "superintendent of public instruction" for "department of commerce". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Chapters 1 and 11 inserted (3) relating to withholding of state equalization aid; inserted (4) relating to a district's right to contested case hearing before aid is withheld; and made minor changes in phraseology. Amendment effective July 1, 1990.

Chapter 11 at end of (2)(a) substituted "provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid" for "would most effectively meet the financial needs of districts"; in (5) inserted reference to county; in (6)(a) substituted "foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of the entitlement of each district or county" for "payment of state equalization aid must be based on an estimate of 20% of each district's entitlement"; inserted (6)(b) relating to subsequent monthly payments; and made minor changes in phraseology. Amendment effective July 1, 1990.

1986 Amendment: In (2)(a) at end inserted "and in a manner that would most effectively meet the financial needs of districts"; and inserted (4) relating to first state equalization aid payment.

Contingent Effective Date: Section 2, Ch. 18, Sp. L. June 1986, provided that the act was effective on passage and approval if the maximum budget schedules for school fiscal year 1987 in 20-9-318 and 20-9-319 were reduced or repealed by the June 1986 Special Session of the Legislature. Chapter 7, Sp. L. June 1986, effective June 30, 1986, reduced such budget schedules. Chapter 18, Sp. L. June 1986, was effective July 10, 1986.

1983 Amendments: Chapter 236 inserted (4) relating to erroneous claims or reimbursement of school equalization funds and adjustment of such errors. Subsection (4) terminated January 1, 1985, under sec. 3, Ch. 236, L. 1983.

Chapter 287 substituted reference to Department of Commerce for reference to Department of Administration.

1981 Amendments: Chapter 274 substituted "department of administration" for "municipal division of the department of community affairs" in (3).

Chapter 317 deleted "Except as provided in 20-9-345" at the beginning of (1).

Administrative Rules

ARM 10.67.101 State aid distribution schedule.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.

Compiler's Comments

2001 Amendment: Chapter 205 near end of (3) after "located" inserted "or to the investment account identified by the applicable district". Amendment effective April 5, 2001.

Effective Date — Applicability: Section 5, Ch. 205, L. 2001, provided: "[This act] is effective on passage and approval [approved April 5, 2001] and applies to the transfer of funds on or after [the effective date of this act]."

1995 Amendments: Chapter 509 in (2), after "distribution", deleted "from the state equalization aid account to no more than $1 million for the school fiscal year ending June 30, 1994, and"; and in (3), after "respective county", inserted "for county equalization", after "or" inserted "to the county treasurer of the", and inserted "for BASE aid". Amendment effective July 1, 1995.

Chapter 586 in (1), near middle after "general fund", inserted "and debt service fund"; in (2), near beginning after "state", inserted "advances and" and after "no more than" substituted "the amount appropriated for the school fiscal year" for "$1 million for the school fiscal year ending June 30, 1994, and to no more than $2 million for the biennium ending June 30, 1995"; in (2)(a), near beginning, substituted "the debt service payment obligation" for "by May 1 of each school fiscal year the number of mills levied", after "were" substituted "sold" for "issued", substituted "20-9-370(3)" for "20-9-370(2)(b)(i) or (2)(b)(ii)", and after "qualify for" substituted "a state advance or reimbursement for school facilities" for "guaranteed tax base aid"; in (2)(b), after "aid", substituted "appropriated" for "available" and after "purposes" substituted "state advance for school facilities and the proportionate share of state reimbursement for school facilities" for "in this subsection (2), determining the percentage of state equalization aid"; in (2)(c), after "amount", inserted "by May 31 of each school fiscal year"; deleted (2)(d) that read: "(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the next school fiscal year for the purposes of this subsection (2)"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 349 in (6) substituted "office of budget and program planning as provided in 17-7-111" for "legislature as provided in 5-11-210".

Chapter 633 throughout section, after "state", inserted "and county"; in (1), at end after "instruction", deleted "and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347"; inserted (2) relating to distribution of $2 million in state and county equalization aid for state reimbursement for school facilities for biennium; in (3), before "electronic", deleted "state warrant or"; and in (3) and (4), before "aid", substituted "BASE" for "state equalization". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, deleted (2) providing for recommending to Board of Public Education the entitlement of districts and counties to state equalization aid; in (2) and (3), after "aid", inserted "state advances for county equalization"; inserted (5)(e) concerning state advances and repayment for county equalization; and made minor changes in style. Amendment effective July 24, 1992.

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1991 Amendment: In (6) substituted introductory language regarding reports required under 5-11-210 for former language that read: "reporting to both houses of the state legislature in any year when a session is convened". Amendment effective March 20, 1991.

1989 Special Session Amendment: Throughout section inserted references to county; near middle of (1) substituted "retirement and general fund budgets" for "budget"; in (3) inserted "or electronic transfer" and "respective county"; in (6) substituted "houses" for "branches"; and made minor changes in phraseology. Amendment effective July 1, 1990.

20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.

Compiler's Comments

1997 Amendments: Chapter 22 in (1)(b), after "raised for the", substituted "elementary and high school county equalization funds" for "basic county tax fund" and after "20-9-331 and" deleted "for the basic special tax fund as provided in"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 42 in (3)(b) substituted "county superintendent of schools" for "county superintendent of public instruction". Amendment effective March 12, 1997.

1993 Amendment: Chapter 633 deleted former (1) that read: "(1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district"; in (1) (a) substituted "monthly report of the payment of BASE aid" for "report of the apportionments of state equalization aid", before "program" substituted "BASE funding" for "foundation", and after "county" deleted "and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report"; in (1)(c) substituted "subsection (1)(b)" for "subsection (2)(b)"; in (2)(a), before "aid", substituted "BASE" for "foundation program and guaranteed tax base" and substituted "20-9-212(8)" for "20-9-212(9)"; in (2)(b), at end, substituted "BASE aid" for "state and county equalization aid"; inserted (3) requiring Superintendent to distribute special education allowable cost payments and payment reports; and made minor changes in style. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 6, Sp. L. July 1992, inserted (2)(b) concerning state advance of basic county tax and basic special tax; inserted (2)(c) concerning adoption of rules; and inserted (3) concerning adjustment to schedule prescribed in 20-9-344. Amendment effective July 24, 1992.

1992 Statement of Intent: The statement of intent attached to Ch. 6, Sp. L. July 1992, provided: "A statement of intent is required for this bill because the superintendent of public instruction is granted rulemaking authority in 20-9-347(2) to adopt rules with regard to state advances to support the county equalization collections for foundation program [renamed 1993] funding under 20-9-331 and 20-9-333. The procedure is intended to ensure that the county equalization revenue is fully realized by school districts in a timely manner, regardless of delinquent or protested taxes. It is anticipated that the county superintendent of schools will continue to calculate and report to the school districts the revenue generated in support of elementary and high school county equalization for foundation program [renamed 1993] funding."

Retroactive Applicability: Section 15(2), Ch. 6, Sp. L. July 1992, provided that the amendments to this section apply retroactively to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

1989 Special Session Amendment: Throughout section, after "state equalization aid", inserted "in support of the foundation program"; near middle of (1), after "aid", inserted "available for support of the foundation program"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Attorney General's Opinions

Obligation to Provide Special Education: School districts are not entitled to deny special education services to children in need thereof who live within the district on the basis of the fact that the legal residence of child's parent or guardian is elsewhere. 37 A.G. Op. 148 (1978), clarifying 37 A.G. Op. 98 (1977).

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

20-9-348. Estimation of state equalization aid for budget purposes.

Compiler's Comments

1985 Amendment: Near beginning of first sentence substituted "second source of revenue" for "third source of revenue", near end of first sentence, before "the high school district foundation program (renamed 1993)", deleted "it shall be the second source of revenue in calculating the financing of", near middle of second sentence, after "general fund budget revenues", substituted "the county superintendent shall consider that the" for "the superintendent of public instruction shall annually estimate a uniform percentage of each district's foundation program which", and at end of section inserted "100% of the foundation program (renamed 1993)" and deleted last sentence of former (1) and all of former (2) that read: "Such estimate shall be called the "state equalization level" and shall be based on the best available data and calculated according to the allocation procedure provided in 20-9-347.

(2) The superintendent of public instruction shall notify each county superintendent of the state equalization level estimate by July 1. The county superintendent shall use such estimated state equalization level in establishing the budget estimate of the financing available for each district's foundation program for the ensuing school fiscal year."

20-9-351. Funding of deficiency in BASE aid.

Compiler's Comments

1993 Amendment: Chapter 633 near beginning, before "aid", substituted "BASE" for "state equalization", before "guaranteed" deleted "foundation program schedule support determined in 20-9-348 and the", near middle, after "20-9-369", inserted "and BASE aid support determined under 20-9-347", and near end, after "funding of", substituted "BASE aid for the elementary and high school districts" for "guaranteed tax base aid and the foundation programs of the elementary or secondary schools, or both". Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 5, Sp. L. July 1992, near beginning, after "aid", inserted "is not the result of a reduction in spending under 17-7-140 and". Amendment effective July 24, 1992.

1989 Special Session Amendment: At beginning substituted "If the money available for state equalization aid is not sufficient to provide the foundation program schedule support determined in 20-9-348 and the guaranteed tax base aid required under 20-9-366 through 20-9-369" for "If the foundation program level made under the provisions of 20-9-348 is less than 100%, it shall be the duty of"; near end, after "funding of", inserted "guaranteed tax base aid and"; and made minor changes in phraseology. Amendment effective July 1, 1990.

1985 Amendments: Chapter 15 after "under the provisions of 20-9-348 is less than 100%" deleted "or if the permissive funding level made under the provisions of 20-9-352 [repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989] is less than 100%"; and after "funding of the foundation programs" deleted "prescribed under 20-9-348 and of the permissive programs prescribed under 20-9-352 [20-9-352 repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989]".

Chapter 299 at beginning of section substituted "foundation program" for "estimated state equalization".

1981 Amendments: Chapter 317 substituted the duty of the Superintendent of Public Instruction to seek a supplemental appropriation for the former duty of the Director of the Department of Revenue to levy additional taxes separately for elementary and high school districts; deleted former (2) through (5) relating to apportionment of proceeds of mill levies. For former text see sec. 4, Ch. 355, L. 1973.

Chapter 540 inserted "or if the permissive level made under the provisions of 20-9-352 [repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989] is less than 100%"; deleted provision that required the Department of Revenue to levy additional taxes "separately for the elementary districts and the high school districts" in the middle of the section; and inserted "prescribed under 20-9-348 and of permissive programs as prescribed under 20-9-352 [20-9-352 repealed effective July 1, 1990—sec. 94, Ch. 11, Sp. L. June 1989]" after "foundation programs" near the end of the section.

Composite Section — 1981 Amendment Not Codified: Chapter 540 added "and shall deposit such proceeds in the earmarked revenue account established under 20-9-343" at the end of the first sentence of (2); substituted "the excess may be retained in the state equalization aid account" for "the excess may be transferred to the state equalization aid account" at the end of (3); substituted "in calculating the financing of the foundation and permissive programs for elementary and high school districts" for "in calculating the financing of the elementary district foundation program and the high school district foundation program" at the end of (4); and substituted "the elementary district and the high school district programs" for "the elementary district foundation programs and the high school district foundation programs" near the end of (5). These amendments to those former subsections deleted by Ch. 317, L. 1981, have not been codified by the Code Commissioner as the deletion of subsections (2) through (5) is in the nature of a repeal and cannot be amended. See 1-2-204.

20-9-353. Over-BASE budget levy — election for authorization to impose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 640, L. 2023. Amendment effective July 1, 2023.

2011 Amendment: Chapter 418 in (2) inserted "over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years". Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

Over-BASE Budget Levy: Section 25, Ch. 489, L. 2009, provided: "If an appropriation for a 3% increase in the basic entitlement and per-ANB entitlement in each fiscal year is contained in [section 85] [not codified], then a district may impose an over-BASE budget levy, calculated in accordance with 20-9-141, to fund the over-BASE budget. Districts shall comply with voting requirements as provided in 20-9-353." Effective May 14, 2009.

2007 Amendment: Chapter 173 in (1) near middle after "exceed the" deleted "maximum" and after "budget" deleted "for the district or other"; deleted former (1)(b) that read: "(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3)"; in (2) in first sentence near middle substituted "20-9-308(4)" for "20-9-308(5)" and in second sentence near middle after "entitlements" inserted "or of the general fund payments established in 20-9-327 through 20-9-330"; deleted former (3) that read: "(3) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy"; in (3) in first sentence near beginning substituted "proposition" for "election" and after "financing" deleted "or budget authority"; deleted former (5) that read: "(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year"; in (5) near middle after "amount" deleted "or an amount in excess of the maximum general fund budget amount for the district" and after "20-9-308" deleted "(3)"; and made minor changes in style. Amendment effective April 10, 2007.

2005 Amendment: Chapter 462 in (3) in first sentence at beginning inserted exception clause; inserted (8) authorizing district trustees to permissively levy the same over-BASE property tax revenue as levied in the previous year; and made minor changes in style. Amendment effective April 28, 2005, and terminates June 30, 2007.

Effective Date — Retroactive Applicability: Section 24(6), Ch. 462, L. 2005, provided: "(6) [Section 16] [20-9-353] is effective on passage and approval [approved April 28, 2005] and applies retroactively, within the meaning of 1-2-109, to the preparation of school budgets for the 2006 school fiscal year."

2001 Amendment: Chapter 495 in (2) in first sentence at end inserted "as provided in 15-10-425", in fourth sentence at end inserted "and must conform to the requirements of 15-10-425", and in fifth sentence substituted "conform to the requirements of 15-10-425" for "state the amount of the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget" and at end deleted "The ballot must be in the following format:

PROPOSITION

The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by (insert the number of mills) mills.

Shall the district be authorized to increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by approximately (insert the number of mills) mills?

☐ FOR the additional levy.

☐ AGAINST the additional levy." Amendment effective October 1, 2001.

1999 Amendment — Coordination Instruction: Section 10(2), Ch. 514, L. 1999, a coordination instruction, deleted former (1)(a) that read: "(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2)"; in (1)(a) substituted "20-9-308(2)" for "20-9-308(3)"; in (1)(b) substituted "20-9-308(3)" for "20-9-308(4)"; inserted first two sentences in (2) requiring that except for increase in state funding of basic or per-ANB entitlements by legislature, any increase in local property taxes for district proposing adoption of over-BASE budget is to be submitted to electors, in third sentence substituted "voted amount" for "the additional amount of general fund financing", at beginning of fourth sentence after "The" deleted "special", in fifth sentence after "of" substituted "the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget" for "money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended", in first paragraph after "PROPOSITION" inserted two sentences requiring ballot language to state local property tax amount and number of mills to support budget and requiring statement concerning local property tax dollar increase and increase or decrease in number of mills if approved, in second paragraph after "PROPOSITION" after "authorized to" substituted language regarding local property tax increase and increase or decrease in number of mills for "expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)", and after "FOR" and "AGAINST" substituted "the additional levy" for "budget authority and any levy"; inserted (3) requiring trustees proposing adoption of general fund budget amount exceeding maximum general fund budget to submit proposition to finance to electors and providing requirements for election and ballot language; in first sentence in (4) after "financing" inserted "or budget authority" and in second sentence before "election" deleted "special" and after "20-9-141" deleted "to raise the amount of the additional levy"; in (5) and (7) substituted "20-9-308(3)" for "20-9-308(4)"; in (6) before "election" deleted "special"; in (7) after "finance an" deleted "increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), and increased"; and made minor changes in style. Amendment effective July 1, 1999.

The amendment to this section made by Ch. 359, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

The amendment to this section made by Ch. 514, L. 1999, was rendered void by sec. 10(2), Ch. 514, L. 1999, a coordination instruction.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1997 Amendment: Chapter 211 in (3), near end of first sentence, substituted "final" for "preliminary". Amendment effective April 7, 1997.

1995 Amendment: Chapter 266 in (1), at beginning, deleted "Except as limited by 20-9-308"; inserted (1)(a) and (1)(b) regarding budget amounts up to BASE and over-BASE amount; in (1)(c), after "budget", inserted "amount" and at end inserted reference to 20-9-308(4); in (2), at beginning of first sentence, deleted "Except as provided in 20-9-308(4)(b)", after "general fund budget" deleted "that is in excess of the maximum general fund budget amount", and after "finance the" substituted "additional" for "excess" and in ballot question, in parenthetical, inserted "additional"; in (4) substituted reference to budget amount allowed by 20-9-308(4) for "under the provisions of this section"; in (5) inserted "All levies adopted under this section"; in (6), before "BASE", inserted "an increased amount up to the", before "over-BASE" inserted "increased", substituted "20-9-308(3)(a)" for "20-9-308(3)(b)", and inserted "or an amount in excess of the maximum general fund budget amount for the district as allowed by 20-9-308(4)"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date — Applicability: Section 2, Ch. 266, L. 1995, provided: "[This act] is effective July 1, 1995, and applies to school district general fund budgets for the school fiscal year beginning July 1, 1996."

1993 Amendment: Chapter 633 in (1) substituted "20-9-308" for "20-9-315(2)", near end substituted "maximum general fund budget" for "foundation program and the permissive", and after "district" deleted "for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;
(b) furnishing additional school facilities for the district;
(c) acquisition of land for the district;
(d) proper maintenance and operation of the school programs of the district; or
(e) severance pay for district employees"; in (2), in first sentence at beginning, inserted exception clause, substituted "maximum general fund budget" for "statutory schedule amount

and the permissive", near middle, before "the excess", substituted "to finance" for "of an additional levy to raise", and at end, after "proposition", deleted "except that an election is not required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy" in third sentence substituted "financed" for "raised by additional property taxation" and after "raise" inserted "all or a portion of", and in ballot, after "Shall", substituted "the district be authorized" for "a levy be made in addition to the levies authorized by law in the number of mills as may be necessary", before "the sum of" substituted "expend" for "raise", after "amount to be" substituted "expended" for "raised by additional tax levy", after "additional" substituted "financing" for "tax levy", and after "FOR" and after "AGAINST" substituted "budget authority and any" for "the"; in (3), near beginning after "additional", substituted "financing" for "levy"; inserted (5) relating to compliance by trustees; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1), in introductory clause after "program", inserted "and the permissive amount"; in (2), in first sentence after "schedule amount", inserted "and the permissive amount"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: At beginning inserted exception clause; near middle of (1) substituted "foundation program for the district" for "general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321"; inserted (1)(e) relating to severance pay; and made minor changes in phraseology. Amendment effective July 1, 1990.

1987 Amendment: At end of (2), in two places in ballot form language, deleted "additional" before "levy".

1985 Amendment: In (2) near end of first sentence, after "to use", substituted "any funds available to finance the additional amount other than those funds to be raised by the additional levy" for "federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget as established in 20-9-316 through 20-9-321 by the amount of these funds"; and in third sentence inserted "only" after "state".

1981 Amendment: Deleted former subsection (2) that read: "(2) However, when the trustees adopt a total general fund budget which exceeds 110% of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget."; deleted "Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year." from the end of (4).

Administrative Rules

Title 10, chapter 23, ARM Permissive and voted amounts — levies.

Case Notes

No Application to Parochial Schools: School board adopting resolution calling for special tax levy for expending funds for employment of teachers to teach secular subjects in parochial school violated former statutes dealing with special levies since statutes pertained to public schools only. State ex rel. Chambers v. School District, 155 M 422, 472 P2d 1013 (1970).

Attorney General's Opinions

Federal Funds to Be Applied to Permissive Levy:

No statutory changes since the issuance of 38 A.G. Op. 97 (1980), have affected the basis that under state law, a school district may deposit Pub. L. No. 81-874 money into any operating budget. However, the conclusion that if that money is allocated to the general fund budget, it must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. 240(d)(2)(i) as a state that may consider that money in determining the amount of state aid available to a school district. 44 A.G. Op. 41 (1992).

Federal funds received under P.L. 81-874, intended to relieve increased tax burdens due to federal installations or activity, may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount. (See 1985 amendment.) 38 A.G. Op. 97 (1980).

Electorate Approval Not Required: Due to statutory changes in 20-9-353, 28 A.G. Op. 58 (1960) is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15-mill levy would produce. (See 1985 amendment.) 38 A.G. Op. 97 (1980).

Taxation — Levy for Liability Insurance: The levy provided by 2-9-212 does not require an election. The school trustees may authorize the levy upon determining that it is in the best interests of the school district. The annual property tax may be used to fund all policies of insurance required or permitted by law. 37 A.G. Op. 109 (1978), reversing contrary language in 35 A.G. Op. 44 (1973).

20-9-360. State equalization aid levy.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 772, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 542 near end of first sentence substituted "61-3-321(2) or (3)" for "23-2-517, 23-2-803, 61-3-521" and before "61-3-562" deleted "61-3-560 through". Amendment effective January 1, 2006.

2001 Amendment: Chapter 257 in second sentence substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 584 at beginning inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments: Chapter 422 at beginning of last sentence deleted "Except as provided in subsection (2)"; deleted (2) that read: "(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 496 in (1), in first sentence after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 509 in (1) substituted "state general fund" for "state special revenue fund". Amendment effective July 1, 1995.

Chapter 580 in (1) inserted reference to 61-3-527. Amendment effective January 1, 1996.

1991 Amendment: In (1), in first sentence after "imposed", inserted "by the county commissioners of each county"; and in (2), in first sentence after "1990", deleted "each year" and after "distribute" substituted present language regarding distribution of the state equalization aid levy for former language that read: "to the county an amount of the state equalization levy equal to the tax increment derived by the municipality for the fiscal year ending June 30, 1989, from the levy for property taxes for school district purposes against property within the urban renewal district, less the amount of tax increment actually received by the municipality in each year as a result of the imposition of mill levies for school district purposes". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date — Retroactive Applicability: Sections 98 and 99, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990, and applies retroactively to all taxable years beginning after December 31, 1989.

Case Notes

Mines Net Proceeds Taxes and Resource Indemnity Trust Taxes Settlement Agreement — Payments Distributed According to Mill Levies in Year Settlement Paid: Under a settlement agreement in 1992, Cyprus paid to Madison County back mines net proceeds taxes and resource indemnity trust taxes for the years 1980-1987. The county brought a summary judgment action to allow it to distribute the payment to certain Madison County taxing districts rather than according to the mill levies in place on the date when the funds were received, including the state university levies and the county and state school equalization aid payments. The county argued that application of school funding equalization taxes to Cyprus's settlement for 1980-1987 taxes was improper retroactive taxation because not all of the equalization laws were in effect in those years. The District Court granted summary judgment to the county. The Supreme Court held that no retroactivity issue existed and that the settlement paid was property tax revenue that must be distributed according to the mills levied in the year that the settlement was paid. Madison County v. St., 1998 MT 285, 291 M 446, 968 P2d 732, 55 St. Rep. 1160 (1998).

20-9-361. County equalization revenue.

Compiler's Comments

1997 Amendment: Chapter 422 deleted (2) that read: "(2) Revenue received from the state equalization aid levy for a municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, is statutorily appropriated, as provided in 17-7-502, to be distributed as provided in 20-9-360(2)"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 509 in (1), after "20-9-333", deleted "and 20-9-343", after "is" deleted "statutorily appropriated, as provided in 17-7-502, to:

(1) the superintendent of public instruction", and before "aid" deleted "and state equalization"; in (2), at beginning, inserted language concerning revenue received for a municipality that created an urban renewal area with tax increment financing prior to July 1, 1990, and before "as" substituted "be distributed" for "counties"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: In (1), after "schools", substituted "for the purposes of 20-9-343(1)(a)" for "as provided by law". Amendment effective July 1, 1991, and terminates June 30, 1993.

Termination: Section 5, Ch. 729, L. 1991, provided: "[This act] terminates June 30, 1993."

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-366. Definitions.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 9, Ch. 745, L. 2023. Amendment effective July 1, 2023.

The amendments made to this section by sec. 4, Ch. 45, L. 2023, and sec. 5, Ch. 772, L. 2023, were replaced by sec. 9, Ch. 745, L. 2023, a coordination section.

2021 Amendment — Coordination: Chapter 560 in definition of statewide elementary guaranteed tax base ratio or statewide high school guaranteed tax base ratio in (a) in first sentence at beginning inserted exception clause and near middle after "in the state, multiplied by" substituted "250% for fiscal year 2022 and 254% for fiscal year 2023" for "193% for fiscal year 2018, 216% for fiscal year 2019, 224% for fiscal year 2020, and 232% for fiscal year 2021" and inserted last sentence concerning fiscal year 2024 and subsequent fiscal years, inserted (a)(i) and (a)(ii) concerning fiscal years 2024 through 2031 revenue transfers to the state general fund, and inserted (a)(iii) concerning fiscal years 2032 and subsequent fiscal years; inserted (6) concerning guaranteed tax base multiplier reduction based on Ch. 506, L. 2021, contingency; and made minor changes in style. Amendment effective May 14, 2021.

The amendments made to this section by sec. 10, Ch. 506, L. 2021, and sec. 1, Ch. 560, L. 2021, were rendered void by sec. 3, Ch. 560, L. 2021, a coordination section.

2017 Amendment: Chapter 336 in (5)(a) after "multiplied by 193%" inserted "for fiscal year 2018, 216% for fiscal year 2019, 224% for fiscal year 2020, and 232% for fiscal year 2021 and each succeeding fiscal year". Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2015 Amendment: Chapter 8 in definitions of "county retirement mill value per elementary ANB", "district mill value per ANB", "facility guaranteed mill value per ANB", and "statewide mill value per elementary ANB" near end substituted "prior year total" for "current year total"; in definition of "district guaranteed tax base ratio" substituted "district's prior year GTBA budget area" for "sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment"; inserted definition of "guaranteed tax base aid budget area"; in definition of "statewide elementary guaranteed tax base ratio" substituted "prior year statewide GTBA budget area for the state elementary school districts or the state high school districts" for "total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 261 in (2)(a) near middle after "except for" inserted "property value disregarded because of protested taxes under 15-1-409(2) or". Amendment effective October 1, 2011.

Applicability: Section 5(2), Ch. 261, L. 2011, provided: "(2) [Sections 2 and 3] apply to tax years beginning after December 31, 2011."

2007 Special Session Amendment: Chapter 1 in definition of statewide elementary guaranteed tax base ratio in (a) near middle after "multiplied by" substituted "193%" for "175%". Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2007 Amendment: Chapter 194 in definitions of district guaranteed tax base ratio and district mill value per ANB near middle inserted exception clause for new district under 20-6-326. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

2005 Amendment: Chapter 462 in definition of district guaranteed tax base ratio at end inserted "and the state special education allowable cost payment"; and in definition of facility guaranteed mill value per ANB at end after "total" substituted "state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts" for "ANB amount used to calculate the school districts' current year total per-ANB entitlement". Amendment effective April 28, 2005.

2003 Amendment: Chapter 550 at beginning substituted "20-9-371" for "20-9-369"; inserted definition of facility guaranteed mill value per ANB; and in definition of statewide mill value per elementary ANB at beginning after "school" deleted "facility entitlement and". Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1999 Amendment: Chapter 211 in definition of district guaranteed tax base ratio in (a) at end substituted "BASE budget amount less direct state aid" for "direct state aid and 40% of the special education allowable cost payment"; and in definition of statewide elementary guaranteed tax base ratio in (a) at end substituted "BASE budget amounts less total direct state aid" for "total direct state aid and 40% of special education allowable cost amounts". Amendment effective July 1, 2000.

Applicability: Section 9(2), Ch. 211, L. 1999, provided that the amendment to this section applies to school budgets for school fiscal years beginning on or after July 1, 2000.

1993 Amendment: Chapter 633 in definitions of county retirement mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB, after "year", substituted "total per-ANB entitlement" for "foundation program"; inserted definition of district guaranteed tax base ratio; in definition of district mill value per ANB, after defined term, inserted "for school facility entitlement purposes"; deleted definition of permissive amount that read: ""Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353"; in definition of statewide mill value per elementary ANB, near beginning before "and retirement", substituted "school facility entitlement" for "permissive"; and inserted definition of statewide elementary guaranteed tax base ratio. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 changed defined term to county retirement mill value per elementary ANB or county retirement mill value per high school ANB from county mill value per elementary ANB or county mill value per high school ANB; and in definition of statewide mill value per elementary ANB or statewide mill value per high school ANB inserted "for permissive and retirement guaranteed tax base purposes". Amendment effective July 1, 1991.

Chapter 790 in definitions of county mill value per elementary ANB and district mill value per ANB, near beginning of first sentence before "taxable valuation", deleted "current", inserted reference to previous year, deleted "plus the taxable value of oil and gas net proceeds determined under 15-23-607(4) for production occurring after March 31, 1990, plus the taxable value of coal gross proceeds determined under 15-23-703(3) plus all the taxable value of nonlevy revenue for the support of schools, other than Public Law 81-874 funds", and deleted last sentence that read: "The taxable value of nonlevy revenue for the purpose of computing guaranteed tax base aid for schools is the amount of nonlevy revenue received by a district in the previous year, including for fiscal year 1991 the revenue received in fiscal year 1990 from the net proceeds taxation of oil and natural gas and including for fiscal year 1992 and thereafter the local government severance tax, divided by the number of mills levied by the district in the previous year, multiplied by 1,000"; substituted definition of permissive amount for definition of guaranteed overschedule general fund budget and changed "135%" to "35%"; and substituted present definition of statewide mill value per elementary or high school ANB for former definition (see 1989 MCA for text). Amendment effective May 17, 1991.

Coordination Instruction — Amendment Void: Section 58, Ch. 767, L. 1991, provided: "If House Bill No. 580 is passed and approved and if it contains a section amending 20-9-366, then the amendments to 20-9-366 in [this act] [section 31, Ch. 767, L. 1991] are void." House Bill No. 580 was approved May 17, 1991, as Ch. 790, L. 1991, and included an amendment to 20-9-366. Therefore, the amendments to 20-9-366 contained in sec. 31, Ch. 767, L. 1991, are void.

Transition Period for School Year Beginning July 1, 1991: Section 3, Ch. 790, L. 1991, provided: "The superintendent of public instruction shall, for the purposes of the definitions contained in 20-9-366 and for performing the duties required in 20-9-369, use for the school fiscal year beginning July 1, 1991, the taxable value of all property for calendar year 1990 reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305, which taxable value the department of revenue has provided to the superintendent of public instruction." Subsection (1) of sec. 7, Ch. 790, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the taxable year beginning after December 31, 1990. Section 8, Ch. 790, L. 1991, provided that this section terminates December 1, 1991. Section 9, Ch. 790, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

1990 Special Session Amendment: In definitions of county mill value per elementary ANB, district mill value per ANB, and statewide mill value per elementary ANB inserted provision for including the taxable value of oil and gas net proceeds and coal gross proceeds, moved the division formula from the end to the middle of the definitions, substituted "nonlevy" for "nontax", and inserted the provision for including revenue received from the net proceeds taxation of oil and natural gas in 1991 and including in 1992 and thereafter the local government severance tax; and made minor changes in phraseology. Amendment effective June 19, 1990.

Severability: Section 6, Ch. 3, Sp. L. May 1990, was a severability clause.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-367. Eligibility to receive guaranteed tax base aid or state debt service assistance for school facilities.

Compiler's Comments

2017 Amendment: Chapter 404 in (3) after "the district may receive" inserted "debt service assistance in the form of"; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in (1) in two places substituted "35.3%" for "38.2%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in (1) in two places substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In (1) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement.

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1995 Amendment: Chapter 586 in (3), near end after "receive", substituted "a state advance or reimbursement for school facilities" for "guaranteed tax base aid based on the number of mills levied". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1), near beginning, substituted "guaranteed tax base ratio" for "mill value per ANB", near middle, after "statewide", substituted "elementary or high school guaranteed tax base ratio" for "district mill value per elementary ANB or high school ANB", and near end, before "general fund", substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the" for "its permissive amount of the"; in (2), after "statewide", deleted "county"; inserted (3) relating to district qualification for guaranteed tax base aid for debt service; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 in (2), after "county", inserted "retirement" and before "high school" inserted "county retirement mill value per". Amendment effective July 1, 1991.

Chapter 767 in (1), after "statewide", inserted "district", after "per" inserted "elementary ANB or high school", and before "permissive" deleted "guaranteed overschedule"; in (2), after "statewide", inserted "county" and after "per" inserted "elementary ANB or high school". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-368. Amount of guaranteed tax base aid.

Compiler's Comments

2015 Amendment: Chapter 8 in (3)(a) substituted "prior year GTBA budget area" for "BASE budget amount less direct state aid"; and in (3)(b) inserted "prior year". Amendment effective July 1, 2015.

2000 Amendment: (Version effective July 1, 2000) Chapter 11 in (3) in two places substituted "35.3%" for "38.2%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective May 25, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: (Temporary version) Chapter 211 in (3) in two places substituted "38.9%" for "40%" in the figures for basic entitlement and total per-ANB entitlement. Amendment effective July 1, 1999, and terminates June 30, 2000.

(Version effective July 1, 2000) In (3) in two places substituted "38.2%" for "40%" in the figures for basic entitlement and total per-ANB entitlement; and in (3)(a) substituted "BASE budget amount less direct state aid" for "direct state aid and 40% of the special education allowable cost payment".

Applicability: Section 9, Ch. 211, L. 1999, provided in subsection (1) that the temporary version of this section applies to school budgets for the school fiscal year beginning July 1, 1999, and provided in subsection (2) that the amendment to this section that takes effect July 1, 2000, applies to school budgets for school fiscal years beginning on or after that date.

1993 Amendment: Chapter 633 in (1) and (2), before "mill", deleted "county"; in (3), near beginning after "aid", deleted "per-ANB", after "support of" substituted "up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the" for "its permissive amount of the", after "budget" inserted "and up to 40% of the special education payment", and after "is" substituted language in (a) through (c) relating to calculation of guaranteed tax base aid for former language that read: "the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget"; in (4) deleted former second sentence that read: "If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 711 near end of (1) and (2), after "budgets", substituted "for" for "of". Amendment effective July 1, 1991.

Chapter 767 in (1) and (2), after "statewide", inserted "county"; and in (3), near beginning before "permissive", deleted "guaranteed overschedule", after "statewide" inserted "district", and near end, after "district's", deleted "guaranteed overschedule". Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-369. Duties of superintendent of public instruction and department of revenue.

Compiler's Comments

1995 Amendment: Chapter 586 in (1)(b), near end after "aid", inserted "and state advance and reimbursement for school facilities"; and in (4), at beginning, deleted "For the purposes of implementing 20-9-366 through 20-9-368 and this section for the school fiscal year beginning July 1, 1993, the superintendent of public instruction shall estimate the direct state aid for a district for the school fiscal year beginning July 1, 1993, in order to calculate the district and statewide guaranteed tax base ratios for that school fiscal year. For succeeding school fiscal years". Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 in (1)(a), in two places, substituted "guaranteed tax base ratios" for "county mill values per ANB" and after "preliminary statewide" inserted "and district"; inserted (1)(b) requiring Superintendent to provide District and County Superintendent preliminary and final statewide, county, and district mill values per ANB to calculate guaranteed tax base aid; inserted (4) requiring Superintendent to estimate direct state aid for the school fiscal year beginning July 1, 1993, to calculate guaranteed tax base ratios and to use prior year's state aid payment for succeeding years; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1)(a) substituted "March 1" for "June 15" and "May 1" for "July 15"; and in (3) substituted "December" for "June", after "each year" deleted "a preliminary determination of the taxable value of property within each school district and county of the state and shall provide by July 1 of each year", and at end deleted "values" and inserted language referring to values in each district and county as reported to Department of Revenue based on information delivered to Clerk and Recorder under 15-10-305. Amendment effective May 17, 1991.

Applicability: Subsection (2) of sec. 7, Ch. 790, L. 1991, provided: "(2) Except as provided in subsection (1), [this act] applies to school fiscal years beginning after June 30, 1991."

Transition Period for School Year Beginning July 1, 1991: Section 3, Ch. 790, L. 1991, provided: "The superintendent of public instruction shall, for the purposes of the definitions contained in 20-9-366 and for performing the duties required in 20-9-369, use for the school fiscal year beginning July 1, 1991, the taxable value of all property for calendar year 1990 reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305, which taxable value the department of revenue has provided to the superintendent of public instruction." Subsection (1) of sec. 7, Ch. 790, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the taxable year beginning after December 31, 1990. Section 8, Ch. 790, L. 1991, provided that this section terminates December 1, 1991. Section 9, Ch. 790, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Effective Date: Section 98, Ch. 11, Sp. L. June 1989, provided that this section is effective July 1, 1990.

20-9-370. Definitions.

Compiler's Comments

2003 Amendment: Chapter 550 in definition of school facility entitlement in (a) increased amount from $220 to $300, in (b) increased amount from $330 to $450, and in (c) increased amount from $270 to $370; and in definition of state reimbursement for school facilities in (a) substituted "mill value per ANB that is less than the corresponding facility guaranteed mill value per ANB" for "mill value per elementary ANB that is less than the corresponding statewide mill value per elementary ANB or a district mill value per high school ANB that is less than the corresponding statewide mill value per high school ANB" and in (b) at end deleted "for which the original issue was sold after July 1, 1991". Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendments: Chapter 18 deleted (2)(b)(i) that read: "(i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991"; and made minor changes in style.

Chapter 586 inserted definition of state advance for school facilities; and substituted definition of state reimbursement for school facilities for former definition that read: ""State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) (i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;

(ii) for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in [and payable from] the debt service fund of the district in any year." Amendment effective July 1, 1995.

Code Commissioner Comment: In (2)(b)(ii), after "sold in", the Code Commissioner inserted "[and payable from]" to clarify legislative intent regarding definition of state reimbursement for school facilities.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-371. Calculation and uses of school facility entitlement amount.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 492 in (1) near end, (2)(b) near end, and (4) in first sentence near middle and in second sentence near end before "bonds" inserted "general obligation". Amendment effective April 24, 2003.

Chapter 550 in (1) in formula substituted "facility guaranteed" for "statewide"; and in (4) at end of first sentence after "debt service fund of the district" deleted "after July 1, 1991". Amendment effective July 1, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendment: Chapter 586 at end of (1) substituted "20-9-370(3)" for "20-9-370(2)(b)(i) or (2)(b)(ii)"; inserted (2) concerning calculation of state advance for school facilities; inserted (3) concerning distribution of state advance for school facilities; at beginning of first sentence of (4) deleted "For the school fiscal years beginning July 1, 1993, and July 1, 1994" and after "requirement" inserted "in the ensuing school fiscal year" and inserted second sentence concerning application for state advance for school facilities; and deleted former (3) that read: "(3) For the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement of all bonded indebtedness in the district debt service fund." Amendment effective July 1, 1995.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-376. Purpose of increased funding beyond inflation.

Compiler's Comments

Effective Date — Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years. Approved May 6, 2013.

20-9-380. School facilities fund — school major maintenance aid special revenue account.

Compiler's Comments

2017 Enactment — Coordination: The enactment of this section by sec. 1, Ch. 377, L. 2017, was rendered void and replaced by sec. 3(1), Ch. 259, L. 2017, a coordination section.

Effective Date: Section 4, Ch. 259, L. 2017, and sec. 4, Ch. 377, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

Part 4
School Bonds

20-9-401. Applicable laws for school district bonding.

Case Notes

Public Works Law Not Special Legislation: Former section dealing with undertaking of public works program by trustees was not unconstitutional as a deprivation of due process or a special law. Lorang v. High School District, 126 M 204, 247 P2d 477 (1952).

Apportioned Total Debt Not to Exceed Limitations: Chapter 275, L. 1947 (sections 75-4601 through 75-4606, R.C.M. 1947, now repealed), was unconstitutional as decided in the Rankin case only insofar as it purported to authorize the high school district to incur indebtedness to the full amount permitted by the state constitution irrespective of the debts of the common school districts comprising the high school district. Such high school districts had the authority to issue bonds and incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the common school districts respectively, did not bring the debt of any of the latter in excess of the limit prescribed by Art. XIII, sec. 6, 1889 Mont. Const. Wright v. Browning High School District, 125 M 495, 240 P2d 862 (1952).

High School Districts' Public Works Program Subject to Debt Limitation: Chapter 275, L. 1947 (sections 75-4601 through 75-4606, R.C.M. 1947, now repealed), was held unconstitutional as contravening Art. XIII, sec. 6, 1889 Mont. Const., because it was merely an attempt to expand the constitutional limit of indebtedness by pyramiding another tax unit upon the identical property and taxpayers of a school district. Rankin v. Love, 125 M 184, 232 P2d 998 (1951). This case expressly overrules House v. School District, 120 M 319, 184 P2d 285 (1947).

Loans to Repay Void Bonds Held Constitutional: The act of February 18, 1895, authorizing repayment of loans advanced to trustees in reliance upon bonds subsequently declared void, was constitutional. State ex rel. NW. Nat'l Bank v. Dickerman, 16 M 278, 40 P 698 (1895).

20-9-402. Definition of school district for bonding purposes.

Compiler's Comments

1997 Amendment: Chapter 219 near end, after "high school district", inserted "county high school district" and after "community college district" deleted former exception that read: "except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:

(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or

(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

20-9-403. Bond issues for certain purposes.

Compiler's Comments

2013 Amendment: Chapter 400 in (1) and (1)(f) inserted "oil and natural gas revenue bonds"; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2009 Amendment: Chapter 489 inserted (3) concerning qualified school construction bonds or tax credit bonds. Amendment effective May 14, 2009.

2003 Amendment: Chapter 492 in (1) in introductory clause substituted "general obligation bonds or impact aid bonds" for "bonds on the credit"; inserted (1)(f) concerning funding a debt service reserve account; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1989 Amendment: In (1)(e) inserted "including the repayment of tax protests lost by the district". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1987 Amendment: In (1)(a), at end, deleted "including postsecondary vocational-technical centers in the school district".

Case Notes

Construction of Combined Grade School and High School: Board of trustees of high school district and common school district included therein had authority, under former statute, to build grade school and high school in one unit sharing common facilities and to issue bonds therefor. Long v. School District, 149 M 220, 425 P2d 822 (1967).

Gymnasium Construction Authorized: Under former statute, where a district had voted a bond issue for the construction of an outdoor high school gymnasium and athletic field, the board having provided for athletic training, a place for giving proper instruction therein, whether within or outside of a building, became a necessary part of the school plant and the board of trustees was authorized to issue bonds for its construction. McNair v. School District, 87 M 423, 288 P 188 (1930).

20-9-404. Contracts and bonds for joint construction.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 166 in (1) near middle after "adjoining county" inserted "with the governing body of another political subdivision within the county in which the school district is located, or with the governing body of a political subdivision of a county adjoining the school district"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Applicability: Section 3, Ch. 166, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]."

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 397 in first sentence, after "for the joint construction of", substituted "a facility" for "vocational-technical secondary schools"; and made minor changes in style.

Applicability: Section 4, Ch. 397, L. 1997, provided: "[This act] applies to contracts entered into after [the effective date of this act]." Effective October 1, 1997.

20-9-405. Proportional joint ownership — disposition of money.

Compiler's Comments

1999 Amendment: Chapter 166 in first sentence near middle after "school districts" inserted "or other political subdivisions" and at end substituted "political subdivision" for "district". Amendment effective July 1, 1999.

Applicability: Section 3, Ch. 166, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act]."

1997 Amendment: Chapter 397 in first and third sentences substituted "facility" for "vocational-technical secondary school" and in second sentence substituted "facility" for "school"; and made minor changes in style.

Applicability: Section 4, Ch. 397, L. 1997, provided: "[This act] applies to contracts entered into after [the effective date of this act]." Effective October 1, 1997.

20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — oil and natural gas payment.

Compiler's Comments

2015 Amendment: Chapter 307 in (1)(a) substituted "100%" for "50%"; in (1)(b) substituted "regardless of whether the general obligation bonds finance elementary program improvements or high school program improvements, is the sum of 100% of the taxable value of the property in its elementary program subject to taxation and 100% of the taxable value of the property in its high school program subject to taxation" for "is up to 100% of the taxable value of the property subject to taxation"; in (1)(c)(i) near end of first sentence before "the corresponding facility guaranteed mill value" deleted "50% of" and near beginning of first and second sentences inserted clause concerning maximum amount calculated; and made minor changes in style. Amendment effective April 27, 2015.

2013 Amendment: Chapter 400 in (1)(a), (1)(b), and (1)(c)(i) after "under 20-9-471" inserted "oil and natural gas revenue bonds to which a deficiency tax levy is pledged"; inserted (4) capping maximum amount of oil and natural gas revenue bonds; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 271 in (1)(b) and (1)(c)(i) following "20-9-471" deleted "and 20-9-502". Amendment effective April 23, 2011.

2009 Amendment: Chapter 213 in (1)(a) near middle following "20-9-471" deleted "and 20-9-502"; deleted former (1)(c) that read: "(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 50% of the taxable value of the property for elementary school program purposes and 50% of the taxable value of the property for high school program purposes"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment: Chapter 279 in (1)(a) near end increased elementary and high school district debt limit from 45% to 50% of taxable value; in (1)(b) near end increased K-12 district debt limit from 90% to 100% of taxable value; in (1)(c) in two places increased total indebtedness of high school district with attached elementary district from 45% to 50% of taxable value for elementary program and high school program purposes; and in (1)(d)(i) near end of first sentence increased debt limit for elementary or high school ANB from 45% to 50% for facility guaranteed mill value, in second sentence increased debt limit for K-12 ANB from 45% to 50% for facility guaranteed mill value, and inserted third sentences in (1)(d)(i) and (1)(d)(ii) allowing district to use the greater of current year ANB or 3-year averaging for purposes of calculating ANB. Amendment effective July 1, 2007.

2005 Amendment: Chapter 462 in (1)(a) near middle, (1)(b) near middle, and (1)(d)(i) in first sentence near middle after "registered warrants" inserted "outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district"; in (1)(d)(i) in first sentence near beginning after "than the" substituted "facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366" for "corresponding statewide mill value per elementary ANB or per high school ANB" and near end and in second sentence in two places before "mill value" substituted "facility guaranteed" for "statewide"; and made minor changes in style. Amendment effective April 28, 2005.

2003 Amendment: Chapter 492 throughout (1) and (2) before "bonds" inserted "general obligation"; inserted (3) relating to the maximum amount of impact aid revenue bonds that may be issued and the maximum average annual principal and interest payment at the time of issuance of the bonds; inserted (6) defining federal impact aid basic support payment; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 10 near end of (1)(a) substituted "last assessment" for "last-completed assessment" and at end deleted "plus"; deleted subsections (1)(a)(i) through (1)(a)(vii) that read: "(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 45%; and

(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 45%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 45%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 45%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%"; in (1)(b) near end substituted "last assessment" for "last-completed assessment" and at end deleted "plus"; deleted subsections (1)(b)(i) through (1)(b)(vii) that read: "(i) (A) for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, multiplied by 90%; and

(B) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 90%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 90%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 90%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%"; at end of (1)(c) deleted "adjusted as provided in this section"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 3, Ch. 10, L. 2001, provided: "[This act] applies to the authorization and issuance of bonds occurring on or after July 1, 2001."

1999 Amendments — Composite Section: (Version effective July 1, 2000) Chapter 285 in (1)(a)(i)(A) at beginning deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and near end after "1995" deleted "in each case of class eight property"; inserted (1)(a)(ii) relating to bonds issued during fiscal year 2001; inserted (1)(a)(iii) relating to bonds issued during fiscal year 2002; inserted (1)(a)(iv) relating to bonds issued during fiscal year 2003; inserted (1)(a)(v) relating to bonds issued during fiscal years when class eight property tax rate is 2%; inserted (1)(a)(vi) relating to bonds issued during fiscal years when class eight property tax rate is 1%; inserted (1)(a)(vii) relating to bonds issued during fiscal years after repeal of 15-6-138; at beginning of (1)(b)(i)(A) deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and"; inserted (1)(b)(ii) relating to bonds issued during fiscal year 2001; inserted (1)(b)(iii) relating to bonds issued during fiscal year 2002; inserted (1)(b)(iv) relating to bonds issued during fiscal year 2003; inserted (1)(b)(v) relating to bonds issued during fiscal years when class eight property tax rate is 2%; inserted (1)(b)(vi) relating to bonds issued during fiscal years when class eight property tax rate is 1%; inserted (1)(b)(vii) relating to bonds issued during fiscal years after repeal of 15-6-138; and made minor changes in style. Amendment effective July 1, 2000.

Chapter 426 at beginning of (1)(a)(i) and (1)(b)(i) in temporary version and (1)(a)(i)(A) and (1)(b)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and"; inserted (1)(a)(ii) and (1)(b)(ii) in temporary version and (1)(a)(i)(B) and (1)(b)(i)(B) in July 1, 2000, version relating to taxable value of telecommunications property; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 556 at beginning of (1)(a)(i) in temporary version and (1)(a)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and near end after "for tax year 1995" deleted "in each case of class eight property"; inserted (1)(a)(ii) in temporary version and (1)(a)(i)(B) in July 1, 2000, version regarding taxable value attributable to electrical generation property; at beginning of (1)(b)(i) in temporary version and (1)(b)(i)(A) in July 1, 2000, version deleted "for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and" and after "for tax year 1995" deleted "in each case of class eight property"; inserted (1)(b)(ii) in temporary version and (1)(b)(i)(B) in July 1, 2000, version regarding taxable value attributable to electrical generation property; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 29, Ch. 285, L. 1999, was a saving clause.

Section 36, Ch. 556, L. 1999, was a saving clause.

Severability: Section 30, Ch. 285, L. 1999, was a severability clause.

Section 37, Ch. 556, L. 1999, was a severability clause.

Applicability: Section 43, Ch. 426, L. 1999, provided: "[This act] applies to tax years beginning after December 31, 1999."

Section 39(2), Ch. 556, L. 1999, provided that this section applies to fiscal years beginning after June 30, 2000.

1995 Amendments: Chapter 570 in middle of (1)(a) and (1)(b), after "indebtedness", inserted language limiting bonded indebtedness for class eight property for elementary or high school district (see 1995 Session Law for text); at end of (1)(b), after "purposes", inserted "adjusted as provided in this section"; and made minor changes in style.

Chapter 586 in (1)(c)(i), near beginning after "district", substituted "with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB" for "that qualifies for guaranteed tax base aid under the provisions of 20-9-367"; inserted (1)(c)(ii) concerning agreement to include students for which district or county pays tuition; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 633 at beginning of (1)(a) and (1)(b) inserted exception clause; deleted (1)(a)(i) through (1)(a)(iii) that read: "(i) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);

(ii) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and

(iii) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%"; in (1)(b), in second sentence before "must", deleted "as represented by the issuance of bonds"; inserted (1)(c) relating to district maximum bond indebtedness; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 555 in (1)(a) substituted "an elementary district or a high school district" for "each school district"; inserted (1)(b) relating to maximum bonded indebtedness allowed for a K-12 district; at beginning of (2) substituted "maximum amounts determined in subsection (1)" for "45% maximum"; in (3) substituted "limitations" for "45% limitation"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 inserted (1)(a)(i), (1)(a)(ii), and (1)(a)(iii) to include in taxable value of property subject to taxation the taxable value of coal gross proceeds and oil and gas net proceeds and the amount of value of certain other oil and gas production; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: Near end of (1), after "district", inserted "or to bonds issued for the repayment of tax protests lost by the district". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

1981 Amendment: Increased 29% to 45% wherever it appears.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981, was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobiles and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobiles and light trucks.

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Case Notes

Overlapping Districts Subject to Property Tax Limitations: Under former statute, where a high school district was created which overlapped the common school districts, such high school district could incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part, added to the existing indebtedness of the common school districts, did not bring the debt of any of the latter in excess of the limit prescribed by Art. XIII, sec. 6, 1889 Mont. Const. Wright v. Browning High School District, 125 M 495, 240 P2d 862 (1952), decided prior to 1958 amendment of Art. XIII, sec. 6, 1889 Mont. Const.

High School Districts Added to Existing School District: Under former statute, where a high school district was created and the effect was to divide the powers already exercised by a school district in an attempt to expand the constitutional limit of indebtedness by the pyramiding of another tax unit upon the identical property and taxpayers of the existing school district, an injunction was properly issued restraining the trustees of the district from becoming indebted to a sum greater than the then constitutional limit of 3% of the value of the taxable property, but such injunction was inoperative after date that raise of indebtedness limit to 5% became effective. Rankin v. Love, 125 M 184, 232 P2d 998 (1951), overruling House v. School District, 120 M 319, 184 P2d 285 (1947).

Issuing Less Bonds Than Authorized at Election: Under former statute, issuance of public bonds in a lesser amount than that authorized by the election does not warrant injunction against their issuance. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

20-9-407. Industrial facility agreement for bond issue in excess of maximum.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 644, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 307 in (1) near end of first sentence before "limitation" deleted "50%"; and in second sentence substituted "100%" for "50%". Amendment effective April 27, 2015.

2007 Amendment: Chapter 279 in (1) in first and second sentences increased bond debt limit from 45% to 50%; and made minor changes in style. Amendment effective July 1, 2007.

1985 Amendment: In (1) substituted "45%" for "29%" in two places; and in (2) substituted "20-9-406" for "this section".

Commissioner Correction: In subsection (1), "this section" was changed to "20-9-406" by the Code Commissioner, 1979. Sections 20-9-406 and 20-9-407 were enacted as part of one section and were split during recodification. The internal reference to "this section" was overlooked and has now been corrected.

20-9-408. Definition of forms of bonds.

Compiler's Comments

2013 Amendment: Chapter 400 inserted definition of oil and natural gas revenue bonds; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2007 Amendment: Chapter 44 in definition of impact aid revenue bonds near end after "credit of the" substituted "fund" for "account"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 451 in definition of serial bonds near beginning after "installments" inserted "of principal", after "maturing" inserted "or subject to mandatory sinking fund redemption", after "installment" inserted "commencing with the installment payable in the fourth year after the date of issue", and near end substituted "payable" for "maturing". Amendment effective April 28, 2005.

2003 Amendment: Chapter 492 inserted definitions of general obligation bonds and impact aid revenue bonds; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in (1) inserted second full sentence concerning payment on initial interest payment date and in last sentence substituted "as a result of rounding" for "resulting from disregarding fractional cents"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1989 Amendment: In (2) substituted definition of serial bonds for former language that read: ""serial bonds" means the form of bonds which are payable in annual installments and on which the amount maturing each year may not be more than three times the principal amount of the bonds maturing in the immediately preceding years." Amendment effective March 23, 1989.

Saving Clause: Section 9, Ch. 256, L. 1989, was a saving clause.

1983 Amendment: Substituted definition of serial bonds as being annual installments not to exceed three times the principal amount maturing in the previous year for former definition, which read: "'serial bonds' means the form of bonds which are payable in annual installments and on which the amount to be redeemed each year is determined by dividing the total amount of the bonds by the term of the bond issue. However, the first or the first and second installments may vary from the others to the extent resulting from fixing the amounts of each bond of the other installments at $100, at $500, or at some multiple thereof."

20-9-410. Limitation of term and interest — timing for redemption.

Compiler's Comments

2019 Amendment: Chapter 137 in (1) at beginning of first sentence deleted "Except as provided in subsection (2)" and after "longer than" substituted "30 years" for "20 years"; deleted former (2) that read: "(2) School district bonds may be issued for a term of up to 30 years if the rate on the bonds is less than or equal to the rate on bonds issued with a term of 20 years and the bonds are sold to the United States or an agency, instrumentality, or corporation of the United States"; and made minor changes in style. Amendment effective April 16, 2019.

2017 Amendment: Chapter 337 in (1) at beginning of first sentence inserted exception clause; inserted (2) concerning issuance of school district bonds for term of up to 30 years; and made minor changes in style. Amendment effective May 7, 2017.

2005 Amendment: Chapter 451 in (1) at beginning of second sentence inserted "Other than refunding or redeeming bonds"; and made minor changes in style. Amendment effective April 28, 2005.

1989 Amendment: Inserted (2) relating to when the term of a bond commences; and made minor changes in phraseology. Amendment effective March 23, 1989.

Saving Clause: Section 9, Ch. 256, L. 1989, was a saving clause.

1987 Amendment: In last sentence, after "interest shall", substituted "be as provided under 17-5-102" for "not exceed the limitation of 17-5-102".

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted "the limitation of 17-5-102" for "7% per annum" after "exceed" in the last sentence.

20-9-411. Dates of issue and payments.

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

20-9-412. Issuance of refunding bonds without election.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 182, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 277 in (6)(b) at beginning inserted exception clause; inserted (6)(c) allowing investment of funds if the funds initially deposited in escrow are sufficient; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendment: Chapter 423 inserted (4) concerning unrefunded portion of outstanding bond issue; inserted (5) concerning refunding bonds in amount greater than outstanding bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1993 Amendment: Chapter 158 in (3), at beginning, inserted exception clause regarding bonds refunded by a school district; and made minor changes in style. Amendment effective March 24, 1993.

1983 Amendment: Inserted (2)(a) relating to facts; at beginning of (2)(b) inserted "at their option"; inserted (4) relating to refunding bonds; and made minor changes in phraseology.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.

Compiler's Comments

2011 Amendment: Chapter 25 near beginning inserted "and 20-9-471"; and made minor changes in style. Amendment effective March 18, 2011.

1989 Amendment: In first sentence inserted "15-1-402 and". Amendment effective March 21, 1989.

Effective Date — Retroactive Applicability: Section 14, Ch. 213, L. 1989, provided: "[This act] is effective on passage and approval [approved March 21, 1989] and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983."

Case Notes

Rescission of Valid Election Not Authorized: There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Bd. of Trustees, 128 M 493, 278 P2d 584 (1955).

Authority to Purchase Site Not Implied in Bond Approval: Under former law, where the only question submitted to the electors of a school district of the second class was whether bonds in a given amount should be authorized for the purpose of erecting a school building, authorization to issue the bonds did not carry with it the implied authority to purchase a site, although question of acquisition might have been submitted as part of same proposition. Nichols v. School District, 87 M 181, 287 P 624 (1930).

Attorney General's Opinions

Election Not Required — County Revenue Bonds to Finance Community College District Construction: No election under this section is required when Flathead Valley Community College District uses funds that Flathead County raised by issuing revenue bonds for school construction. 42 A.G. Op. 29 (1987).

20-9-422. Additional requirements for trustees' resolution calling bond election.

Compiler's Comments

2013 Amendment: Chapter 400 in (1)(a) in middle inserted "oil and natural gas revenue bonds" and at end inserted "and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2003 Amendment: Chapter 492 inserted (1)(a) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds; in (2) in first sentence near beginning inserted "for a general obligation bond" and near end before "bonds" and in third sentence before "bond" inserted "general obligation"; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 586 inserted (1)(d) concerning estimated state advance for school facilities; inserted (2) concerning statement of estimated state advance for school facilities; and made minor changes in style. Amendment effective July 1, 1995.

20-9-423. Form, contents, and circularization of petition proposing school district bond election.

Compiler's Comments

2013 Amendment: Chapter 400 in (1) in middle inserted "oil and natural gas revenue bonds" and at end inserted "and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2003 Amendment: Chapter 492 inserted (1) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

20-9-424. Validation of petition — election administrator's certificate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Transition: Section 404, Ch. 571, L. 1979, was a transition section.

20-9-426. Preparation and form of ballots for bond election.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 5, Ch. 653, L. 2023. Amendment effective October 1, 2023.

The amendments to this section made by sec. 3, Ch. 388, L. 2023, and sec. 2, Ch. 653, L. 2023, were replaced by sec. 5, Ch. 653, L. 2023, a coordination section.

Applicability: Section 6, Ch. 653, L. 2023, provided: "[This act] applies to bond elections held on or after [the effective date of this act]." Effective October 1, 2023.

2015 Amendment: Chapter 49 in (1) after "elections" deleted "and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose"; deleted former (2) that read: "(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election"; and made minor changes in style. Amendment effective November 4, 2015.

2013 Amendment: Chapter 400 in (3) after "general obligation" inserted "oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 271 in (3) in second paragraph of form before "payable" deleted "bearing interest at a rate not more than .... percent (..........%) a year". Amendment effective April 23, 2011.

2003 Amendment: Chapter 492 in (3) in second paragraph of the form inserted "(state type of bonds here: general obligation or impact aid revenue)". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1997 Amendment: Chapter 144 inserted (2) specifying that ballots for certain school bond elections must be made available 30 days before bond election; and made minor changes in style.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted ".... percent (....%)" for "seven percent (7%)" before "per annum" in the third paragraph.

Case Notes

Bond Issue of Combined Grade School and High School Approved: Under former law, bond issue of joint common school district and high school district for purpose of building combined grade school and high school was not illegal for failure to state cost of land separately on ballot. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Form of Ballot — Substantial Compliance With Statute: Under former law, use of words "For" and "Against" on ballot in school bond election was substantial compliance with statute requiring words "Yes" and "No". Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

20-9-427. Notice of bond election by separate purpose.

Compiler's Comments

2013 Amendment: Chapter 400 in (1) after "general obligation" inserted "oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged"; and in (3) inserted "oil and natural gas revenue bonds". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 271 in (1) in form before "payable semiannually" deleted "bearing interest at a rate not more than .... percent (.............%) a year". Amendment effective April 23, 2011.

2003 Amendment: Chapter 492 in (1) in first paragraph of the form near middle inserted "(state here: general obligation or impact aid revenue)"; and inserted (3) relating to specifying whether the bonds will be general obligation bonds or impact aid revenue bonds. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in form of notice deleted former second sentence that read: "The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees" and in second sentence, after "issued", deleted "whether amortization or serial bonds"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendment: Substituted ".... percent (....%)" for "seven percent (7%)" before "per annum" in the second paragraph.

Case Notes

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

20-9-428. Determination of approval or rejection of proposition at bond election.

Compiler's Comments

2015 Amendment: Chapter 49 in (1)(c) after "election is held" substituted "in conjunction with" for "at a general election, at", after "chapter 19, or" deleted "at a special election that is held", and before "or primary election" substituted "general" for "regular". Amendment effective November 4, 2015.

2011 Amendment: Chapter 271 in (1)(a) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 23, 2011.

2005 Amendment: Chapter 503 substituted (1)(a) through (1)(c) regarding the method of determining approval or rejection of a school bond proposition for former (1)(a) through (1)(f) that read: "(a) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for such school bond election;

(b) determine the total number of qualified electors who voted at the school bond election from the tally sheet or sheets for such election;

(c) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(b) by the amount determined in subsection (1)(a); and

(d) when the calculated percentage in subsection (1)(c) is 40% or more, the school bond proposition shall be deemed to have been approved and adopted if a majority of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(e) when the calculated percentage in subsection (1)(c) is more than 30% but less than 40%, the school bond proposition shall be deemed to have been approved and adopted if 60% or more of the votes shall have been cast in favor of such proposition, otherwise it shall be deemed to have been rejected; or

(f) when the calculated percentage in subsection (1)(c) is 30% or less, the school bond proposition shall be deemed to have been rejected"; and made minor changes in style. Amendment effective April 28, 2005.

Effective Date — Applicability: Section 4, Ch. 503, L. 2005, provided: "[This act] is effective on passage and approval [approved April 28, 2005] and applies to school bond elections held on or after [the effective date of this act]."

Case Notes

No Authority in School Board to Remove Unqualified Voters From List of Registered Voters: Under this section a school board of trustees removed from the certified list of registered voters the names of several persons who the board determined were disqualified to vote. The court held that this section must be read with other statutes governing elections, including 20-20-303, concerning how an elector's qualifications may be challenged; 13-13-301, et seq., concerning how qualifications are determined; and 13-15-101, concerning general canvassing requirements. The court determined the school board had no authority to remove names of unqualified voters. Bischoff v. School District, 230 M 336, 749 P2d 533, 45 St. Rep. 253 (1988).

Failure to Canvass Bond Election: Failure of trustees to canvass vote as required by former statute did not make bonds issued by school district illegal and void. Long v. School District, 149 M 220, 425 P2d 822 (1967).

Attorney General's Opinions

Revision of Voter Registration List by School Trustees Prohibited: Montana law does not permit the exercise of discretion by anyone other than the election administrator to revise the number of names on a voter registration list, pursuant to Title 13, ch. 2, part 4. Therefore, school trustees are not permitted under this section to revise the number of voters on the certified list of registered electors when determining the percentage of voter turnout at a school bond election. 42 A.G. Op. 19 (1987).

20-9-429. Trustees' resolution to issue school district bonds pursuant to public sale.

Compiler's Comments

2011 Amendment: Chapter 253 at beginning of first sentence inserted "If the trustees conduct a public sale"; and made minor changes in style. Amendment effective April 22, 2011.

Severability: Section 33, Ch. 253, L. 2011, was a severability clause.

Applicability: Section 35, Ch. 253, L. 2011, provided: "[This act] applies to local government actions commencing on or after [the effective date of this act]." Effective April 22, 2011.

1995 Amendment: Chapter 423 in introductory clause, at beginning, substituted "Anytime" for "Within 60 days", after "certificate" deleted "or as soon thereafter as is practical in the judgment of the trustees", and after "resolution" substituted "calling for the sale" for "providing for the issuance"; substituted (3) concerning minimum purchase price for former text that read: "the maximum rate of interest"; at beginning of (8) substituted "whether bids will be accepted for either serial or amortization bonds and, if so" for "that amortization bonds will be preferred but also fix" and after "serial" inserted "or amortization"; inserted (10) concerning minimum price for bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Case Notes

Mandamus to Compel Issuance of Bonds — Time Limitation Suspended: Court would not compel board to issue bonds for construction of school where board was making good faith effort to solve financial aspects of building the proposed school. Litigation that was instituted to test validity of bond election suspended the running of 60-day period in the former statute. State ex rel. Tilzey v. School District, 149 M 509, 428 P2d 974 (1967).

Bond Sale Resolution — Minutes Not Incomplete: Under former law, school bond election was not invalid for failure of clerk to set out in full in minute books of board of trustees resolution authorizing sale of bonds, in absence of showing that resolution itself was defective, since minute books need not reflect exact contents of resolution. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

Delay in Issuance of Bonds — Time Limitations Directory: Delay in the issuance of bonds, occasioned by litigation and negotiations with the federal government in the financing thereof under National Recovery Act, did not affect the legality of original authority voted by the district, the requirement to proceed within 60 days, under the former statute, being directory, not mandatory. State ex rel. Sullivan v. School District, 100 M 468, 50 P2d 252 (1935).

20-9-430. Sale of school district bonds and notice of public sale.

Compiler's Comments

2013 Amendment: Chapter 400 in first paragraph of notice after "general obligation" inserted "oil and natural gas revenue". Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2011 Amendment: Chapter 253 at beginning of first sentence after "trustees" inserted "may sell school district bonds at public or private sale pursuant to 17-5-107" and at beginning of second sentence inserted "If the trustees conduct a public sale, the trustees". Amendment effective April 22, 2011.

Severability: Section 33, Ch. 253, L. 2011, was a severability clause.

Applicability: Section 35, Ch. 253, L. 2011, provided: "[This act] applies to local government actions commencing on or after [the effective date of this act]." Effective April 22, 2011.

2003 Amendment: Chapter 492 in first paragraph of the form inserted "(state here:" and "or impact aid revenue)". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 in introductory clause, before "bonds", inserted "school district"; in form of notice of sale, in first paragraph, substituted "general obligation bonds" for "either amortization or serial bonds"; deleted former second and third paragraphs that read: "Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue"; in second paragraph, near beginning before "bonds", deleted "serial", before "amount" inserted "aggregate principal", and at end inserted parenthetical concerning amortization bonds; in third paragraph, after "bonds", deleted "whether amortization or serial bonds", before "date" inserted "an original issue", and after "interest" deleted "at a rate not exceeding ....% per annum"; in fourth paragraph, in first sentence after "less than", deleted "their par value", after "interest" inserted "on the principal amount of the bonds to the date of their delivery", and at end substituted "the price specified for the bonds" for "par" and deleted former second sentence that read: "The bonds shall be sold in open competition bidding, by written bids, or by sealed bids"; in fifth paragraph, after "bids", deleted "other than by or on behalf of the state board of land commissioners" and after "accompanied by" substituted parenthetical concerning bid security for "money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendments: Chapter 11 made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

Chapter 631 substituted fourth paragraph of "Notice of Sale" relating to serial bonds payable according to a maturity schedule for former text, which read: "If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, the sum of .... dollars ($....) of the serial bonds will become payable on the .... day of ...., 19.., and the sum of .... dollars ($....) will become payable on the same day each year thereafter until all of the bonds are paid."; and in fifth paragraph of "Notice" after "per annum" inserted "commencing on the ... day of ... (month), 19.., and" and after "year" inserted "thereafter".

1981 Amendment: Substituted "....%" for "7%" before "per annum" in the sixth paragraph.

20-9-431. Publication of notice of sale of school district bonds.

Compiler's Comments

2011 Amendment: Chapter 253 at beginning inserted "If the trustees conduct a public sale"; and made minor changes in style. Amendment effective April 22, 2011.

Severability: Section 33, Ch. 253, L. 2011, was a severability clause.

Applicability: Section 35, Ch. 253, L. 2011, provided: "[This act] applies to local government actions commencing on or after [the effective date of this act]." Effective April 22, 2011.

1995 Amendment: Chapter 423 near end substituted "one or more newspapers" for "a newspaper"; deleted (2) that read: "(2) If the bond issue to be sold is $10,000 or more, the trustees may cause a brief notice to be published in some newspaper in the city of New York"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1987 Amendment: Substituted (1) referencing notice pursuant to 17-5-106 for former (1) that read: "(1) The trustees shall cause a copy of the notice of sale of the bonds to be:

(a) published once a week for 4 successive weeks preceding the date of the sale in a newspaper as determined by the trustees;

(b) published once, not less than 30 days prior to the date of sale, in some daily newspaper of the state that has a general circulation throughout the state when the bond issue to be sold is $10,000 or more; and

(c) sent to the board of investments."

Case Notes

Failure to Advertise in New York Paper: Under former law, failure to cause notice of sale of bonds to be published in New York City newspaper was no reason for invalidating bond election and subsequent bond issue. Elliot v. School District, 149 M 299, 425 P2d 826 (1967).

20-9-432. Sale of school district bonds.

Compiler's Comments

2011 Amendment: Chapter 253 in (1) at beginning of first sentence inserted "If the trustees conduct a public sale"; and made minor changes in style. Amendment effective April 22, 2011.

Severability: Section 33, Ch. 253, L. 2011, was a severability clause.

Applicability: Section 35, Ch. 253, L. 2011, provided: "[This act] applies to local government actions commencing on or after [the effective date of this act]." Effective April 22, 2011.

1995 Amendment: Chapter 423 in (1), in second sentence after "less than", substituted "the minimum bid specified for bonds" for "par" and substituted "specify the rate of interest and purchase price" for "specify the form of bonds to be issued, whether amortization or serial, and the rate of interest", deleted former third sentence that read: "A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full", and in last sentence, after "less than", substituted "the minimum sale price" for "par"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1983 Amendment: Near beginning and end of (1) after "par" substituted "with accrued interest to date of delivery" for "and accrued interest"; near middle of (1) at beginning of fifth sentence, substituted "Consultants' fees and attorney fees may be paid" for "No attorney fees, brokerage or other fees, or commissions of any kind shall be paid".

20-9-433. Form and execution of school district bonds.

Compiler's Comments

2009 Amendment: Chapter 489 in (1) inserted second sentence concerning qualified school construction bonds or tax credit bonds. Amendment effective May 14, 2009.

2003 Amendment: Chapter 492 in (1) near middle inserted "or indenture of trust". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1995 Amendment: Chapter 423 substituted current text concerning resolution providing for issuance of bonds and prescribing form of bonds and manner of execution of bonds for former text that read: "(1) It is not necessary for the trustees to prescribe the detailed form of the bonds to be issued, but the bonds must conform to all legal requirements for their payment whether they are issued as amortization or serial bonds. The bonds and coupons shall be issued in the name of the school district and shall be executed by the chairman of the trustees and the school district clerk in accordance with 2-16-114. If the bonds are purchased by the board of investments, all payments of principal or interest shall be made at the office of the state treasurer.

(2) The trustees shall cause the bonds, with the attached coupons, to be printed at the expense of the school district at the lowest commercial rates." Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation.

Compiler's Comments

1995 Amendment: Chapter 423 deleted former (1)(a) that read: "(a) the number and amount of each bond"; deleted (1)(d) that read: "(d) the name of the purchaser"; in (2), after "printed", inserted "specimen"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

20-9-435. Delivery of school district bonds and disposition of sale money.

Compiler's Comments

1997 Amendment: Chapter 219 in (3), at end, deleted "Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by investment must be used in the manner provided in 7-6-2802. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from the bond issue must be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of the issue." Amendment effective July 1, 1997.

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1991 Amendments: Chapter 568 in (3), at end of second sentence, inserted "and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district"; and made minor changes in style. Amendment effective April 23, 1991.

Chapter 767 in (3), in first sentence after "realized for", inserted "accrued interest or" and near middle, after "fund", deleted "for the purchase of such bonds"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Attorney General's Opinions

When School Bonds Become Binding: The act of delivery is essential to the very existence of public bonds as obligations binding on their issuers. Therefore, school bonds become binding upon taxpayers on the date the bonds are delivered, not on the date of issuance. 45 A.G. Op. 8 (1993).

20-9-436. County attorney to assist in proceedings.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-9-437. School district liable on bonds.

Compiler's Comments

2013 Amendment: Chapter 400 inserted (4) through (7) regarding oil and natural gas revenue bonds. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2003 Amendment: Chapter 492 in (1) in first sentence near middle and in (2) before "bonds" inserted "general obligation"; and inserted (3) stating what impact aid revenue bonds must be payable from and that the school district's taxing power is not pledged for repayment of the bonds. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 549 inserted (2) concerning use of up to 25% of impact aid funds; and made minor changes in style. Amendment effective May 1, 2001.

20-9-438. Preparation of general obligation debt service fund budget — operating reserve.

Compiler's Comments

2013 Amendment: Chapter 400 inserted (2)(c) regarding amount to satisfy reserve requirement; inserted (3) regarding inclusion of debt service reserve account in final adopted budget; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2003 Amendment: Chapter 492 in (1) near beginning before "bonds" inserted "general obligation". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

1997 Amendment: Chapter 211, in (1), (2), and three places in (4) substituted "final budget" for "preliminary budget"; and in (1), near middle, substituted "20-9-133" for "20-9-113". Amendment effective April 7, 1997.

1991 Amendment: In (2)(b) and in two places in (3), before "reserve", substituted "operating" for "cash"; in (3), in two places after "end-of-the-year", substituted "fund" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: Inserted (2)(b) requiring trustees to include in the debt service fund of the preliminary budget a limited cash reserve for the school fiscal year following the ensuing fiscal year; and inserted (3) allowing trustees to designate a portion of the end-of-the-year cash balance of the debt service fund to be earmarked as a limited cash reserve and providing that any portion of the cash balance not earmarked be used for property tax reduction.

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

Anticipated Tax Delinquencies Includable in Budget: Anticipated delinquencies in tax payments may be included in the computations in preparing a school's debt service fund in the preliminary budget and in setting the levy for the ensuing school fiscal year. 43 A.G. Op. 21 (1989).

Debt Service Fund Deficit to Be Included in Budget: When the debt service fund of a school district contains a deficit from the previous school year, the deficit should be included in the budget and the levy for the ensuing school fiscal year. 43 A.G. Op. 21 (1989).

Increase in Preliminary Budget Limited to Amount of Bonds and Assessments in Treasurer's Statement: A County Superintendent may increase the preliminary budget amount in the debt service fund only to the amount of obligations for bonds and special improvement district assessments contained in the County Treasurer's statement pursuant to 20-9-121. 43 A.G. Op. 21 (1989).

Limited Cash Reserve Not Includable in Debt Service Fund: The limited cash reserve in the debt service fund is made up of a portion of the cash balance of the fund at the end of the fiscal year. Thus, if there is no cash surplus, there can be no limited cash reserve for the next fiscal year. Therefore, trustees are not required to include a limited cash reserve in the debt service fund of the preliminary budget. Even if there is a cash surplus in the debt service fund, trustees are not required to designate a portion for the next fiscal year. 43 A.G. Op. 21 (1989).

20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.

Compiler's Comments

2011 Amendment: Chapter 152 in (2) substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

2007 Amendment: Chapter 194 inserted introductory clause referring to 20-6-326. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

2003 Amendment: Chapter 492 in (1) near beginning before "debt" inserted "general obligation"; and in (1)(a)(iv) inserted "authorized by 20-9-437(2) to be". Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

2001 Amendment: Chapter 549 inserted (1)(a)(iv) concerning impact aid funds used to repay bonds; and made minor changes in style. Amendment effective May 1, 2001.

1995 Amendment: Chapter 586 in (1)(a)(iii) substituted "state advance for school facilities" for "state reimbursement for school facilities"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendments: Chapter 133 in (2) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 633 inserted (1)(a)(iii) relating to state reimbursement for school facilities distributed to qualified district; in (1)(a)(iv), before "anticipated", inserted "including money from federal sources" and at end, after "income", inserted "excluding any guaranteed tax base aid"; in (1)(b), after "budget", deleted "expenditure amount"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1)(a)(i), after "end-of-the-year", substituted "fund" for "cash", after "balance" deleted "less any outstanding warrants", and after "limited" substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1987 Amendment: At end of (1)(a)(i) inserted "and less any limited cash reserve as provided in 20-9-438".

20-9-440. Payment of debt service obligations — termination of interest.

Compiler's Comments

2019 Amendment: Chapter 166 in (2) near beginning after "county treasurer" inserted "or, if a district has established an investment account and subsidiary checking account for the district's debt service fund under 20-9-235, the school district". Amendment effective July 1, 2019.

Effective Date — Applicability Section 4, Ch. 166, L. 2019, provided: "[This act] is effective July 1, 2019, and applies to school fiscal years beginning on or after July 1, 2019."

2013 Amendment: Chapter 400 in (1) in first sentence inserted "oil and natural gas revenue bond", in second sentence after "issued as" substituted remainder of sentence for "impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required", and in third sentence inserted "The school district" and "oil and natural gas revenue"; and made minor changes in style. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2003 Amendment: Chapter 492 in (1) inserted first sentence requiring the school district to provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule, and in second sentence inserted "and, if bonds are to be issued as impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required" and after "tax money" inserted "or impact aid revenue"; and made minor changes in style. Amendment effective April 24, 2003.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under 20-9-443 when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

20-9-441. Redemption of bonds — investment of debt service fund money.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-9-442. Entries of payments and notification of school district.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-9-443. Disposition of remaining debt service fund.

Compiler's Comments

2007 Amendment: Chapter 44 in (2) near end after "aid" substituted "fund" for "account". Amendment effective October 1, 2007.

2005 Amendment: Chapter 462 in (1) near beginning after "bond interest" inserted "and special improvement district obligations"; and made minor changes in style. Amendment effective April 28, 2005.

2001 Amendments — Composite Section: Chapter 480 near middle after "county treasurer to the" substituted "building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school" for "general fund of such school" and at end after "district" inserted "provided that the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 549 in (1) at beginning inserted exception clause; inserted (2) concerning reversion of impact aid funds after bond repayment; and made minor changes in style. Amendment effective May 1, 2001.

Effective Date — Applicability: Section 5, Ch. 480, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to transfers during the school fiscal year beginning on or after July 1, 2001."

Attorney General's Opinions

Transfer of Funds From General Fund to Debt Service Fund — Use of General Fund Money to Pay Bond Principal and Interest Not Allowed — Repayment: Except for the transfer provided for under this section when all bonds and interest have been fully paid, no authority exists for financing the debt service fund from a transfer of money from the general fund or by allocating general fund money for payment of bond principal and interest. Under 20-9-208, the transfer of budgeted amounts between funds, unless specifically authorized by law, is prohibited. (However, see 2001 amendment to 20-9-208.) A school district that received more guaranteed tax base aid than that to which it was entitled because of an unauthorized transfer between funds is required to reimburse the state for the overpayment. 44 A.G. Op. 41 (1992).

County High School Bonds — Surplus: The money remaining in bond debt service fund after payment of a bond debt incurred for a county high school must be transferred to the county general fund unless the Board of County Commissioners directs that such funds be transferred to another series or issue of county bonds. 37 A.G. Op. 83 (1977).

20-9-461. Purpose.

Compiler's Comments

2007 Amendment: Chapter 94 at beginning substituted "Section 20-9-464 and this section" for "Sections 20-9-461 through 20-9-464"; and made minor changes in style. Amendment effective October 1, 2007.

20-9-464. Statute of limitations — action to test validity.

Compiler's Comments

2007 Amendment: Chapter 94 near beginning after "issue" deleted "in which the preliminary proceedings have been submitted to and approved by the attorney general"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 451 at end substituted "the adoption of the resolution calling for the sale of bonds of the school district" for "sale"; and made minor changes in style. Amendment effective April 28, 2005.

20-9-471. Issuance of obligations — authorization — conditions.

Compiler's Comments

2019 Amendment: Chapter 96 in (1) near beginning, (5)(c) in first sentence, and (9) near middle inserted reference to a bank, building and loan association, savings and loan association, or credit union; in (1) near beginning after "electors of the district" inserted "secure loans from or"; inserted (2)(a), (2)(b), and (2)(c) concerning written notice to the board of investments by the trustees before seeking to secure a loan or issue and sell obligations to a regulated lender, the procedure for the board of investments to accept an offer to issue a loan or purchase obligations, and when the trustees may secure a loan or issue and sell obligations to a regulated lender after notification to the board of investments; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 1 in (1)(a) after "costs of vehicles and equipment" inserted "and construction of buildings used primarily for the storage and maintenance of vehicles and equipment"; inserted (1)(c) concerning the costs of nonpermanent modular classrooms; in (3)(a) in two places after "budget" inserted "of an applicable budgeted fund of the district"; inserted (3)(b) concerning pledging revenue; in (4) inserted references to subsections (1)(a) and (1)(c); in (6) at beginning inserted exception clause; and made minor changes in style. Amendment effective February 8, 2017.

2015 Amendments — Composite Section: Chapter 49 in (4)(c) in middle substituted "an election held" for "a special or regular election"; and made minor changes in style. Amendment effective November 4, 2015.

Chapter 344 in (1)(b) substituted "cost-saving measures" for "conservation measures"; and in (5) substituted "guaranteed cost savings" for "conservation-related cost savings". Amendment effective October 1, 2015.

Applicability: Section 14, Ch. 344, L. 2015, provided: "[This act] applies to contracts entered into on or after [the effective date of this act]." Effective October 1, 2015.

2011 Amendment: Chapter 25 in (1)(b) inserted "and conservation measures as defined in 90-4-1102"; inserted (5) prohibiting vote on levy to pay principal or interest on conservation-related cost savings obligations; inserted (6) requiring statement on face of obligation; and made minor changes in style. Amendment effective March 18, 2011.

1997 Amendments: Chapter 23 in (4), at beginning, inserted exception clause. Amendment effective July 1, 1997.

Chapter 499 in (2) substituted "10 fiscal years" for "5 fiscal years"; in (4), in introductory clause at end, inserted "unless"; inserted (4)(a), (4)(b), and (4)(c) concerning conditions under which school district obligations may be used to acquire real property or construct facility; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 37 in (2), near middle of first sentence after "5", deleted "full" and after "fiscal years" inserted "except that the term of the obligation for a qualified energy project may not exceed 10 fiscal years" and inserted second sentence defining qualified energy project; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Correction: In (2), the Code Commissioner substituted Department of Environmental Quality for Department of Natural Resources and Conservation to reflect the assignment of energy conservation projects to that agency in Title 90, ch. 6, part 4.

1991 Amendments: Chapter 719 in (1)(c), before "expenditure", deleted "capital" and at end inserted "including the payment of settlements of legal claims and judgments". Amendment effective April 29, 1991.

Chapter 767 throughout section, before reference to obligation, deleted "short-term"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Effective Date: Section 3, Ch. 264, L. 1989, provided that this section is effective March 23, 1989.

20-9-472. Security for impact aid revenue bonds — agreement of state.

Compiler's Comments

2007 Amendment: Chapter 44 in (1) near middle after "credited to the" substituted "fund" for "account". Amendment effective October 1, 2007.

Effective Date — Applicability: Section 17, Ch. 492, L. 2003, provided: "[This act] is effective on passage and approval [approved April 24, 2003] and applies to bonds authorized on or after [the effective date of this act]."

20-9-473. Security for oil and natural gas revenue bonds.

Compiler's Comments

Effective Date — Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years. Approved May 6, 2013.

20-9-474. Oil and natural gas revenue bond debt service reserve account.

Compiler's Comments

Erroneous Codification Instruction: Section 40, Ch. 400, L. 2013, provided that this section was to be codified as an integral part of Title 20, chapter 9, part 3. The code commissioner has codified this section in Title 20, chapter 9, part 4, to more closely reflect the subject matter.

Effective Date — Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section is effective on passage and approval and applies to school fiscal year 2014 and subsequent school fiscal years. Approved May 6, 2013.

Part 5
Special Purpose Funds

Part Compiler's Comments

Severability: Section 61, Ch. 633, L. 1993, was a severability clause.

Part Administrative Rules

ARM 10.10.320 Cash and budget transfers between school district funds.

Part Attorney General's Opinions

Use of Adult Education and Transportation Funds Prohibited in New School Construction: Under the 2009 version of 20-9-208, the transfer of funds from one budgeted fund to another budgeted fund is restricted, particularly if the funding source is a property tax levy. Property taxes levied to support adult education and transportation funds may be transferred to the school flexibility fund as long as the transfer is within or directly related to the purposes for which the funds were raised, for example, to support adult education or transportation. A transfer of property taxes for any other purpose, such as constructing a new school, is invalid. Transferred funding sources cannot be converted to flex fund revenues or cash balances to cover expenditures authorized for flex fund purposes. A county or school board may demand an accounting to determine how funds were transferred, budgeted, and spent. If liability exists, a county, school board, or citizen with standing may pursue any remedy provided by law. 54 A.G. Op. 6 (2012).

20-9-501. Retirement costs and retirement fund.

Compiler's Comments

2017 Special Session Amendment: Chapter 2 deleted former (4)(a)(v) that read: "(v) property tax reimbursements made pursuant to 15-1-123(6)"; and made minor changes in style. Amendment effective July 1, 2018.

2013 Amendment: Chapter 389 in (4)(a)(iv) substituted "20%" for "35%". Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

2011 Amendments — Composite Section: Chapter 152 deleted former (2)(a)(v) that read: "(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5"; in (5)(b) substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August"; in (11) near end of first sentence substituted "on or before September 15" for "not later than the second Monday in September"; and made minor changes in style. Amendment effective April 10, 2011.

Chapter 411 inserted (4)(a)(v) relating to property tax reimbursements; and made minor changes in style. Amendment effective July 1, 2011.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendments — Composite Section: Chapter 2 deleted former (4)(a)(iv) that read: "(iv) countywide school retirement block grants distributed under 20-9-631"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 489 inserted (2)(a)(v) concerning employee whose salary and health-related benefits are paid from state fiscal stabilization funds received pursuant to the American Recovery and Reinvestment Act of 2009; and made minor changes in style. Amendment effective May 14, 2009.

2007 Amendment: Chapter 44 in (2)(a)(ii) near beginning after "interlocal" substituted "cooperative" for "agreement"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 130 in (4)(a)(iv) substituted "20-9-631" for "section 245, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

Chapter 405 in (2)(a)(ii) at end after "20-9-321" inserted "or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101"; inserted (2)(a)(iv) requiring that a school district or cooperative pay, from the retirement fund, the employer's contributions of a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund; and made minor changes in style. Amendment effective April 25, 2005.

Effective Date — Retroactive Applicability: Section 2, Ch. 405, L. 2005, provided: "[This act] is effective on passage and approval [approved April 25, 2005] and applies retroactively, within the meaning of 1-2-109, to retirement benefits paid in the school fiscal year beginning on or after July 1, 2004."

2003 Amendments — Composite Section: (Temporary version) Chapter 276 inserted (10)((11) in version effective July 1, 2004) requiring each county superintendent to submit a report of the revenue amounts used to establish levy amounts for the county school fund supporting elementary and high school district retirement obligations not later than the second Monday in September. Amendment effective April 9, 2003.

(Version effective July 1, 2004) Chapter 550 in (1) near beginning of first sentence inserted "or the management board of a cooperative" and at end inserted reference to subsection (2)(a) and in four places after "district's" inserted "or the cooperative's"; inserted (2) relating to payments from the retirement fund; and made minor changes in style. Amendment effective July 1, 2004.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

Restrictions on Retirement Fund for Fiscal Year 2004: Section 15, Ch. 550, L. 2003, provided: "(1) For school fiscal year 2004, the amount that a school district or cooperative may charge to the retirement fund for the employer's contributions to the retirement, federal social security, and unemployment insurance systems for all employees whose salaries are paid from a federal funding source is limited to the amount that the district or cooperative charged to the retirement fund for those same purposes for the same group of employees in school fiscal year 2003.

(2) The restriction in subsection (1) does not apply to employees whose salaries are paid from the district's school food services fund." Effective May 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

2001 Amendment: Chapter 574 at end of (3)(a)(i) deleted "including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (3)(a)(iv) concerning retirement block grants; and made minor changes in style. Amendment effective July 1, 2001.

School Retirement Block Grants: Section 245, Ch. 574, L. 2001, provided that the office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county for elementary and high school purposes is set forth in sec. 245(1). See 2001 Session Law for text.

Section 245(2) provided that the average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (3)(a)(i) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 379 in (5) inserted "or district levy"; and inserted (9) limiting community college district levy to property within district. Amendment effective April 20, 1999.

Chapter 554 deleted former (3)(a)(iii) that read: "(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendments: Chapter 211 in (2), near middle of first sentence, substituted "final budget" for "preliminary budget". Amendment effective April 7, 1997.

Chapter 496 in (3)(a)(i), near end after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (3)(a)(ii) concerning oil and gas production taxes for "net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988"; inserted (3)(a)(iii) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (3)(a)(i) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendment: Chapter 133 in (4)(b) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendment: Deleted former (3)(a)(ii) that read: "(ii) anticipated guaranteed tax base aid in support of retirement"; in (3)(a)(iv), at beginning after "any", substituted "fund balance" for "cash", in two places, after "end-of-the-year", substituted "fund" for "cash", and in two places, before "reserve", substituted "operating" for "cash"; inserted (3)(a)(v) that reads: "(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid"; at beginning of (3)(b) inserted "notwithstanding the provisions of subsection (8)"; in (7), at end of first sentence, substituted "special education cooperative budget is prorated to the member school districts" for "budget for the special education cooperative agreement of the district bears to the total budget of the cooperative" and in second sentence, before "fix", inserted "the county commissioners shall"; inserted (8) requiring County Superintendent to calculate the number of mills to be levied on county property to finance the retirement fund net levy requirement; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendments: Section 43, Ch. 11, deleted former fourth sentence of (1) that read: "The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204"; at end of first sentence of (2) deleted "and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve"; inserted (3)(a)(ii) relating to guaranteed tax base aid; at end of (3)(a)(iii), relating to net proceeds taxes, deleted "for interim production and new production, as defined in 15-23-601"; deleted former (4)(b) that read: "(b) reduce the total retirement fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of 20-9-532"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Sections 43 and 89, Ch. 11, in (3)(a)(i) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537". Amendment effective August 11, 1989.

Section 89, Ch. 11, at end of (3)(a)(ii), relating to net proceeds taxes, inserted "and local government severance taxes on any other oil and gas production occurring after December 31, 1988"; and inserted (3)(a)(iii) relating to coal gross proceeds taxes. Amendment effective August 11, 1989.

1987 Amendments: Chapter 611 in (3)(a)(i), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 635 inserted (4)(b) relating to reduction of retirement fund requirements because of equalization aid; and made minor changes in phraseology.

Chapter 655 in (3)(a)(ii), before "new production", inserted "interim production and".

1985 Amendment: Inserted (3)(a)(ii) relating to net proceeds taxes for new production.

1983 Amendment: In (3)(a)(i), inserted "including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Case Notes

Special Tax Levy — Teachers' Retirement: Under the applicable 1974 statutes the Flathead County Board of County Commissioners had authority to levy a special tax to finance the Flathead Valley Community College district's teachers' retirement fund contribution separate from other levies made to finance the general fund, building debt service, and adult education program. Burlington N., Inc. v. Flathead County, 176 M 9, 575 P2d 912 (1978).

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in this section that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. (See 1999 amendment.) 47 A.G. Op. 17 (1998).

20-9-502. Purpose and authorization of building reserve fund — subfund structure.

Compiler's Comments

2021 Amendment: Chapter 245 in (3)(a) near end of fifth sentence after "$15,000 and the product of" substituted "$110" for "$100". Amendment effective July 1, 2021.

Applicability: Section 6, Ch. 245, L. 2021, provided: "[This act] applies to notice requirements, school budgets, property tax levies, and state major maintenance aid calculations related to school fiscal years beginning on or after July 1, 2022."

2019 Amendments — Composite Section: Chapter 3 in (3)(g) substituted "former" for "[former]". Amendment effective October 1, 2019. Amendment rendered void by Ch. 253 amendment.

Chapter 253 in (3)(a) at beginning of second sentence deleted "Except as provided in subsection (3)(g)" and near end substituted "identified improvements or projects" for "identified school major maintenance projects"; in (3)(a)(i) substituted "no later than March 31 of each fiscal year" for "no later than June 1 for fiscal year 2017 only and no later that March 31 for fiscal years 2018 and subsequent fiscal years"; in (3)(a)(i)(A) substituted "anticipated improvements or projects" for "anticipated school major maintenance projects"; deleted former (3)(g) that read: "(g) A district awarded a quality schools facility grant pursuant to [former] Title 90, chapter 6, part 8, during the biennium beginning July 1, 2017, may not impose the levy under this subsection (3) during the biennium beginning July 1, 2017"; inserted (5)(a)(ii) concerning funds generated by a voter-approved levy; inserted (5)(b) concerning a voted levy; and made minor changes in style. Amendment effective May 2, 2019.

2017 Amendment — Coordination — Code Commissioner Correction: Chapter 404 in (1) after "The trustees of any district" deleted "with the approval of the qualified electors of the district", at end of first sentence inserted "fund to budget for and expend funds for any of the purposes set forth in this section", and inserted second sentence requiring appropriate subfunds; in (2)(a) at beginning inserted "A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district" and at end of first sentence deleted "or for the purpose of funding school transition costs as provided in subsections (5) and (6)"; in (2)(a)(iii) substituted "for the levy" for "in subsection (1)(b)"; in (2)(b) substituted "subsection (4)(b)" for "subsections (5)(b) and (6)"; inserted (3) requiring a subfund for school major maintenance and repairs, authorizing a nonvoted levy of up to 10 mills, defining school major maintenance amount, requiring certain public notice requirements to adopt the levy, requiring the county superintendent to report to the county commissioners, and prohibiting a district with a quality schools facility grant from imposing levy until after June 30, 2019; in (4)(a) substituted "A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district" for "The trustees may submit a proposition to the qualified electors of the district for a levy"; inserted (4)(a)(v) regarding approval from voters to expand an elementary district into a K-12 district; in (4)(b) substituted "subsection (4)(c)" for "subsections (5)(c) and (6)" and in last sentence at beginning deleted "Except as provided in subsection (6)"; inserted (5) requiring a subfund for school safety and security purposes in the building reserve fund; deleted former (6) that read: "(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years"; and made minor changes in style. Amendment effective May 19, 2017.

In (3)(g) the code commissioner inserted "[former]" before "Title 90, chapter 6, part 8" to reflect the repeal of that part.

The amendments to this section made by sec. 2, Ch. 205, L. 2017, and sec. 6, Ch. 404, L. 2017, were rendered void by sec. 13, Ch. 404, L. 2017, a coordination section.

Applicability — Retroactive Applicability: Section 15, Ch. 404, L. 2017, provided that: (1) this section applies to school district budgets beginning on or after July 1, 2017; and (2) the authority and requirement for notice under subsection (3) of this section applies retroactively, within the meaning of 1-2-109, to levies noticed on or after January 1, 2017. Approved May 19, 2017.

2009 Amendment: Chapter 213 in (2) deleted first sentence that read: "The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406." Amendment effective October 1, 2009.

2007 Amendment: Chapter 194 in (1) at end of first sentence inserted reference to subsection (6); in (2) in second sentence in exception clause inserted reference to subsection (6); in (5)(b) in first and second sentences in exception clause inserted reference to subsection (6); inserted (6) concerning levy for transition costs; and made minor changes in style. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

2001 Amendments — Composite Section: Chapter 237 in (1) at end of first sentence inserted "or for the purpose of funding school transition costs as provided in subsection (5)"; in (2) near beginning of first sentence inserted "less the amount provided for in subsection (5)" and at beginning of second sentence inserted exception clause; inserted (5) requiring voter approval for a levy to fund transition costs when a school district opens or closes a school or replaces a school building or when a school district consolidates with or annexes another school district; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

Chapter 495 in (1)(d) inserted reference to 15-10-425; and at end of (3) substituted "in compliance with 15-10-425" for "in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO".

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used)?

☐ BUILDING RESERVE—YES.
☐ BUILDING RESERVE—NO"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: In (2) substituted "the limitations provided in 20-9-406" for "45% of the taxable value of the taxable property of the district. Such limitation shall be determined in the manner provided in 20-9-406"; and made minor changes in style. Amendment effective July 1, 1991.

1981 Amendment: Substituted "shall not be more than 45% of the taxable value" for "shall not be more than 5% of the value" in (2).

20-9-503. Budgeting, tax levy, and use of building reserve fund.

Compiler's Comments

2017 Amendment: Chapter 1 in (2)(a) after "revenue" deleted "for loans", substituted "15 years to repay loans" for "5 years. However, loan proceeds may be", and after "projects authorized by" inserted "the electors of the district pursuant to"; and made minor changes in style. Amendment effective February 8, 2017.

Transfer Authority to Building Reserve Fund: Section 9, Ch. 364, L. 2013, provided: "(1) For fiscal year 2013 through fiscal year 2015 only, a school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school safety and security as follows:

(a) planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants;

(b) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(c) installing or updating bullet-resistant windows and barriers; and

(d) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) by June 30, 2015, must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds." The section was not codified because of its short duration. The section is effective April 30, 2013, and terminates June 30, 2015.

2011 Amendment: Chapter 152 in (1) near middle of second sentence substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

1997 Amendments: Chapter 23 inserted (2)(a) allowing trustees to pledge loan revenue for up to 5 years for authorized projects; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 211 in (1), at end of first sentence, substituted "final budget" for "preliminary budget"; and made minor changes in style. Amendment effective April 7, 1997.

1993 Amendment: Chapter 133 in (1), in second sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-9-504. Extracurricular fund for pupil functions.

Compiler's Comments

2013 Amendment: Chapter 38 in (1) in first sentence substituted "trustees of" for "government of the pupils of the school within", after "district" deleted "or the administration of a school on behalf of the pupils", substituted "receiving and expending" for "the receipts and expenditures of", and after "functions" deleted "with the approval of the trustees of the district"; and inserted (3) regarding investment of excess money in the extracurricular fund and the expenditure of interest. Amendment effective October 1, 2013.

1991 Amendment: In (2), in introductory clause, substituted "superintendent of public instruction must" for "department of commerce shall"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

20-9-505. Purpose and establishment of nonoperating fund.

Compiler's Comments

1991 Amendment: In (1), in two places, and in first sentence of (2) substituted reference to fund balance for reference to cash balance; in (2), in seven places before "reserve", substituted "operating" for "cash"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

20-9-506. Budgeting and net levy requirement for nonoperating fund.

Compiler's Comments

2011 Amendment: Chapter 152 in (3) near middle substituted "on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and the county commissioners shall impose the required levies on the district" for "on the fourth Monday of August, and such levies shall be made on the district by the county commissioners"; and made minor changes in style. Amendment effective April 10, 2011.

1993 Amendment: Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

20-9-507. Miscellaneous programs fund.

Compiler's Comments

2013 Amendment: Chapter 46 in (1) in third sentence after "reimbursement" deleted "or a local government severance tax payment". Amendment effective October 1, 2013.

2011 Amendment: Chapter 418 in (1) in second sentence after "recoveries" deleted "the transfer of a fund balance from a tuition fund closed under 20-9-201", in third sentence after "reimbursement" deleted "the transfer of a tuition fund balance", and in last sentence after "project" deleted "funds transferred from a closed tuition fund". Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2001 Amendment: Chapter 356 in (1) in middle of second sentence inserted "the transfer of a fund balance from a tuition fund closed under 20-9-201", in third sentence inserted "the transfer of a tuition fund balance", and in last sentence near end inserted "funds transferred from a closed tuition fund"; and made minor changes in style. Amendment effective April 23, 2001.

1999 Amendment: Chapter 554 in (1) in second sentence near middle after "realized by the district" deleted "a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325"; and made minor changes in style. Amendment effective January 1, 2000.

Saving Clause: Section 16, Ch. 554, L. 1999, was a saving clause.

Applicability: Section 19(1), Ch. 554, L. 1999, provided that this section applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

1997 Amendment: Chapter 22 in (1), near middle of first sentence, substituted "impact aid, as provided in 20 U.S.C. 7701, et seq." for "Title I of Public Law 81-874", in second sentence, after "15-36-325", inserted "indirect cost recoveries", and at end of fifth sentence substituted "local, state, or federal grant project and the indirect cost recoveries" for "federal grant program and for the aggregate of all reimbursement money"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 451 in second sentence, after "district", inserted "a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325" and in third sentence, after "reimbursement", inserted "or a local government severance tax payment". Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments — Composite Section: Chapter 466 near beginning of (1) substituted "20-9-321(8)" for "20-9-321(3)". The Code Commissioner has not made this revision because the reference was merely a reflection of the amendment to 20-9-321 made by Ch. 466, and the reference was deleted by Ch. 633. Amendment effective July 1, 1994.

Chapter 563 near beginning of (1) substituted "20-5-324" for "20-5-307(4), 20-5-312(8)".

Chapter 633 near beginning of (1), after "20-5-312(8)", deleted "and 20-9-321(3)". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: In (1), in first sentence after "receiving", substituted "money from local" for "grants of" and after "state or federal" substituted "or other sources provided in 20-5-307(4), 20-5-312(8), and 20-9-321(3)" for "moneys" and in second sentence, after "reimbursement of", inserted "miscellaneous program fund"; in (2), at end after "fund", deleted "which shall be applied by individual grant programs or for the aggregate amount of the reimbursement moneys rather than on the basis of the total fund"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Public Law Reference: Public Law 81-874, referred to in this section, is compiled in the U.S.C. as Title 20, §§ 236 through 244.

Administrative Rules

ARM 10.10.310 Unobligated tuition money in the miscellaneous programs fund.

20-9-508. Building fund.

Compiler's Comments

1999 Amendment: Chapter 343 deleted former (1)(d) that read: "(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1995 Amendment: Chapter 506 in (1)(f) inserted "including payments made by a developer under the provisions of 20-9-615"; and made minor changes in style. Amendment effective April 15, 1995.

Case Notes

Authority of Board of Trustees to Proceed With School Construction Without Voter Approval — Use of Insurance Proceeds — Contiguous Property: A citizens' group contended that a school district Board of Trustees lacked the authority to construct a new middle school without first getting approval from the voters for the purchase of the property. The District Court correctly found that the Board had authority to proceed with construction: (1) without an election if the cost could be financed without exceeding the maximum-general-fund-budget-without-a-vote amount, as set out in 20-6-603; (2) using insurance proceeds to credit the district building fund under this section; and (3) without a site approval election if the property was contiguous to an existing site that was in use for school purposes under 20-6-621. The Awareness Group v. Bd. of Trustees, 243 M 469, 795 P2d 447, 47 St. Rep. 1333 (1990).

20-9-509. Lease or rental agreement fund.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), near middle of third sentence after "$10,000", inserted "for an elementary or high school district or $20,000 for a K-12 district" and near end, after "excess of", substituted "this limit must" for "$10,000 shall"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: Throughout section changed fund name from "housing and dormitory fund" to "lease or rental agreement fund".

1983 Amendment: In (1), raised the maximum housing and dormitory cash balance from $3,000 to $10,000.

20-9-512. Compensated absence liability fund.

Compiler's Comments

1995 Amendment: Chapter 129 at beginning of (3) substituted "The trustees may transfer money from the general fund, within the adopted budget" for "At the end of each school fiscal year, the trustees may appropriate a portion of the general fund end-of-the-year fund balance"; and near end of (4)(a) and (4)(b) substituted "current school fiscal year" for "preceding school fiscal year". Section 2, Ch. 129, repealed the termination date formerly applicable to this section found in sec. 3, Ch. 754, L. 1991. Amendment effective July 1, 1995.

1991 Amendments: Chapter 568 in (3) ((2) of version effective July 1, 1995), before "balance", substituted "fund" for "cash"; in (4)(a) ((3) of version effective July 1, 1995) substituted "June 30" for "January 15"; and made minor changes in style. Amendment effective April 23, 1991.

Chapter 754 in (1) substituted "compensated absence liability" for "reserve"; in (1)(a) and (4)(a), after "nonteaching", inserted reference to administrative; inserted (1)(b) authorizing trustees to establish compensated absence liability fund to pay "any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district"; at beginning of (2) substituted "The compensated absence liability" for "Such a reserve"; in (3), before "balance", substituted "fund" for "cash" and after "establish" substituted "and maintain the compensated absence liability" for "such a reserve"; in (4) changed subsection reference; in (4)(a) substituted "June 30" for "January 15"; inserted

(4)(b) prohibiting maximum amount in reserve fund from exceeding 30% of "the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the preceding school fiscal year"; inserted (5) defining administrative school district employee; and made minor changes in style. Amendment effective July 1, 1991, and terminates July 1, 1995.

Termination: Section 3, Ch. 754, L. 1991, provided: "[This act] terminates July 1, 1995."

Attorney General's Opinions

Transfer of End-of-the-Year General Fund Balance Required: There is no basis for the conclusion that school district trustees may establish or maintain the compensated absence liability fund only with the positive difference between initially budgeted and actually expended amounts. Rather, school district trustees may transfer any portion of the end-of-the-year general fund balance, as that term is used in 20-9-104, into the compensated absence liability fund subject to the limitations in this section. 45 A.G. Op. 27 (1994).

20-9-514. Impact aid fund.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), in two places, and in (2) substituted reference to 20 U.S.C. 7701, et seq., for reference to Title I of Public Law 81-874. Amendment effective July 1, 1997.

Effective Date: Section 59(1), Ch. 633, L. 1993, provided that this section is effective July 1, 1993.

20-9-515. Litigation reserve fund.

Compiler's Comments

Effective Date — Retroactive Applicability: Section 4, Ch. 493, L. 1995, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994." Effective April 15, 1995.

Administrative Rules

ARM 10.10.315 Litigation reserve fund.

20-9-516. School facility and technology account.

Compiler's Comments

2017 Special Session Amendment: Chapter 6 in (1) at beginning of second sentence inserted "Subject to legislative fund transfer"; inserted (3) regarding state debt service payments for the biennium beginning July 1, 2017, and transfers that must be completed prior to any other transfers; and made minor changes in style. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2017 Amendment: Chapter 404 in (1) at end substituted "contingent on appropriation from the legislature, funding for the following in priority order" for "money to schools for"; substituted current language in (1)(a) and (1)(b) for former language that read: "(a) major deferred maintenance;

(b) improving energy efficiency in school facilities;

(c) critical infrastructure in school districts;

(d) emergency facility needs;

(e) technological improvements; and

(f) state reimbursement for school facilities as provided in 20-9-371; inserted (3) regarding a transfer of excess funds from the school facility and technology account to the school major maintenance aid account; and made minor changes in style. Amendment effective May 19, 2017.

Applicability: Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

2013 Amendment: Chapter 17 deleted former (2)(b) that read: "(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622"; and made minor changes in style. Amendment effective July 1, 2013.

2013 Purported Amendment — Line-Item Veto: Chapter 325, L. 2013, purported to amend this section as follows:

"20-9-516. School facility and technology account. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools. After the distribution pursuant to 20-9-534 is made, the remainder of the account must be used for~~:~~

~~(a) major deferred maintenance;~~
~~(b) improving energy efficiency in school facilities;~~
~~(c) critical infrastructure in school districts;~~
~~(d) emergency facility needs;~~
~~(e) technological improvements; and~~
~~(f)~~ state reimbursement for school facilities as provided in 20-9-371.
(2) If funds remain in the account after the distribution in subsection (1) is made, the budget director shall certify the amount of unencumbered funds available in the account. These available funds must be used for grants made by the department of commerce under 90-6-802. Grants made pursuant to 90-6-802 must be for:
(a) emergency facility needs;
(b) critical infrastructure in school districts;
(c) major deferred maintenance;
(d) improving energy efficiency in school facilities; and
(e) technological improvements.
~~(2)~~(3) There must be deposited in the account:
(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;
(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and
(c) the income received from certain lands and riverbeds as provided in 17-3-1003(5)." The governor removed this section from the bill in a line-item veto issued April 26, 2013.

2011 Amendments — Composite Section: Chapter 371 in (1) inserted (1)(f) regarding state reimbursement for school facilities; deleted former (2)(c) that read: "(c) the rental income received from power site leases as provided in 77-4-208" and inserted (2)(c) regarding income received from certain lands and riverbeds; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 418 inserted (1)(f) relating to state reimbursement for school facilities; and made minor changes in style. Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2009 Amendment: Chapter 377 in (1) near beginning substituted "school facility and technology account" for "school facility improvement account" and near end of (1) after "schools" deleted "to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, Chapter 1, Special Laws of December 2005"; inserted (1)(d) relating to emergency facility needs; inserted (1)(e) relating to technological improvements; inserted (2) relating to money to be deposited into the account; and made minor changes in style. Amendment effective April 28, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

Effective Date: Section 31, Ch. 1, Sp. L. May 2007, provided: "[This act] is effective July 1, 2007."

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-9-525. School major maintenance aid account — formula.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 772, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 245 in (2) after "and secondary schools under 20-9-309" substituted "including but not limited to" for "and that involve, except as provided in subsection (7)"; deleted former (2)(a) and (2)(b) providing for a priority in the use of the account (see 2021 Session Law for former text); inserted (2)(a) listing "improvements to school and student safety and security as described in 20-9-236(1)"; in (2)(b) at beginning deleted "undertaking"; in (3)(a)(i)(A) at end substituted "187%" for "171%"; deleted former (7) allowing a school district board of trustees to use funds when they have certified to the office of public instruction a current school safety plan or emergency operations plan (see 2021 Session Law for former text); in (7)(b) after "$15,000 and the product of" substituted "$110" for "$100"; and made minor changes in style. Amendment effective July 1, 2021.

Applicability: Section 6, Ch. 245, L. 2021, provided: "[This act] applies to notice requirements, school budgets, property tax levies, and state major maintenance aid calculations related to school fiscal years beginning on or after July 1, 2022."

2019 Amendments — Composite Section: Chapter 10 in (3)(a)(i) substituted "determined" for "certified" and substituted "20-9-369" for "15-10-202"; in (3)(a)(iii) at end substituted "district's mill value" for "district's school major maintenance amount"; inserted (3)(a)(iv) concerning division of the result determined under subsection (3)(a)(iii); in (3)(b) and (3)(c) substituted "subsection (3)(a)(iv)" for "subsection (3)(a)(iii)"; in (4) substituted "determined" for "certified" and substituted "20-9-369" for "15-10-202"; and made minor changes in style. Amendment effective February 19, 2019.

Chapter 96 in (2) near beginning inserted "including the payment of principal and interest on obligations issued pursuant to 20-9-471 for school facility projects"; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 253 in (2) at end inserted exception clause; inserted (7) concerning certification of a current school safety plan or emergency operations plan and utilization of proceeds from an authorized levy; and made minor changes in style. Amendment effective May 2, 2019.

2017 Special Session Amendment: Chapter 6 in (2) at beginning inserted "Subject to legislative fund transfer"; and made minor changes in style. Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

Effective Date — Applicability: Section 15, Ch. 404, L. 2017, provided that this section is effective on passage and approval and applies to school district budgets beginning on or after July 1, 2017. Approved May 19, 2017.

20-9-533. Technology acquisition and depreciation fund — limitations.

Compiler's Comments

2013 Amendment: Chapter 262 in (1) after "incurred" deleted "and depreciation accrued"; in (1)(a) after "maintenance" deleted "and depreciation"; inserted (1)(b) regarding cloud computing services; in (3) in first sentence after "district" inserted "for levies approved prior to July 1, 2013" and in last sentence after "budgeted" inserted "pursuant to levies approved prior to July 1, 2013"; in (6) in middle substituted "costs of providing the technologies included in subsection (1)" for "the depreciation of technological equipment authorized under this section" and inserted last sentence limiting levies approved after July 1, 2013, to 10 years; inserted (8) regarding proposition for technology levy; and made minor changes in style. Amendment effective July 1, 2013.

Saving Clause: Section 2, Ch. 262, L. 2013, was a saving clause.

Applicability: Section 4, Ch. 262, L. 2013, provided: "[This act] applies to a school district technology levy authorized after [the effective date of this act]." Effective July 1, 2013.

2011 Amendment: Chapter 152 in (4) substituted "on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

2001 Amendment — Coordination: Chapter 474 in (1), (1)(a), (2), and (8) inserted "and depreciation"; in (1) after "incurred" inserted "and depreciation accrued"; in (2) inserted first sentence requiring expenditures from fund to be made in accordance with financial administration requirements for budgeted fund; in (2)(b) after "state" inserted "private" and at end inserted "or technology-associated training"; inserted (3) requiring trustees upon voter approval to include up to 20% of original cost of equipment in district's budget when depreciating technology equipment and limiting amount budgeted to 150% of original cost of equipment; inserted (4) requiring annual revenue requirement of fund to be reported by county superintendent to county commissioners for setting fund levy requirement; inserted (5) requiring expenditure of fund money to be within limits of fund budget and financial administration provisions; inserted (6) authorizing trustees to submit additional levy to fund depreciation of technological equipment to voters as prescribed in Title 20 and requiring specific ballot provisions for the levy; inserted (7) requiring approval by majority of voters for passage of proposed technology levy and providing that levy is subject to 15-10-420; and made minor changes in style. Amendment effective April 30, 2001.

The amendments to subsection (6) made by sec. 2, Ch. 474, L. 2001, were rendered void by sec. 3, Ch. 474, L. 2001, a coordination instruction, which provided: "If House Bill No. 179 is passed and approved, then [section 2(6) [20-9-533(6)] of this act] must read as follows: "(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by [section 1 of House Bill No. 179] [15-10-425]."" House Bill No. 179 was passed and approved as Ch. 495, L. 2001.

Effective Date — Applicability: Section 4, Ch. 474, L. 2001, provided: "[This act] is effective on passage and approval [approved April 30, 2001] and applies to school budgets for school fiscal years beginning on or after July 1, 2001."

1997 Amendment: Chapter 22 in (2), after "fund the", deleted "budget for the" and at end, after "20-9-534", inserted "and with other local, state, and federal funds received for the purpose of funding technology"; deleted former (3) that read: "(3) Whenever the trustees of a district establish the technology acquisition fund, the trustees shall:

(a) adopt a resolution stating the reasons and purpose for financing a technology acquisition fund budget;

(b) adopt a budget for the amount required for the technology acquisition fund for the ensuing school fiscal year; and

(c) report the technology acquisition fund budget to the county superintendent on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 8, Ch. 517, L. 1995, provided that this section is effective July 1, 1995.

20-9-534. Statutory appropriation for school technology purposes.

Compiler's Comments

2021 Amendment: Chapter 475 in (1) at end substituted "to the office of public instruction" for "for grants for school technology purposes"; deleted former (2) that read "(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533"; inserted (2) concerning allocation of funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505; inserted (3) concerning allocation of the remaining 75% of the appropriation under subsection (1) for grants for school technology purposes and the distribution formula; and inserted (4) concerning unspent funds. Amendment effective July 1, 2021, and terminates June 30, 2023.

Applicability: Section 3, Ch. 475, L. 2021, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2021."

2017 Amendment: Chapter 259 in (1) substituted "to the department of commerce for providing funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505, provided that none of the state matching funds may be used by schools for self-construction of their own or portions of their own networks" for "for grants for school technology purposes"; deleted former (2) that read: "(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533"; and made minor changes in style. Amendment effective July 1, 2017, and terminates June 30, 2019.

Applicability: Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

2013 Amendment: Chapter 329 in (2) at end deleted "in the prior fiscal year." Amendment effective July 1, 2013.

Applicability: Section 10, Ch. 329, L. 2013, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2013."

2011 Amendment: Chapter 152 in (2) near beginning substituted "the third Friday in July" for "September 1". Amendment effective April 10, 2011.

2009 Amendment: Chapter 377 inserted (1) establishing a statutory appropriation for school technology purposes; in (2) near beginning substituted "statutory appropriation for school technology purposes" for "amount for grants for school technology purchases" and deleted former last sentence that read "The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502"; and made minor changes in style. Amendment effective April 28, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

2002 Amendment: Chapter 3 near end of first sentence substituted "provided in 20-9-343 for the purposes of 20-9-533" for "provided in 20-9-343(3)(a)(ii)". Amendment effective August 13, 2002.

Effective Date — Retroactive Applicability: Section 5, Ch. 3, Sp. L. August 2002, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning July 1, 2001." Approved August 13, 2002.

2001 Amendment: Chapter 554 in first sentence near beginning after "annual amount" deleted "appropriated" and at end substituted "prior fiscal year" for "current school year" and inserted second sentence statutorily appropriating the grants. Amendment effective July 1, 2001.

1997 Amendment: Chapter 22 at beginning inserted "By September 1" and after "allocate the" inserted "annual". Amendment effective July 1, 1997.

Effective Date: Section 8, Ch. 517, L. 1995, provided that this section is effective July 1, 1995.

20-9-537. Montana Indian language preservation program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 571, L. 2023. Amendment effective July 1, 2023.

Transition: Section 2, Ch. 571, L. 2023, provided: "The legislature intends that the office of public instruction collaborate with tribal governments to adopt program guidelines and solicit applications by October 1, 2023, so that funds may be distributed in fiscal year 2024 no later than February 1, 2024."

2021 Amendments — Composite Section: Chapter 240 in (2)(a) near end after "each tribal government" substituted "of a federally recognized Indian tribe in Montana" for "located on the seven Montana reservations and the Little Shell Chippewa tribe". Amendment effective April 19, 2021.

Chapter 261 in (5)(b) after "the legislature" inserted "and to the state-tribal relations committee". Amendment effective April 20, 2021.

Chapter 562 in (2)(a), (5)(a), and (5)(b) substituted reference to the office of public instruction for reference to the state-tribal economic development commission; and in (6)(h) substituted "the state-tribal economic development commission" for "the office of public instruction". Amendment effective July 1, 2021.

Termination Provisions Repealed: Section 4, Ch. 562, L. 2021, repealed sec. 7, Ch. 410, L. 2013, secs. 3 and 7, Ch. 426, L. 2015, secs. 2, 3, 4, and 9, Ch. 232, L. 2017, and secs. 1 through 7, Ch. 77, L. 2019, which terminated this section June 30, 2023. Effective July 1, 2021.

Extension of Termination Date: Sections 1 through 7, Ch. 77, L. 2019, amended sec. 7, Ch. 410, L. 2013, secs. 3 and 7, Ch. 426, L. 2015, and secs. 2, 3, 4, and 9, Ch. 232, L. 2017, by extending the termination dates imposed by those sections to June 30, 2023. Effective March 20, 2019.

2017 Amendment: Chapter 232 in (1) substituted "spoken, written, sung, or signed language" for "spoken, written, or sign language"; in (2)(c)(iv) substituted "administration" for "development"; in (3) at beginning deleted "By December 15, 2016" and after "submitted" inserted "within 1 year of production"; inserted (9) concerning payments used for matching funds; and made minor changes in style. Amendment effective April 25, 2017, and terminates June 30, 2019.

Extension of Termination Date: Sections 2, 3, and 4, Ch. 232, L. 2017, amended sec. 7, Ch. 410, L. 2013, and secs. 3 and 7, Ch. 426, L. 2015, by extending the termination dates imposed by those sections to June 30, 2019. Effective April 25, 2017.

2015 Amendment — Code Commissioner Correction: Chapter 426 in (1) after "Montana Indian language" deleted "pilot" and after "preserve" inserted "and perpetuate"; in (2)(a) after "Montana historical society" deleted "Montana public television organizations" and at end substituted "create program guidelines" for "adopt program rules by July 31, 2013"; in (2)(b) substituted "guidelines" for "rules"; in (2)(c)(ii) substituted "reference materials, which may be in audio, visual, electronic, or written format" for "dictionaries and other reference materials, including audio, visual, electronic, or written dictionaries"; inserted (2)(c)(iv) regarding strategic plans; inserted (2)(d)(v) regarding formal and informal presentations; in (3) substituted "By December 15, 2016, any tangible goods produced under this section" for "By September 15, 2014, at least two copies of any tangible goods produced under this section, including but not limited to audio or visual recordings, literature, dictionaries, or other publications"; in (4) after "Tribal governments" inserted "or their designees", after "program funds" substituted "may" for "shall", and deleted former last sentence that read: "Each local program advisory board shall work with college tribal language instructors and individuals who evaluate applicants for licensure as a class 7 American Indian language and culture specialist to develop and adopt measurable and specific outcome requirements for their respective language preservation programs"; in (5)(a) substituted "Each tribal government or designee" for "Each local program advisory board" and substituted "other criteria required under the guidelines established pursuant to subsection (2)(a) to the state-tribal economic development commission" for "other criteria determined by the state-tribal economic development commission pursuant to subsection (2)(a) to the state-tribal relations committee at each meeting during the interim"; in (5)(b) substituted "state-tribal economic development commission" for "state-tribal relations committee" and at end substituted "preservation program to the legislature as provided in 5-11-210" for "preservation pilot program to the 64th legislature"; in (6) after "Tribal governments" inserted "and their designees"; and made minor changes in style. Amendment effective May 5, 2015 and terminates June 30, 2017.

Although section 7, Ch. 426, L. 2015, provided that the amendments to this section terminate July 30, 2017, the code commissioner corrected the termination date to June 30, 2017, to coincide with the termination date for the section.

Preamble: The preamble attached to Ch. 426, L. 2015, provided: "WHEREAS, Montana is committed in its educational goals to the preservation and perpetuation of American Indian cultural integrity; and

WHEREAS, language is the conveyor of culture and is fundamental to cultural integrity and identity; and

WHEREAS, Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers; and

WHEREAS, the tribes and the state have resources such as the tribal colleges, councils, historic preservation offices, state universities, the Montana historical society, and the state library to preserve and protect Montana tribal languages for current and future generations."

Extension of Termination Date: Section 3, Ch. 426, L. 2015, amended sec. 7, Ch. 410, L. 2013, by extending the termination date imposed by Ch. 410 to June 30, 2017. Effective May 5, 2015.

Preamble: The preamble attached to Ch. 410, L. 2013, provided: "WHEREAS, Montana is committed in its educational goals to the preservation of American Indian cultural integrity; and

WHEREAS, language in the form of spoken, written, or sign language is foundational to cultural integrity; and

WHEREAS, Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers; and

WHEREAS, the tribes and the state have resources, such as the tribal colleges, councils, and historic preservation offices and the state universities, historical society, and library, to preserve and protect Montana tribal languages for this and future generations."

Effective Date: Section 6, Ch. 410, L. 2013, provided that this section is effective on passage and approval. Approved May 6, 2013.

Termination: Section 7, Ch. 410, L. 2013, provided: "[This act] terminates June 30, 2015."

Administrative Rules

Title 10, chapter 75, ARM Montana Indian language preservation program.

20-9-543. School flexibility fund — uses.

Compiler's Comments

2021 Amendment: Chapter 9 in (1) in introductory clause substituted "may establish" for "shall establish" and deleted former (1)(b) that read: "(b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB"; deleted former (2) that read: "(2) The trustees of a district shall fund the school flexibility fund with the money allocated under 20-9-542 and with the money raised by the levy under 20-9-544"; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment Repealed — Termination Ineffective: Section 21, Ch. 480, L. 2021, repealed sec. 27, Ch. 457, L. 2015, which amended this section. This rendered ineffective the termination date imposed by sec. 33, Ch. 457, L. 2015, which would have terminated the amendments December 31, 2023. Effective October 1, 2021.

2015 Amendment: Chapter 457 inserted (1)(a)(x) regarding innovative educational programs and technology deficiencies; in (2) inserted "20-9-904 and"; and made minor changes in style. Amendment effective January 1, 2016, and terminates December 31, 2023.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

2015 Amendment: Chapter 457 inserted (1)(a)(x) regarding innovative educational programs and technology deficiencies; in (2) inserted "20-9-904 and"; and made minor changes in style. Amendment effective January 1, 2016, and terminates December 31, 2023.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Effective Date — Applicability: Section 23(1), Ch. 237, L. 2001, provided that this section is effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

20-9-570. Statewide average per-pupil spending.

Compiler's Comments

Extension of Termination Date: Section 20, Ch. 480, L. 2021, amended sec. 33, Ch. 457, L. 2015, by extending the termination date imposed by Ch. 457 to December 31, 2029. Effective July 1, 2021.

Severability: Section 30, Ch. 457, L. 2015, was a severability clause.

Effective Date: Section 31, Ch. 457, L. 2015, provided: "[This act] is effective January 1, 2016."

Applicability: Section 32, Ch. 457, L. 2015, provided: "[This act] applies to tax years beginning after December 31, 2015."

Termination: Section 33, Ch. 457, L. 2015, provided: "[This act] terminates December 31, 2023."

Part 6
Public School Fund and Grants to Schools

Part Law Review Articles

Montana's State School Trust Lands, Wiles, 38 Pub. Land & Resources L. Rev. 149 (2017).

20-9-601. Public school fund.

Compiler's Comments

2001 Amendment: Chapter 34 in first sentence of introductory clause substituted "permanent fund type" for "nonexpendable trust fund type". Amendment effective July 1, 2001.

1999 Amendment: Chapter 122 in (6) at beginning inserted exception clause; in (8) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1999.

Deletion of Termination Date: Section 9, Ch. 533, L. 1993, amended sec. 6, Ch. 14, Sp. L. January 1992, by removing the termination date for this section.

Preamble: The preamble attached to Ch. 14, Sp. L. January 1992, provided: "WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands [now Department of Natural Resources and Conservation]."

1992 Special Session Amendment: Chapter 14 in (6), after "sale of", deleted "timber". Amendment effective February 4, 1992.

Termination: Section 6, Ch. 14, Sp. L. January 1992, provided that this section terminates June 30, 1993.

1983 Amendment: In first sentence, substituted "fund in the nonexpendable trust fund type" for "subfund in the trust and legacy fund".

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-602. Title to farm mortgage lands vested in state and transfers validated.

Compiler's Comments

Chapter Repealed: Chapter 250, L. 1953 (section 75-3729, R.C.M. 1947), referred to in this section, was repealed by sec. 496, Ch. 5, L. 1971.

20-9-603. Acceptance and expenditure of federal moneys for state.

Compiler's Comments

2009 Amendment: Chapter 10 in (1) in second sentence and in (2) in second sentence after "treasury and" deleted "are appropriated and made" and after "available" inserted "for appropriation"; and made minor changes in style. Amendment effective October 1, 2009.

20-9-604. Gifts, legacies, devises, and administration of endowment fund.

Compiler's Comments

2019 Amendment: Chapter 409 in (1) in second sentence after "the trustees" substituted "may" for "shall" and at end substituted "any budgeted or nonbudgeted fund at the discretion of the trustees and may thereafter transfer any portion of the gift, legacy, devise, or proceeds to any other fund at the discretion of the trustees" for "an endowment fund"; in (2) at beginning substituted "If the trustees accept a gift, legacy, or devise pursuant to subsection (1) and if the donor, devisor, or testator specifies the gift, legacy, or devise for an endowment, the trustees shall deposit the gift, legacy, devise, or proceeds in an endowment fund and" for "The trustees", at beginning of second sentence deleted "Unless the conditions of the endowment instrument require an immediate disbursement of the money", and at end deleted "No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district"; inserted (6) concerning the spending of donated funds and accumulated interest deposited in an endowment fund without specific instructions; inserted (7) concerning the adoption of gift acceptance policy by school district trustees; and made minor changes in style. Amendment effective May 9, 2019.

2011 Amendment: Chapter 152 in (5) at beginning of second sentence substituted "By July 20" for "No later than July 1 each school fiscal year". Amendment effective April 10, 2011.

2001 Amendment: Chapter 76 in (2) at end after "trustees" substituted "according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30" for "notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof, which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or

(e) direct obligations of the United States government"; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 2, Ch. 76, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to investment of school district endowments on or after July 1, 2001."

20-9-615. Voluntary rural residential impact payments.

Compiler's Comments

Effective Date: Section 6, Ch. 506, L. 1995, provided: "[This act] is effective on passage and approval." Approved April 15, 1995.

20-9-620. Definition.

Compiler's Comments

2013 Purported Amendment — Line-Item Veto: Chapter 325, L. 2013, purported to amend this section as follows: in (1) substituted "20-9-516(3)(a)" for "20-9-516(2)(a)". The governor removed this section from the bill in a line-item veto issued April 26, 2013.

2009 Amendments — Composite Section: Chapter 377 in (1) substituted "20-9-516(2)(a)" for "20-9-343(4)(a)(ii)". Amendment effective April 28, 2009.

Chapter 465 in (1) near middle substituted "77-1-109" for "available on or after July 1, 2003, 77-1-607, and 77-1-613". Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

2002 Amendment: Chapter 3 near middle of (1) substituted "described in 20-9-343(4)(a)(ii) and available on or after July 1, 2003" for "described in 20-9-343(3)(a)(ii)". Amendment effective August 13, 2002.

Effective Date — Retroactive Applicability: Section 5, Ch. 3, Sp. L. August 2002, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning July 1, 2001." Approved August 13, 2002.

2001 Amendment — Coordination: Section 9(1), Ch. 554, L. 2001, a coordination instruction, provided that if House Bill No. 41 (Ch. 554, L. 2001) and Senate Bill No. 495 (Ch. 418, L. 2001) are both passed and approved, then subsection (1) of this section must be amended as follows: near beginning after "means" inserted "except for that portion of revenue described in 20-9-343(3)(a)(ii), 77-1-607, and 77-1-613". Amendment effective July 1, 2001.

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-621. Permanent fund.

Compiler's Comments

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

20-9-622. Guarantee account.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 772, L. 2023. Amendment effective July 1, 2023.

2017 Amendments — Coordination: Chapter 336 substituted (2) concerning transfer of excess revenue for former (2) that read: "(2) Any excess interest and income revenue deposited in the guarantee account for distribution under this section must be allocated as follows:

(a) 50% of the excess interest and income revenue must be reserved for an appropriation in the next regular session of the legislature as part of the natural resource development K-12 funding payment referred to in 20-9-306; and

(b) 50% of the excess interest and income revenue must be distributed to schools on a per-quality-educator basis, with the amount to be distributed to each district calculated by dividing the total funds available for distribution under this subsection (2)(b) by the total number of quality educators, as defined in 20-4-502, employed by each school district in the state in the immediately preceding school fiscal year. A school district receiving funds under this section shall deposit the funds in its miscellaneous programs fund provided for in 20-9-507 and shall use the funds in the following order:

(i) to address any repairs categorized as "safety", "damage/wear out", or "codes and standards" in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(ii) if repairs under subsection (2)(b)(i) have been completed, to any other purpose authorized by 20-9-543". Amendment effective July 1, 2017.

Section 23, Ch. 336, L. 2017, a coordination section, in (2) substituted "school major maintenance aid account provided for in 20-9-525" for "school facility and technology account provided for in 20-9-516". Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2013 Amendments — Composite Section: Chapter 17 in (1)(b) in second sentence at beginning deleted "Except as provided in subsection (2)"; deleted former (2) that read: "(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility and technology account pursuant to 17-6-340"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 400 inserted (2) regarding allocation of excess interest and income revenue. Amendment effective May 6, 2013.

Applicability: Section 42(1), Ch. 400, L. 2013, provided that this section applies to school fiscal year 2014 and subsequent school fiscal years.

2009 Amendment: Chapter 377 in (1)(b) in third sentence in exception clause deleted reference to subsection (3); in (2) at end substituted "school facility and technology account" for "school facility improvement account"; deleted former (3) that read: "The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533"; and made minor changes in style. Amendment effective April 28, 2009.

Preamble: The preamble attached to Ch. 377, L. 2009, provided: "WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated $2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to safety and energy conservation and to extend the life of school facilities; and

WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and

WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model."

Severability: Section 20, Ch. 377, L. 2009, was a severability clause.

2007 Special Session Amendment: Chapter 1 in (2) inserted second sentence concerning transfer of mineral royalties to school facility improvement account. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2003 Amendment: Chapter 291 in (1) in first sentence after "account in" deleted "a subfund of"; and in (2) near middle before "transfer" substituted "monthly" for "annually" and at end substituted "currently outstanding" for "outstanding in the prior year". Amendment effective April 11, 2003.

2002 Amendment: Chapter 10 at end of first sentence in (1) substituted "state special revenue fund" for "state general fund"; in (1)(b) in second sentence substituted language providing that except as provided in subsections (2) and (3), guarantee account is statutorily appropriated for distribution to school district through school equalization aid as provided in 20-9-343 for former language that read: "Except as provided in subsection (2), the guarantee account must be distributed to school districts through the basic and per-ANB entitlements"; in (2) after "department" inserted "of natural resources and conservation"; inserted (3) requiring revenue distributed through 20-9-534 to be used for the purposes of 20-9-533; and made minor changes in style. Amendment effective August 16, 2002.

Effective Date — Retroactive Applicability: Section 6, Ch. 10, Sp. L. August 2002, provided: "[This act] is effective on passage and approval [approved August 16, 2002] and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001."

Coal Severance Tax Loan — Agreement: Sections 8 and 9, Ch. 418, L. 2001, provided: "Section 8. Coal severance tax loan — rate of interest — appropriation. (1) There is appropriated to the department of natural resources and conservation from the coal severance tax permanent fund an amount not to exceed $75 million for the biennium ending June 30, 2003, for the purpose of purchasing mineral production rights as provided in [section 4] [17-6-340]. The department shall deposit the appropriated loan proceeds in the guarantee account provided for in [section 3] [20-9-622].

(2) The interest to be paid on the loan authorized under subsection (1) must be at the long-term investment rate. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund to the department.

Section 9. Loan agreement. (1) In order to make the loan authorized in [section 8] [not codified], the board of investments shall enter into a contract with the department of natural resources and conservation pledging the percentage of mineral royalties to the repayment of the loan over a period of 30 years. The loan agreement may not require a payment on the loan until fiscal year 2004. In fiscal years 2004 and 2005, 20% of the mineral royalties deposited in the guarantee account provided for in [section 3] [20-9-622] must be pledged to the loan repayment. In fiscal years 2006 through 2011, not less than 25% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment, and in succeeding fiscal years, not less than 34% of the mineral royalties deposited in the guarantee account must be pledged to the loan repayment until the loan is fully paid.

(2) The contract must provide that the loan repayment proceeds be deposited in the coal severance tax permanent fund. To the extent possible, the board of investments shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 8] [not codified] may not be made until the contract required by this section has become effective."

2001 Amendment — Coordination: Section 9(2), Ch. 554, L. 2001, a coordination instruction, provided that if House Bill No. 41 (Ch. 554, L. 2001) and Senate Bill No. 495 (Ch. 418, L. 2001) are both passed and approved, then subsection (1) of this section must be amended as follows: near beginning substituted "account in a subfund of the state general fund" for "account in the state special revenue fund". Amendment effective July 1, 2001.

Effective Date: Section 13(1), Ch. 418, L. 2001, provided that this section is effective July 1, 2001.

Case Notes

Accounting System Allowing Commingling of State Trust Revenue Constitutional: Plaintiff challenged the state's alleged improper commingling of state land trust assets, including rental and bonus payments on certain coal leases, into the general fund, asserting that the accounting system violated the state's duty to obtain full market value for school trust lands. The District Court concluded that plaintiff failed to prove financial harm to the school trust beneficiaries, particularly when the Legislature's appropriation to public schools far exceeded the combined money provided by the interest income and the bonus payments. On appeal, the Supreme Court affirmed. The state satisfied its trust obligations by demonstrating that its accounting system was sufficiently accurate and complete to allow plaintiff to ascertain that all trust revenue goes to benefit public schools, while plaintiff failed to carry its burden of proving that the state withheld either the interest income or the bonus payments or improperly diverted those funds to nontrust purposes. Thus, the state statutory scheme did not breach the state's trustee duty by requiring the deposit of interest income and bonus payments into the general fund. Montanans for Responsible Use of School Trust v. Darkenwald, 2005 MT 190, 328 M 105, 119 P3d 27 (2005), distinguishing Cobell v. Babbit, 52 F. Supp. 2d 11 (D.D.C. (1999). See also Montanans for Responsible Use of School Trust v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, 296 M 402, 989 P2d 800 (1999).

20-9-635. Natural resource development K-12 school facilities payment.

Compiler's Comments

2019 Amendment: Chapter 24 in (2) substituted current text providing the calculation for the natural resource development K-12 school facilities payment general fund appropriation for former text that read: "(2) Beginning in fiscal year 2020, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) $6.4 million in fiscal year 2020, $7.6 million in fiscal year 2021, and $10 million in fiscal year 2022, increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment"; in (3) substituted current text concerning the present law base calculated for major maintenance aid for former text that read: "(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2)"; and made minor changes in style. Amendment effective February 27, 2019.

Termination Provision Removed: Section 2, Ch. 10, L. 2019, and sec. 3, Ch. 24, L. 2019, amended sec. 35, Ch. 429, L. 2017, to remove the termination of the amendments made to this section by sec. 27, Ch. 429, L. 2017. Effective February 19, 2019.

Applicability: Section 5, Ch. 24, L. 2019, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2019."

2017 Amendments — Coordination: Section 24, Ch. 336, L. 2017, a coordination section, in (2) substituted "school major maintenance aid account provided for in 20-9-525" for "school facility and technology account provided for in 20-9-516". Amendment effective July 1, 2017.

Section 27, Ch. 429, L. 2017, a coordination section, in (2) near beginning substituted "fiscal year 2020" for "fiscal year 2019"; and in (2)(a) at beginning deleted "$5.8 million in fiscal year 2019". Amendment effective on occurrence of contingency and terminates June 30, 2019.

Effective Date: Section 27, Ch. 336, L. 2017, provided that this section is effective July 1, 2017.

Contingent Effective Date: Section 27, Ch. 429, L. 2017, provided that the amendments in subsection (2) are effective if: (1) "the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,180,000,000, as determined by the state treasurer on or before August 15, 2017"; or (2) "the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2018 is at level 4 or below as provided in [section 10(3)], and if prior general fund collections for fiscal year 2017 were high enough to prevent implementation of subsection (1)". On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was $2,139,414,715.40.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

20-9-638. Coal-fired generating unit closure mitigation block grant.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 152, L. 2023. Amendment effective July 1, 2023.

2017 Special Session Amendment: Chapter 2 in (3) before "20-9-630(4)(a)" inserted "former". Amendment effective July 1, 2018.

Effective Date: Section 27, Ch. 336, L. 2017, provided that this section is effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

Part 7
Educational Cooperative Agreements

20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 377, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to interlocal agreements entered into on or after July 1, 2001."

Source: Revised Code of Washington (RCW) 28A.600.310.

20-9-707. Agreement with Montana youth challenge program or accredited Montana job corps program.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 2 in (1) substituted "northwest commission on colleges and universities" for "northwest association of schools and colleges". Amendment effective October 1, 2009.

Chapter 137 throughout section in seven places inserted reference to Montana youth challenge program; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 4, Ch. 137, L. 2009, provided that this section applies to school fiscal years beginning on or after July 1, 2010.

2005 Amendment: Chapter 132 inserted (4) regarding residency and job corps status. Amendment effective July 1, 2005.

Effective Date — Applicability: Section 3, Ch. 462, L. 2001, provided: "[This act] [20-9-707] is effective July 1, 2002, and applies to agreements entered into on or after [the effective date of this act]." Effective July 1, 2002.

Part 8
Emergency School Closure

20-9-801. Purpose.

Compiler's Comments

2005 Amendment: Chapter 138 in first sentence after "conduct" deleted "the minimum number of school days and". Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 near end of first sentence, after "days", substituted "and the minimum aggregate hours by grade required by 20-1-301" for "required by law". Amendment effective July 1, 1997.

20-9-802. Definitions.

Compiler's Comments

2021 Amendment: Chapter 151 in definition of "reasonable effort" at end of introductory clause substituted "to make up at least 75% of the hours of pupil instruction lost due to an unforeseen emergency through any combination of the following" for "in an effort to attain the minimum aggregate hours required by law by", in (a) after "extending the school year" deleted "12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades or the equivalent aggregate hours of pupil instruction", in (b) after "scheduled vacation days" inserted "in the district's adopted school calendar pursuant to 20-1-302", and inserted (c) concerning conduct of pupil instruction and (d) concerning extending instructional hours; in definition of "unforeseen emergency" at end substituted "a portion of the minimum aggregate hours of instruction required by 20-1-301" for "1 or more scheduled school days"; and made minor changes in style. Amendment effective April 8, 2021.

Retroactive Applicability: Section 7, Ch. 151, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning on or after July 1, 2020."

2005 Amendment: Chapter 138 in definition of reasonable effort substituted "minimum aggregate hours" for "minimum number of school days" and in (a) substituted "12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades" for "3 days"; in definition of school day substituted "set by the trustees as provided in 20-1-302" for "defined in 20-1-302"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in definition of declaration of emergency, after "declaration", substituted "by a board of trustees that an unforeseen emergency has occurred in the district" for "of a state of emergency by the governor as authorized by 10-3-302"; in definition of reasonable effort, in (a), substituted "3 days and the equivalent aggregate hours of pupil instruction" for "1 week"; and made minor changes in style. Amendment effective July 1, 1997.

1981 Amendment: Inserted (2) defining declaration of emergency.

20-9-805. Rate of reduction in BASE aid.

Compiler's Comments

2021 Amendment: Chapter 151 in (1) near beginning substituted "20-9-806" for "20-9-806(2)" and near end substituted "BASE aid" for "equalization apportionment and entitlement"; and in (2) at end substituted "BASE aid" for "apportionment". Amendment effective April 8, 2021.

Retroactive Applicability: Section 7, Ch. 151, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning on or after July 1, 2020."

2005 Amendment: Chapter 138 in (1) at beginning inserted exception clause, substituted "each hour short" for "each school day short", substituted "number of aggregate hours" for "number of school days", after "emergencies" deleted "as defined in 20-9-802", and at end substituted "by a proportionate amount" for "by 1/180th"; in (2) inserted "grade 1 through 3", substituted "grade 4" for "grade 1", and substituted "minimum aggregate hour" for "minimum school day"; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1985 Amendment: Near middle of (1) after "unforeseen emergencies", substituted "as defined in 20-9-802" for "or by reason of any other cause and for which the school district is not entitled to apportionment credit".

Case Notes

Construction With Other Statutes — Conflicts: Provision in 20-1-301, prior to 1983 amendment, that "Any district that fails to provide for at least 180 school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited money shall be apportioned by the county superintendent to the other elementary districts of his county" is obviously ambiguous as to whether it applies to high school districts or only to elementary school districts. Since this section provides that for each day short of the minimum school days required by law, for which a district is not entitled to apportionment credit, the equalization apportionment and entitlement of the district for that year shall be reduced by 1/180th, and since the interest and income funds referred to in this section are integrated with the equalization funds, the two sections are so conflicting that they require legislative review and revision; and in the meantime, since they are penal statutes, courts are powerless to apply them. Therefore, a high school that held 18 days less than the required 180-day minimum due to a teacher strike was entitled to its interest and income money regardless of the statutes. Missoula High School Legal Defense Ass'n v. Supt. of Pub. Instruction, 196 M 106, 637 P2d 1188, 38 St. Rep. 2164 (1981).

20-9-806. School closure by declaration of emergency.

Compiler's Comments

2021 Amendment: Chapter 151 in (1)(a) at end substituted "BASE aid" for "annual equalization apportionment"; in (1)(b) near beginning substituted "75% of the pupil-instruction time lost due to the unforeseen emergency" for "3 school days or the equivalent aggregate hours"; in (2) added last sentence exempting the 1-school-day closure from 20-9-805. Amendment effective April 8, 2021.

Retroactive Applicability: Section 7, Ch. 151, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning on or after July 1, 2020."

2005 Amendment: Chapter 138 in (1)(a) at beginning inserted exception clause and in second sentence near middle after "requirement" substituted "for aggregate hours" for "for pupil-instruction days"; inserted (2) authorizing trustees to close school for 1 day each school year for an unforeseen emergency without rescheduling of lost instruction time; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 138, L. 2005, provided: "WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee."

1997 Amendment: Chapter 430 in (1) substituted language in introductory clause and language authorizing trustees to adopt resolution on rescheduling pupil-instruction time lost to emergency for "If a school is closed by reason of a declaration of emergency by the governor" and at beginning of second sentence substituted "If the trustees adopt the resolution, the pupil-instruction time lost" for "the pupil-instruction days lost"; inserted (2) requiring make up of at least 3 days or equivalent aggregate hours before trustees may declare reasonable effort made; and made minor changes in style. Amendment effective July 1, 1997.

CHAPTER 10
TRANSPORTATION AND FOOD SERVICES

Part 1
School Buses and Transportation

Part Compiler's Comments

Preamble: The preamble attached to Ch. 711, L. 1991, provided: "WHEREAS, the Legislature recognizes its responsibility to develop a more equalized system of funding school transportation. It is the intent of the Legislature that this bill, which allows the Office of Public Instruction to develop data not currently available to monitor current spending by the school, be considered simply the first step toward providing a long-term solution to school transportation equalization problems in Montana. The Legislature also intends, as provided in [section 16], that the Office of Public Instruction continue to collect school transportation data and that equitable funding methods for school transportation be addressed by the 53rd Legislature."

Study of Transportation Funding: Section 16, Ch. 711, L. 1991, provided: "(1) During the 1991-92 interim, the office of public instruction is directed to collect data and to study methods for equalizing school transportation funding.

(2) The office of public instruction is further directed to report its findings and conclusions and make recommendations for improvements in school transportation funding to the 53rd legislature."

Part Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

Title 10, chapter 64, ARM Board of Public Education transportation policies.

Part Attorney General's Opinions

Use of Adult Education and Transportation Funds Prohibited in New School Construction: Under the 2009 version of 20-9-208, the transfer of funds from one budgeted fund to another budgeted fund is restricted, particularly if the funding source is a property tax levy. Property taxes levied to support adult education and transportation funds may be transferred to the school flexibility fund as long as the transfer is within or directly related to the purposes for which the funds were raised, for example, to support adult education or transportation. A transfer of property taxes for any other purpose, such as constructing a new school, is invalid. Transferred funding sources cannot be converted to flex fund revenues or cash balances to cover expenditures authorized for flex fund purposes. A county or school board may demand an accounting to determine how funds were transferred, budgeted, and spent. If liability exists, a county, school board, or citizen with standing may pursue any remedy provided by law. 54 A.G. Op. 6 (2012).

20-10-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 149, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 221 in definition of school bus inserted (a)(ii) concerning qualifying criteria and in (b)(iii) inserted "and that was purchased prior to July 1, 2017"; and made minor changes in style. Amendment effective July 1, 2017.

2003 Amendment: Chapter 550 deleted definition of weighted ridership that read: ""Weighted ridership" means the sum of the passenger points assigned to the eligible transportees who are transported on a bus route." Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1999 Amendment: Pursuant to sec. 99(4), Ch. 51, L. 1999, in definition of eligible transportee in (a) the code commissioner changed "child with disabilities" to "child with a disability". Amendment effective March 15, 1999.

1995 Amendment: Chapter 298 inserted definition of bus route; in definition of eligible transportee, in (a), substituted "reached the age of 21 on or before September 10 of the current school year" for "attained his 21st birthday" and inserted (c)(ii) regarding transportation identified as a related service; inserted definitions of passenger seating position, transportation service area, and weighted ridership; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 359 near beginning of (3)(a), after "residence", inserted "or an officially designated bus stop". Amendment effective July 1, 1993.

1991 Amendment: In definition of transportation deleted former (b) that read: "(b) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district"; in definition of eligible transportee, in (a) after "birthday", inserted "or who is a preschool child with disabilities between the ages of 3 and 6"; and made minor changes in style. Amendment effective May 15, 1991.

1991 Name Change — Code Commissioner Instruction: Changed term "handicapped child" to "child with disabilities" or "handicapped children" to "children with disabilities", pursuant to sec. 10, Ch. 249, L. 1991, which directed the Code Commissioner to change the terms wherever they appear in Title 20 and in all law enacted by the 52nd Legislature.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: Substituted definition of school bus for former definition that read: "A 'school bus' shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency and which complies with the bus standards established by the board of public education as determined by the Montana division of motor vehicles' semiannual inspection of school buses and the superintendent of public instruction."

Case Notes

Substantial Evidence of Residency: When respondents left their ranch within the county for the purpose of earning an income and educating their children, returned to the property each summer, intended to maintain the ranch as their residence, and paid county property taxes, there was substantial evidence from which the District Court could conclude that respondents were residents of the county and that therefore their children were "eligible transportees" within the meaning of this section. The meaning of "legal residence" for the purposes of this section is to be determined in accordance with the rules set forth in 1-1-215. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in this section, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

Fourteen-Passenger Van as School Bus: Although a passenger van owned by two school districts for transporting students to and from activity events is the general type of vehicle contemplated by the exclusion in the definition of "school bus", it constitutes a bus under the definition if its passenger capacity exceeds nine. 40 A.G. Op. 53 (1984).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-10-102. School bus requirements.

Administrative Rules

Title 10, chapter 64, subchapter 3, ARM Minimum standards for school buses.

20-10-103. School bus driver qualifications.

Compiler's Comments

2017 Amendment: Chapter 221 in (3)(a) at end inserted "to operate a school bus designed to carry more than 10 passengers"; inserted (3)(b) concerning driver's license to operate school bus designed to carry 10 or fewer passengers; and made minor changes in style. Amendment effective July 1, 2017.

1995 Amendment: Chapter 298 in (4), near middle after "transportation", deleted "or by the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 195 in (3) substituted "commercial driver's license" for "driver's license with a commercial vehicle operator's endorsement"; and made minor changes in style.

1989 Amendment: In (4) substituted "form approved by the United States department of transportation or" for "blank provided"; in (5), in two places in first sentence, substituted "basic first aid" for "standard first aid" and near end, before "first aid", inserted "basic"; and made minor changes in grammar. Amendment effective July 1, 1989.

1987 Amendment: In (3) substituted "driver's license with a commercial vehicle operator's endorsement" for "chauffeur's license".

Administrative Rules

ARM 10.7.111 Bus driver certification requirements.

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

Title 10, chapter 64, subchapter 2, ARM Driver qualifications.

Attorney General's Opinions

Responsibility for Cost of Required Medical Examination: The medical examination for school bus drivers mandated by this section is a requirement of certification established by the Legislature rather than a requirement for employment imposed by the employer school district or school bus contractor. Therefore, under 39-2-301, school bus contractors and school districts which employ school bus drivers are not responsible for paying the costs of the medical examination; rather, the cost is the responsibility of the employee or applicant. 41 A.G. Op. 69 (1986).

Age of School Bus Driver: Article II, sec. 14, Mont. Const., provides that a person 18 years of age or older is an adult for all purposes, and a 1973 amendment to 61-5-112 provided that no person under age 18 may obtain a chauffeur's license to drive a school bus. Since 20-10-103(1) was enacted in 1971 and rules of statutory construction provide that earlier statutes to the extent of any repugnancy are controlled by later statutes, 20-10-103(1) (prior to 1977 amendment) appears to have been repealed by implication and an individual must be 18 years of age or older to qualify as a school bus driver. 35 A.G. Op. 73 (1974).

20-10-104. Penalty for violating law or rules.

Compiler's Comments

1997 Amendment: Chapter 427 inserted (2) providing for forfeiture of transportation reimbursement for an unapproved bus route operated by a district in violation of law or policy; in first sentence in (3), after "district", inserted reference to 20-10-145 and 20-10-146 for all miles traveled, including miles traveled in compliance with and in violation of transportation laws or policies and in second sentence, after "superintendent", substituted "shall pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation" for "shall resume paying reimbursements to the district"; and made minor changes in style.

Attorney General's Opinions

"Transportation Law" Construed — Transportation Committee Decisions: A decision of a County Transportation Committee is "a transportation law" within the meaning of this section. 39 A.G. Op. 57 (1982).

Unapproved Bus Routes — Penalty for Following: The penalty for operating school buses in violation of routes approved by the County Transportation Committee is suspension of all reimbursements under 20-10-145 and 20-10-146 until the violation ceases and forfeiture of reimbursement for miles traveled in violation of the approved routes. 39 A.G. Op. 57 (1982).

20-10-105. Determination of residence.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 132 in first sentence inserted exception clause; and minor changes in style. Amendment effective July 1, 2005.

Chapter 463 in second sentence near beginning after "Whenever" substituted "the state" for "a county". Amendment effective July 1, 2005.

1993 Amendment: Chapter 563 near beginning of second sentence, before "county", deleted "district or" and after "accordance with" substituted "20-5-321 through 20-5-323" for "20-5-301, 20-5-302, or 20-5-311"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

Case Notes

Substantial Evidence of Residency: When respondents left their ranch within the county for the purpose of earning an income and educating their children, returned to the property each summer, intended to maintain the ranch as their residence, and paid county property taxes, there was substantial evidence from which the District Court could conclude that respondents were residents of the county and that therefore their children were "eligible transportees" within the meaning of 20-10-101. The meaning of "legal residence" for the purposes of 20-10-101 is to be determined in accordance with the rules set forth in 1-1-215. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

Wrongful Denial of School Transportation Money: Denial of transportation money to an eligible transportee of a school district is an "unlawful act" within the meaning of 27-1-202 for purposes of receiving compensatory damages. School District v. Simonsen, 210 M 100, 683 P2d 471, 41 St. Rep. 944 (1984).

20-10-107. Power of trustees.

Compiler's Comments

2015 Amendment: Chapter 8 in (2) in two places and (3) substituted "communication system or safety device" for "two-way radio"; and made minor changes in style. Amendment effective July 1, 2015.

20-10-109. Liability insurance for school bus.

Case Notes

Governmental Immunity Waived — 1889 Constitution: Prior to adoption of the 1972 Montana Constitution, the statute requiring school districts to carry liability insurance to cover injuries and property damage that might arise in connection with operation and maintenance of school buses constituted waiver of governmental immunity to extent of insurance required to be carried or actually carried. Longpre v. Joint School District, 151 M 345, 443 P2d 1 (1968), distinguished in Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

20-10-111. Duties of board of public education.

Compiler's Comments

2021 Amendment: Chapter 246 in (1)(b)(iii) in two places after "four" inserted "or more". Amendment effective April 19, 2021.

2001 Amendment: Chapter 237 in (1)(a) inserted "and operation"; in (1)(a)(i) at beginning substituted "the recommendations" for "minimum standards" and at end after ";" substituted "and" for "or"; in (1)(a)(ii) substituted "the federal motor vehicle safety standards" for "minimum standards adopted by the national highway traffic safety administration"; deleted former (1)(f) that read: "(f) prescribe other policies for the operation of school buses that are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national conference on school transportation;

(iii) highway safety standards; and

(iv) the transportation provisions of this title"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1999 Amendment: Chapter 343 in (1)(a)(i) and (1)(f)(ii) substituted "national conference on school transportation" for "national commission on safety education"; in (1)(a)(ii) substituted "national highway traffic safety administration" for "national highway safety bureau"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1989 Amendment: Deleted former (2) and (3) that read: "(2) The board of public education may grant permission to the trustees of any district to use for transportation a four-wheel drive vehicle capable of transporting eight passengers or less that meets the minimum standards for these vehicles as prescribed by the board of public education if this type of vehicle will not be used to transport more than eight pupils per trip.

(3) Whenever the board of public education grants the trustees of a district permission to use a four-wheel drive vehicle under the provisions of subsection (2), the reimbursement to the district shall be based on the on-schedule rate of 20 cents per mile"; and made minor changes in phraseology. Amendment effective July 1, 1990.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1981 Amendment: Inserted (2) and (3) relating to use and reimbursement for four-wheel drive vehicles, respectively.

Statement of Intent: The statement of intent attached to HB 662 (Ch. 455, L. 1981) provided: "A statement of intent is required for House Bill 662 because section 1 [20-10-111] delegates rulemaking power to the Board of Public Education.

The Board of Public Education is to promulgate rules prescribing minimum standards for four-wheel drive vehicles that are used as school buses. These standards are to relate to safety considerations and equipment requirements to insure that four-wheel drive vehicles used as school buses provide safe transportation for student transportees."

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

ARM 10.64.201 Driver qualifications.

Title 10, chapter 64, subchapter 3, ARM Minimum standards for school buses.

Attorney General's Opinions

Small Transit-Type Bus Considered School Bus — National School Bus Standards Applicable: Under the definition in 20-10-101, a small, transit-type bus that is smaller than a Greyhound bus but larger than a nine-passenger van is a school bus and may not be used to transport students to extracurricular activities unless it meets the standards contained in the 1990 National Standards for School Buses, including paint requirements, adopted by the Board of Public Education. 45 A.G. Op. 30 (1994).

20-10-112. Duties of superintendent of public instruction.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

Attorney General's Opinions

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-10-122. Discretionary provision of transportation and payment for this transportation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

"Eligible Transportee" Construed — Permission Required for Attendance Outside District Before Transportation Provided: To be designated an "eligible transportee" for purposes of the school transportation statutes, a pupil must reside more than 3 miles from the closest school, regardless of the school's location inside or outside the resident school district. If an eligible transportee wishes to attend a school outside his district, the pupil must obtain permission from the resident district school board in order to be provided transportation by the resident district. 42 A.G. Op. 115 (1988).

20-10-123. Provision of transportation for nonpublic school children.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In second sentence substituted "may" for "shall", making transportation charge discretionary.

20-10-124. Private party contract for transportation — individual transportation contract.

Compiler's Comments

1997 Amendment: Chapter 22 in (1), near beginning of second sentence, after "may", deleted "in contracting with private parties"; in (3)(a) changed requirement for quadruplicate copies to requirement for triplicate copies and deleted requirement that one copy be given to the Superintendent of Public Instruction; in (4)(a), after "quadruplicate", deleted "and, upon approval"; and made minor changes in style. Amendment effective July 1, 1997.

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.
ARM 10.20.102 Calculation of average number belonging (ANB).

Case Notes

Governmental Immunity Waived — 1889 Constitution: Prior to adoption of the 1972 Montana Constitution, the statute requiring school districts to carry liability insurance to cover injuries and property damage that might arise in connection with operation and maintenance of school buses constituted waiver of governmental immunity to extent of insurance required to be carried or actually carried. Longpre v. Joint School District, 151 M 345, 443 P2d 1 (1968), distinguished in Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

20-10-125. Bid letting for contract bus — payments under transportation contract.

Compiler's Comments

1981 Amendment: In (1)(b), increased the maximum percentage by which negotiated contract costs may exceed the basic costs of the previous year's contract from 8% to 12%; at the end of the first sentence of (1)(b), deleted "and provided the duration of the negotiated contract is no longer than the duration of the previous contract".

Case Notes

No Standing to Challenge to Award of Public School Transportation Contract on Statutory Grounds: Plaintiff provided bus service to a school district for about 24 years, but in 2001, the district elected to accept bids for the service. Plaintiff submitted the lowest bid, but the district decided to reject the bid on grounds that plaintiff was not a responsible bidder. The contract was awarded to another bidder, and plaintiff challenged the contract on statutory grounds, claiming that the district violated 18-1-201, 20-9-204, and this section. The Supreme Court declined to address any statutory violations because plaintiff lacked standing to bring the complaint under the criteria in Debcon, Inc. v. Glasgow, 2001 MT 124, 305 M 391, 28 P3d 478 (2001). Hickey v. Baker School District No. 12, 2002 MT 322, 313 M 162, 60 P3d 966 (2002), distinguishing State ex rel. Sletten Constr. Co. v. Great Falls, 163 M 307, 516 P2d 1149 (1973), and E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

20-10-126. Establishment of transportation service areas.

Compiler's Comments

2005 Amendment: Chapter 508 in (2)(a) at beginning inserted exception clause; inserted (2)(b) allowing a school district to extend a bus route across another school district in order to provide transportation to students within its own district; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 427 inserted (5) authorizing trustees objecting to a bus route to report route to county transportation committee and providing a procedure for withdrawal of route approval; and made minor changes in style.

Effective Date: Section 12(1), Ch. 298, L. 1995, provided that this section was effective July 1, 1995.

20-10-129. Transportation for special activities.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 149, L. 2023. Amendment effective July 1, 2023.

Effective Date: Section 3, Ch. 292, L. 2021, provided: "[This act] is effective July 1, 2021."

20-10-131. County transportation committee membership.

Compiler's Comments

2021 Amendment: Chapter 53 inserted (1)(c) concerning representation of school districts within the county; deleted former (1)(c) through (1)(f) that read: "(c) except for a K-12 school district, a trustee or district employee designated by the trustees of each high school district of the county;

(d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of the elementary districts;

(e) two representatives of each K-12 school district of the county, each of whom is either a trustee or a district employee designated by the trustees; and

(f) a representative of a district of another county when the transportation services of the district are affected by the actions of the county transportation committee, but the representative has a voice only in matters affecting transportation within the district or by the district"; in (3) inserted last sentence providing that each member of the committee is a voting member; and made minor changes in style. Amendment effective July 1, 2021.

1995 Amendment: Chapter 298 in (1), in first sentence after "within a county", deleted "under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction"; in (1)(c), at beginning, inserted exception clause; inserted (1)(e) regarding membership of two representatives of each K-12 school district of the county; in (3) inserted second sentence requiring the presence of a quorum to conduct business; adjusted internal references; and made minor changes in style. Amendment effective July 1, 1995.

20-10-132. Duties of county transportation committee.

Compiler's Comments

2015 Amendment: Chapter 128 in (2) in second sentence in two places substituted "90 days" for "30 days". Amendment effective March 27, 2015.

2001 Amendment: Chapter 464 inserted (1)(e) requiring the transportation committee to determine if geographic conditions make it impractical for a child to attend school in the district of residence; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 11(1), Ch. 464, L. 2001, provided: "Except as provided in subsection (2), [this act] applies to tuition paid for students who enroll out of district in the school fiscal year beginning on or after July 1, 2001."

1995 Amendment: Chapter 298 in (1)(a), after "lines", deleted "which will define the geographic area of responsibility for school bus transportation"; in (1)(b), at beginning, inserted exception clause; inserted (2) regarding change in a temporary bus route in an emergency; inserted (3) establishing criteria that must be considered upon request for a new or changed bus route; inserted (4) requiring inclusion of a signed contract and copy of official minutes with an application for increased reimbursement; deleted former (3) that read: "(3) The trustees of any district which objects to a particular school bus route or transportation service area to which it has been assigned may request a transfer to another school bus route or transportation service area. The county transportation committee may transfer the territory of such district to an adjacent district's transportation service area or approved school bus route with the consent of such adjacent district. When the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of such district be transferred for school bus transportation purposes to such consenting, adjacent district. When a satisfactory petition is presented to the trustees, the trustees shall call an election in accordance with 20-20-201 for the next ensuing regular school election day. Such election shall be conducted in accordance with the school election laws. If a majority of those voting at such election approve the transfer, it shall become effective on July 1 of the ensuing school fiscal year"; deleted former (4) that read: "(4) Unless a transfer of a district from one transportation service area or approved school bus route to another such area or route is approved by the county transportation committee and the superintendent of public instruction, the state transportation reimbursement shall be limited to the reimbursement amount for school bus transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils"; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

ARM 10.7.112 Summary of requirements for bus transportation for eligibility for state reimbursement.

Attorney General's Opinions

Unapproved Bus Routes — Penalty for Following: The penalty for operating school buses in violation of routes approved by the County Transportation Committee is suspension of all reimbursements under 20-10-145 and 20-10-146 until the violation ceases and forfeiture of reimbursement for miles traveled in violation of the approved routes. 39 A.G. Op. 57 (1982).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

Authority of Transportation Committee to Change Transportation Service Areas and School Bus Routes: After establishment of transportation areas and school routes for the proximate school year, a county transportation committee has continuing authority to consider new facts arising after transportation areas and school routes were established and, based upon such new facts, to change a transportation service area and approve, disapprove, or adjust proposed modifications to school bus routes which are submitted to it by a district board of trustees. (See 1995 amendment.) 37 A.G. Op. 17 (1977).

Transcript: The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules providing for appeal without a transcript promulgated by the Superintendent of Public Instruction as a transcript, although not necessarily a verbatim stenographic report, is required by 20-3-107 and 20-10-132 on an appeal to the Superintendent from a decision of a county school transportation committee. 35 A.G. Op. 53 (1973).

20-10-141. Schedule of maximum reimbursement by mileage rates.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 149, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 221 inserted (2)(a)(i) concerning 50-cent rate certain school buses; and made minor changes in style. Amendment effective July 1, 2017.

2003 Amendment: Chapter 550 in (2)(a) deleted from end of introductory clause "when the weighted ridership assigned to a bus route is not less than one-half of the rated capacity of the school bus"; in (2)(a)(i) increased amount from 85 cents to 95 cents and increased seating from 45 to 49; substituted (2)(a)(ii) through (2)(a)(v) setting mileage for categories of school buses for "when the rated capacity is more than 45 passenger seating positions, an additional 2.13 cents per bus mile for each additional passenger seating position in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile"; inserted (2)(b) relating to reimbursement for nonbus mileage; deleted former (3) and (4) that read: "(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the weighted ridership assigned to a bus route is less than one-half of the rated capacity of the school bus, the rate per bus mile traveled must be computed as follows:

(a) determine the weighted ridership assigned to the bus route;

(b) multiply the number determined in subsection (4)(a) by two; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2)"; and made minor changes in style. Amendment effective July 1, 2003.

Retroactive Applicability: Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

1995 Amendment: Chapter 298 in (2)(a), after "capacity of", deleted "not less than 12 but". Amendment effective March 30, 1995. The Code Commissioner has not codified the temporary version.

Chapter 298 in (2), in introductory clause, substituted "weighted ridership assigned to a bus" for "number of eligible transportees that board a school bus on an approved"; in (2)(a), after "capacity of", deleted "not less than 12 but" and after "45" substituted "passenger seating positions" for "children"; in (2)(b), in two places, substituted "passenger seating positions" for "children"; in (4), in introductory clause, and in (4)(a) substituted reference to weighted ridership for reference to number of eligible transportees; in (4)(b), after "two", deleted "and round off to the nearest whole number"; in (5), in first sentence after "number of", substituted "passenger seating" for "riding" and inserted second sentence regarding reimbursement in cases of bus modification; inserted (6) disallowing the number of pupils to exceed the seating positions; and made minor changes in style. Amendment effective July 1, 1995.

Retroactive Applicability: Section 12(3), Ch. 298, L. 1995, provided: "[Section 5] [version of 20-10-141 effective March 30, 1995, not codified] applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1994."

Termination: Section 13, Ch. 298, L. 1995, provided: "[Section 5] [version of 20-10-141 effective March 30, 1995, not codified] terminates July 1, 1995."

1991 Amendment: In (2)(a) and (2)(b) increased rate from 80 cents to 85 cents and deleted language pertinent to fiscal years 1984 and 1985; in (2)(b) increased rate from 2 cents to 2.13 cents; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (1) at beginning, deleted "bus" before "mileage", in three places deleted "bus" from the phrase "school bus transportation", inserted fourth sentence referring to overnight location, in fifth sentence inserted "or nonbus", and in last sentence inserted "for bus mileage"; and inserted (3) relating to reimbursement for nonbus mileage.

1983 Amendments: Chapter 515 substituted, in (2) in lead-in, after "when the", clause relating to number of eligible transportees for "bus is used for transportation of eligible transportees"; and inserted (3) relating to rate per bus mile when bus operates at one-half its rated capacity.

Chapter 559 inserted, in middle of (1), third and fourth sentences providing that all approved bus miles are reimbursable and permitting a district to approve additional bus miles but prohibiting reimbursement for such mileage; in (2)(a) and (2)(b) substituted "72 cents in fiscal year 1984 and 80 cents in fiscal year 1985" for "60 cents in fiscal year 1982 and 65 cents in fiscal year 1983"; in (2)(a) and (2)(b) substituted "45 children" for "50 children"; and in (2)(b) substituted "an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 45" for "an additional 2½ cents per bus mile for each additional child in the rated capacity in excess of 50".

1981 Amendment: In (2)(a) substituted "60 cents in fiscal 1982 and 65 cents in fiscal 1983" for "50 cents in fiscal 1980 and 55 cents in fiscal 1981"; and in (2)(b), substituted "2½ cents" for "2 cents", and "60 cents in fiscal 1982 and 65 cents in fiscal 1983" for "50 cents in fiscal 1980 and 55 cents in fiscal 1981".

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

20-10-142. Schedule of maximum reimbursement for individual transportation.

Compiler's Comments

2005 Special Session Amendment: Chapter 4 in (1), (1)(e), and (2) increased rate from 25 cents to 35 cents; and in (4) and in third sentence in (5) increased contract amount from $9.25 to $12.95 for first eligible transportee and from $6 to $8.40 for additional transportees. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

2001 Amendment: Chapter 409 in (1) and (2) in introductory clause near end increased multiplier in reimbursement formula from 21.25 cents to 25 cents; in (4) and (5) increased reimbursement for first transportee from $8 to $9.25 and for each additional transportee from $5 to $6 for each day of attendance; and made minor changes in style. Amendment effective July 1, 2001.

Effective Date — Applicability: Section 3, Ch. 409, L. 2001, provided: "[This act] is effective July 1, 2001, and applies to school district transportation reimbursements for school fiscal years beginning on or after July 1, 2001."

1995 Amendment: Chapter 298 in introductory clause, in fourth sentence after "guardian", inserted "for actual miles transported"; in (2), near end, changed "3 miles" to "6 miles"; in (3), in fourth sentence before "committee", deleted "county transportation"; inserted (4) limiting state reimbursement for individual transportation contracts; in (5), in third sentence, increased per diem rate for one eligible transportee from $5.31 to $8 and for each additional eligible transportee from $3.19 to $5; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 359 at end of (2) decreased multiplier from 22.5 cents to 21.25 cents for figuring daily reimbursement rate; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: In (1) increased multiplier from 20 cents to 21.25 cents; in (2) increased multiplier from 20 cents to 22.5 cents; and in (4) increased per diem rates from $5 to $5.31 and from $3 to $3.19. Amendment effective July 1, 1991.

1981 Amendment: Increased the multiplier in (1) and (2) from 18 to 20 cents; and in (4) increased the per diem rates from $4 and $2 to $5 and $3, respectively.

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

20-10-143. Budgeting for transportation and transmittal of transportation contracts.

Compiler's Comments

1999 Amendment: Chapter 343 inserted (2)(c) authorizing trustees to include contingency amount in transportation fund budget for unforeseen increases in bus route mileage or reimbursement of additional transportation contract obligations; in second sentence in (4) after "bus transportation" deleted "and individual transportation and in third sentence after "contracted" inserted "school bus" and after "budget" deleted "and after the county superintendent has utilized the contracts for that purpose but before the second Monday of August, the county superintendent shall send all transportation contracts received to the superintendent of public instruction"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1997 Amendment: Chapter 211 in (2)(a), (2)(b), and two places in (4) substituted "final budget" for "preliminary budget"; in (4), in third sentence, substituted "second Monday of August" for "fourth Monday of July" and deleted last sentence that read: "When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for the services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for the deviation"; and made minor changes in style. Amendment effective April 7, 1997.

1991 Amendments: Chapter 711 in (3), at beginning, substituted "A budget amendment to the" for "As provided in 20-9-162, an emergency" and at end substituted "20-9-161 through 20-9-166" for "the emergency budgeting law"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (3), before "transportation", substituted "amendment to the" for "emergency" and at end substituted "budget amendment law" for "emergency budgeting law" (latter amendment rendered void by Ch. 711); and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

ARM 10.7.105 Pupil transportation contracts.
ARM 10.7.108 Bus contracts.

Case Notes

Payment for Transportation to Elementary School Outside District: Transportation to another elementary school outside the district was paid from a budget of the district under former law. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Transportation for High School Pupils: Transportation for high school pupils was provided at the expense of the state and county and not by the school district under former law. State ex rel. Knaup v. Holland, 132 M 569, 319 P2d 516 (1957).

Attorney General's Opinions

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.

Compiler's Comments

2017 Special Session Amendment: Chapter 2 deleted former (3)(h) that read: "(h) school district block grants distributed under 20-9-630"; and made minor changes in style. Amendment effective July 1, 2018.

2013 Amendment: Chapter 46 deleted former (3)(g) that read: "(g) anticipated local government severance tax payments for calendar year 1995 production"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 152 in (5) substituted "on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

2005 Amendments — Composite Section: Chapter 130 in (3)(i) substituted "20-9-630" for "section 244, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

Chapter 255 in (2)(a)(i) at end deleted "except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils". Amendment effective July 1, 2005.

2001 Amendment: Chapter 574 deleted former (3)(e) that read: "(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (3)(i) concerning block grants; and made minor changes in style. Amendment effective July 1, 2001.

Block Grants: Section 244, Ch. 574, L. 2001, provided: "(1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the biennial appropriation provided in [section 248(1)] [not codified] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.

(4) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year."

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (3)(e) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendments: Chapter 22 in (2)(b), in two places, substituted "fund balance" for "cash"; and in (3)(a) substituted reference to 20 U.S.C. 7701, et seq., for reference to Title I of Public Law 81-874. Amendment effective July 1, 1997.

Chapter 211 in first sentence of introductory clause substituted "second Monday of August" for "fourth Monday of July and in accordance with 20-9-123"; and in (1), two places in (1)(d), and (2)(a), before "budget", deleted "preliminary". Amendment effective April 7, 1997.

Chapter 496 in (3)(e), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (3)(g) concerning oil and gas production taxes for "net proceeds taxes for new production, production from horizontally completed wells, and incremental production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988"; inserted (3)(h) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (3)(e) inserted reference to 61-3-527. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Special Session Amendment: Chapter 9 in (3)(g), after "new production", inserted "production from horizontally completed wells, and incremental production"; and made minor changes in style. Amendment effective December 17, 1993.

Report Required: Section 21, Ch. 9, Sp. L. November 1993, provided: "The board of oil and gas conservation shall report at least once a year to the revenue oversight committee regarding the implementation of [this act]. The reports must include but are not limited to information regarding:

(1) the methods used to determine production decline rates;

(2) rules adopted to implement [this act];

(3) the number of enhanced recovery projects completed or anticipated to be completed in a year; and

(4) the number of horizontal wells completed or anticipated to be completed in a year and the method of recovery from the horizontal wells."

Severability: Section 23, Ch. 9, Sp. L. November 1993, was a severability clause.

Effective Date — Applicability: Section 24, Ch. 9, Sp. L. November 1993, provided: "[This act] is effective on passage and approval [approved December 17, 1993] and applies to oil production from new or expanded enhanced recovery projects and to tax years that begin after December 31, 1993."

1993 Amendments: Chapter 133 in (5) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(e) requiring the addition of transportation costs to the schedule amount; inserted (3)(h) requiring the addition of transportation payments to the total amount available for the reduction of property tax; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1992 Special Session Amendment: Chapter 9, Sp. L. July 1992, in (2)(a)(i) reduced from 100% to 50% the amount of transportation reimbursement attributed to transportation of special education pupils. Amendment effective August 6, 1992.

1991 Amendments: Chapter 267 in (3)(g), before "new production", deleted "interim production and". Amendment effective March 29, 1991.

Chapter 711 in (2)(a) increased state transportation reimbursement by substituting "divided by 2" for "divided by 3" and deleted "the resulting one-third amount"; in (2)(a)(i) substituted "one-half" for "the resulting one-third amount" and after "must be" substituted "100%" for "two-thirds"; in (2)(a)(ii) substituted "one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146" for former (2)(b) and (2)(c) that read: "(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), is the budgeted county transportation reimbursement for elementary districts and must be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 is the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be one-third of the schedule amount attributed to the transportation of special education pupils"; in (2)(b) substituted "(2)(a)(ii)" for "(2)(b) or (2)(c)" and at end inserted reference to subsection (i) of subsection (2)(a); in (2)(c) changed subsection reference; in (3)(f) substituted "anticipated revenue from coal gross proceeds" for "gross proceeds taxes from coal"; at beginning of (3)(g) inserted "anticipated"; in (3)(i), in three places, substituted reference to fund balance for reference to cash and in two places substituted "operating reserve" for "cash reserve"; in (4)(a), at end, deleted "and, for an elementary district, adding the difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2)"; deleted former (5) that read: "(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts is computed by adding all requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts"; in (5), after "each district", deleted "and in subsection (5) for the county" and after "the district" deleted "and for the county"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (3)(i), in three places, substituted reference to fund balance for reference to cash and in two places substituted "operating reserve" for "cash reserve"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Special Session Amendment: In (3)(e) substituted "property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204" for "vehicle property taxes imposed under 61-3-504(2) and 61-3-537"; inserted (3)(f) relating to gross proceeds taxes from coal; at end of (3)(g) inserted "and local government severance taxes on any other production occurring after December 31, 1988"; and made minor changes in phraseology. Amendment effective August 11, 1989, and applies retroactively to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

1989 Amendment: In (3)(d) and (3)(e) inserted "or reappropriated". Amendment effective July 1, 1989.

1987 Amendments: Chapter 611 in (3)(e), after "anticipated", substituted "revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537" for "motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536".

Chapter 655 in (3)(f), before "new production", inserted "interim production and".

1985 Amendment: Inserted (3)(f) relating to net proceeds taxes for new production.

1983 Amendment: Inserted (3)(e) relating to motor vehicle fees and reimbursement.

20-10-145. State transportation reimbursement.

Compiler's Comments

2019 Amendment: Chapter 166 in (4) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date — Applicability: Section 4, Ch. 166, L. 2019, provided: "[This act] is effective July 1, 2019, and applies to school fiscal years beginning on or after July 1, 2019."

2017 Amendment: Chapter 299 in (1) in second sentence at end substituted "to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301" for "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective July 1, 2017.

2013 Amendment: Chapter 389 inserted (3) concerning school district disbursements; and made minor changes in style. Amendment effective July 1, 2013.

Preamble: The preamble attached to Ch. 389, L. 2013, provided: "WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis"; and

WHEREAS, Article VIII, section 15, of the Montana Constitution requires that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be sufficient to fund the Teachers' Retirement System on an actuarially sound basis, and current contributions remain insufficient to pay the past and future accruals of retirement benefits for members currently in the system; and

WHEREAS, failure to return the system to a position of actuarially sound funding places the benefits to be paid to current system participants in jeopardy and results in collection of employee contributions for which future benefits may not be guaranteed; and

WHEREAS, the current and increasing level of unfunded liabilities has the potential to compromise the credit ratings of the state of Montana and of local government entities, including public school districts; and

WHEREAS, because reasonable increases in employer contributions and reasonable reductions in benefits for future participants alone will not be sufficient to return the system to a position of actuarially sound funding, increased contributions for current and future participants and reduced benefits for future participants are also necessary to return the system to a position of actuarially sound funding; and

WHEREAS, section 19-20-501, MCA, provides that benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute, and this proposed legislation does not diminish the current or future pension benefits promised to current system participants; and

WHEREAS, during the past two legislative sessions and interims, the Legislature, interim committees, the retirement system board and staff, and the Governor's office have analyzed a range of alternatives for returning the system to a position of actuarially sound funding without raising contract impairment issues for current members, but recent actuarial analysis continues to show that the system remains actuarially unsound; and

WHEREAS, due to significant strains on the Montana economy, state and local government budgets, and taxpayers, a modest supplemental contribution rate increase of 1% applied to current retirement system members, with appropriate mechanisms to reduce or terminate the supplemental contribution rate as system funding improves, in conjunction with additional employer and state contributions, is, pursuant to the language of U.S. Trust Company of New York v. New Jersey, 431 U.S. 1 (1977), concerning contract impairment, reasonable and necessary and is the least impairing alternative available to the Legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner."

Severability: Section 25, Ch. 389, L. 2013, was a severability clause.

1999 Amendment: Chapter 343 inserted (3) requiring district to send to superintendent of public instruction a copy of each new or amended individual transportation contract or bus route form after adopting transportation fund budget amendment and requiring a payment procedure for state reimbursement for additional obligations; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 16, Ch. 343, L. 1999, provided: "[This act] is effective July 1, 1999, and applies to school budgets for school fiscal years beginning on or after July 1, 1999."

1991 Amendments: Chapter 711 in (1), in second sentence after "reimbursement", substituted "is one-half of the reimbursement amounts or one-half" for "shall not exceed one-third of the reimbursement amounts established in such sections or one-third" and at end inserted "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 767 in (1), in second sentence, substituted "20-10-141 and 20-10-142" for "such sections" and at end inserted "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

Administrative Rules

Title 10, chapter 7, ARM Pupil transportation.

Attorney General's Opinions

School Transportation Not Reimbursable During Emergency: The authority of the Governor under 10-3-104 to suspend the provisions of a regulatory statute during an emergency is discretionary. Therefore, when nothing in the Governor's executive order declaring a state of emergency specifically mentioned reimbursement for school transportation under this section, the state was not required to reimburse the costs for school bus transportation for districts closed in accordance with the declaration of emergency. 43 A.G. Op. 29 (1989).

20-10-146. County transportation reimbursement.

Compiler's Comments

2017 Special Session Amendment: Chapter 2 deleted former (2)(b)(iv) that read: "(iv) countywide school transportation block grants distributed under 20-9-632"; deleted former (2)(b)(vii) that read: "(vii) property tax reimbursements made pursuant to 15-1-123(7)"; and made minor changes in style. Amendment effective July 1, 2018.

2013 Amendment: Chapter 46 deleted former (2)(b)(iii) that read: "(iii) anticipated local government severance tax payments for calendar year 1995 production"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 152 in (3) substituted "on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August"; in (4) near end of first sentence substituted "on or before September 15" for "not later than the second Monday in September". Amendment effective April 10, 2011.

Chapter 411 inserted (2)(b)(viii) relating to property tax reimbursements; and made minor changes in style. Amendment effective July 1, 2011.

Saving Clause: Section 15, Ch. 411, L. 2011, was a saving clause.

Applicability: Section 17, Ch. 411, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2005 Amendment: Chapter 130 in (2)(b)(v) substituted "20-9-632" for "section 246, Chapter 574, Laws of 2001". Amendment effective October 1, 2005.

2003 Amendment: Chapter 276 inserted (4) requiring each county superintendent to submit a report of the revenue amounts used to establish levy requirements to the superintendent of public instruction not later than the second Monday in September; and made minor changes in style. Amendment effective April 9, 2003.

Effective Date — Applicability: Section 5, Ch. 276, L. 2003, provided: "[This act] is effective on passage and approval [approved April 9, 2003] and applies to school fiscal years beginning on or after July 1, 2003."

2001 Amendment: Chapter 574 in (2)(b)(i) at end deleted "including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204"; inserted (2)(b)(v) concerning transportation block grants; and made minor changes in style. Amendment effective July 1, 2001.

Countywide School Transportation Block Grants: Section 246, Ch. 574, L. 2001, provided that the office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is set forth in sec. 246(1). See 2001 Session Law for text.

Section 246(2) provided that the average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in each succeeding fiscal year.

Appropriation: Section 248, Ch. 574, L. 2001, provided: "(1) There is appropriated from the general fund to the office of public instruction $114,394,755 for the biennium ending June 30, 2003, for the purpose of school district block grants as provided in [section 244] [not codified].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and $11,003,234 for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245] [not codified].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and $1,828,551 for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246] [not codified].

(4) If Senate Bill No. 176 [Ch. 585, L. 2001] is passed and approved, then there is appropriated from the general fund to the supreme court for fiscal year 2003 the amount deducted from the entitlement share payment in [section 1(2)] [15-1-121(2)] plus an additional 6%. The amount appropriated is up to $25 million to be used for the purpose of implementing Senate Bill No. 176."

Inclusion of Appropriations in Budget: Section 249, Ch. 574, L. 2001, provided: "The governor shall include the appropriation in [section 248(1)] [not codified] in the present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (2)(b)(i) deleted reference to 61-3-504 and inserted references to 61-3-560 through 61-3-562 and 61-3-570. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (2)(b)(i), after "61-3-504", deleted "(2)" and after "61-3-527" inserted "61-3-529". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 451 substituted (2)(b)(ii) concerning oil and gas production taxes for "net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988"; inserted (2)(b)(iii) concerning anticipated local government severance tax payments; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 580 in (2)(b)(i) inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6 [part 6 now repealed]; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996. [On December 31, 1995, Title 15, ch. 36, contained only part 1, now repealed. Part 3 of that chapter became effective January 1, 1996.]

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325, now repealed] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

1993 Amendments: Chapter 10 at beginning of (2)(c) deleted "notwithstanding the provisions of subsection (3)"; and made minor changes in style.

Chapter 133 in (3) substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

Chapter 359 deleted second sentence of (2)(b)(iv) that read: "The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 563 inserted (1)(c) regarding an exception for county transportation reimbursement; and at end of (2)(a) inserted "or reimbursements under the mandatory attendance agreement provisions of 20-5-321".

1993 Statement of Intent: The statement of intent attached to Ch. 563, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [20-5-323] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds."

Effective Date — Applicability: Section 22, Ch. 563, L. 1993, provided: "[This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993."

1991 Amendment: Deleted former (1)(a) that read: "(a) the high school apportionment of the county transportation reimbursement shall be twice the state transportation reimbursement payment"; in (1)(a) changed subsection reference to 20-10-144; deleted former (1)(c) that read: "(c) when a district receives a state transportation reimbursement of two-thirds the schedule amount for the transportation of special education pupils, the apportionment of the high school county transportation reimbursement shall be adjusted to provide only a one-third high school county reimbursement of the transportation of special education pupils"; inserted (2) providing for computation of the county transportation net levy requirement for financing reimbursements to districts; inserted (3) providing for report of the county transportation net levy requirement to County Commissioners; in (4), in first sentence before "county", deleted "elementary" and at end substituted "county transportation fund" for "county basic levy and the high school county transportation reimbursement from the proceeds of the county tax for high school transportation"; and made minor changes in style. Amendment effective July 1, 1991.

20-10-147. Bus depreciation reserve fund.

Compiler's Comments

2015 Amendment: Chapter 8 in (1) near beginning after "owning a bus" deleted "or a two-way radio" and at end of first sentence substituted reference to communication systems and safety devices for "radio"; in (2) in two places substituted "communication systems and safety devices installed on the bus" for "two-way radio"; in (3) substituted "communication systems and safety devices installed on the bus" for "radios"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendments — Composite Section: Chapter 152 in (2) near middle of third sentence substituted "by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values" for "on the fourth Monday of August". Amendment effective April 10, 2011.

Chapter 418 deleted former (4) that read: "(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer." Amendment effective May 13, 2011.

Applicability: Section 28(1), Ch. 418, L. 2011, provided that this section applies to school fiscal year 2012.

2001 Amendment: Chapter 220 near end of (2) after "district, and" deleted "subject to 15-10-420"; and made minor changes in style. Amendment effective April 11, 2001.

Applicability: Section 6, Ch. 220, L. 2001, provided: "[This act] applies to school district budgets for the fiscal year beginning July 1, 2001."

1999 Amendments — Composite Section: Chapter 157 in (1) inserted last sentence allowing use of bus depreciation reserve fund to purchase additional bus; near end of (3) inserted reference to purchase of additional bus; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 584 near end of (2) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 238 in (4), near beginning of first sentence after "reserve fund", inserted "sell all of the district's buses and".

1993 Amendment: Chapter 133 in (2), in third sentence, substituted reference to fourth Monday of August for reference to second Monday of August. Amendment effective July 1, 1993.

1991 Amendments: Chapter 69 near end of (1), after "used for", inserted "the conversion, remodeling, or rebuilding of a bus or for"; near end of (3), after "only", substituted "to convert, remodel, or rebuild buses or" for "for the purchase of buses or radios"; and made minor change in style.

Chapter 568 in (2), in first sentence after "radio", deleted "for such purposes" and inserted second sentence that reads: "The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio"; in (4), in first sentence before "balance", substituted "fund" for "cash" and after "district" substituted "the trustees" for "it"; and made minor changes in style. Amendment effective April 23, 1991.

Attorney General's Opinions

Conditions for Transfer of School District Bus Depreciation Reserve Fund: Resolving an apparent statutory conflict regarding the transfer of a school district bus depreciation reserve fund, a budgeted fund, the Attorney General applied the specific provisions of this section over the general provisions of 20-9-201 and 20-9-208 in holding that before a school district may transfer any money in the district's bus depreciation reserve fund to any other district fund, the school district trustees must have sold all of the district's buses and submitted the proposed fund transfer to the electors of the district. 51 A.G. Op. 6 (2005).

Activity Bus Expenses: School district trustees must conform their budget to the accounting procedure prescribed by the Superintendent of Public Instruction, which requires itemizing the expenses of activity buses under the general fund rather than the transportation fund. 38 A.G. Op. 86 (1980).

Allowable Expenditures Under Bus Depreciation Reserve Fund: The bus depreciation reserve fund allowed under 20-10-147 merely provides for replacement of transportation and activity buses and does not expand use of the transportation fund budget to pay expenses for operation of activity buses. 38 A.G. Op. 86 (1980).

Use of School Bus Depreciation Fund: The trustees of a school district may pay for the cost of replacement of a bus or radio from a bus depreciation reserve fund established under 20-10-147 if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any such bus or radio, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle. 37 A.G. Op. 153 (1978).

20-10-148. Cost-effectiveness analysis required before purchase of small school bus.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 149, L. 2023. Amendment effective July 1, 2023.

Effective Date: Section 6, Ch. 221, L. 2017, provided: "[This act] is effective July 1, 2017."

Part 2
Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services money.

Compiler's Comments

2001 Amendment: Chapter 237 in (2) at end of first sentence substituted "the federal special revenue fund" for "the agency fund"; and made minor changes in style. Amendment effective July 1, 2001, and applies to school budgets for the school fiscal years beginning on or after July 1, 2001.

1983 Amendment: In first sentence of (2), substituted "agency fund" for "federal and private grant clearance fund".

Federal Statutes: The National School Lunch Act and the Child Nutrition Act of 1966, referred to in this section, are compiled in the U.S.C. as Title 42, § 1751, et seq.

20-10-202. Records, reports, and reviews.

Compiler's Comments

1991 Amendment: In (2), before "inspections", deleted "audits"; and made minor changes in style. Amendment effective July 1, 1992.

Estimate of Cost Savings Required in 1993 Budget Request: Section 27, Ch. 489, L. 1991, provided: "The governor shall include in his proposed budget submitted to the 53rd legislature an estimate of cost savings to state agencies resulting from the implementation of [this act]."

Interfund Loan From General Fund for Implementation of Single Audit Act: Section 28, Ch. 489, L. 1991, provided: "Costs incurred by the department of commerce during fiscal year ending June 30, 1992, in adopting rules to implement [this act] and in preparing for the implementation of [this act], up to the approved appropriation for this purpose, are to be funded by an interfund loan from the general fund that must be repaid over a 5-year period from the revenues from the filing fees provided for in [this act]."

Effective Date — Applicability: Section 30, Ch. 489, L. 1991, provided: "(1) Except as provided in (2), [this act] is effective July 1, 1992, and applies to the fiscal year ending June 30, 1992.

(2) The department of commerce may adopt rules to implement [this act] to become effective July 1, 1992."

20-10-203. School food commodities.

Compiler's Comments

1983 Amendment: At end of second sentence, substituted "commodity state special revenue account" for "commodity revolving account".

20-10-204. Duties of trustees.

Attorney General's Opinions

School Trustees — Conflict of Interest: A member of the board of trustees of a school district is prohibited from having any pecuniary interests in supplies purchased for the school's lunch program. 34 A.G. Op. 31 (1972).

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) substituted "local office of public assistance" for "county department of welfare"; and made minor changes in style. Amendment effective October 1, 2003.

CHAPTER 11
COMMUNITY CHOICE SCHOOLS

Part 1
Community Choice Schools Act

Part Compiler's Comments

Effective Date: Section 21, Ch. 513, L. 2023, provided: "[This act] is effective July 1, 2023."

Transition: Section 18, Ch. 513, L. 2023, provided: "The legislature intends that the community choice school commission established in [section 4] [20-11-106] organize its operations, adopt bylaws, approve authorizers, and solicit choice school proposals during the fiscal year beginning July 1, 2023, with the goal of having operating choice schools for the school year beginning July 1, 2024."

Severability: Section 20, Ch. 513, L. 2023, was a severability clause.

20-11-107. Authorizers.

Compiler's Comments

2023 Code Commissioner Correction: In (4)(a) in first sentence, the Code Commissioner substituted the bracketed reference to subsection (3) for a reference to subsection (5) to correct an apparent error.

CHAPTER 15
COMMUNITY COLLEGE DISTRICTS

Chapter Compiler's Comments

Legislative Study of Postsecondary Education: Chapter 632, L. 1989, was a bill entitled: "An act establishing a legislative committee to consider issues related to the governance and funding of postsecondary education; providing an appropriation; and providing an effective date and a termination date." Effective July 1, 1989, and terminates June 30, 1991.

Preamble — Interim Study: The preamble attached to Ch. 632, L. 1989, provided: "WHEREAS, postsecondary education provides opportunities for the citizens of Montana to develop their educational potential; and

WHEREAS, as a result of the work of the University Funding Study Committee during the 1989 biennium, valuable conclusions were reached regarding the reliability and use of peer data and the level of funding for Montana postsecondary education institutions relative to peer institutions; and

WHEREAS, the conclusions reached on peer data have removed a major impediment to working cooperatively on elements of the higher education funding formula and have changed the direction for Montana University System budgeting; and

WHEREAS, the relationship between the Montana University System and the Legislature has been significantly improved by the work of the University Funding Study Committee; and

WHEREAS, further work is needed to more fully develop new budgeting formulas and to complete work on personnel and classroom enrollment systems; and

WHEREAS, the balance from the $150,000 appropriated by the 1987 Legislature to conduct the university funding study may be expended to support the costs of a postsecondary education study committee."

Part 1
General Provisions

20-15-101. Definition.

Compiler's Comments

2017 Amendment: Chapter 74 in (1) substituted "open to all people, subject to uniform regulations as determined by the trustees" for "to high school graduates and other persons who have terminated their formal high school education". Amendment effective March 13, 2017.

20-15-102. Community college districts — name and corporate powers.

Case Notes

Administrative Tenure Not Contemplated: A community college may not grant continuing contract status (tenure) except to those persons specifically authorized to receive such status. Tenure for teachers is unique in public contracts of employment; its basis is academic freedom. It does not apply to an administrative position not requiring teacher certification. Sibert v. Community College, 179 M 188, 587 P2d 26 (1978).

Attorney General's Opinions

Power of Community College Trustees to Acquire and Dispose of Property: This section authorizes community college trustees to acquire and dispose of property in the same way as other types of school districts are statutorily permitted. 41 A.G. Op. 72 (1986).

20-15-103. Supervision and coordination by board of regents.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) at beginning substituted current first sentence for former first sentence that read: "Community college districts shall be under the supervision and coordination of the regents"; and in (5) substituted current text concerning providing a recommendation to the legislature pursuant to 20-15-209 for former text that read: "call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

Case Notes

"Schoolteacher" — Higher Education Faculty Not Included: The plain and ordinary meaning of "schoolteacher" does not encompass higher education faculty, including community college faculty members, especially since community college faculty members are ultimately answerable to the Board of Regents. Community college faculty members are state employees for purposes of entitlement to payment for accumulated sick leave. Rippey v. Bd. of Trustees, 210 M 396, 682 P2d 1363, 41 St. Rep. 1117 (1984), followed, with regard to the fact that "teacher" does not include a community college instructor for tenure purposes, in Talley v. Flathead Valley Community College, 259 M 479, 857 P2d 701, 50 St. Rep. 889 (1993).

20-15-104. Pecuniary interest and letting contracts.

Compiler's Comments

2015 Amendment: Chapter 68 in (2)(a) substituted "$80,000" for "$5,000"; deleted former (2)(b) that read: "(b) Whenever the proposed contract costs are less than $25,000 but more than $5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana"; in (2)(b) substituted "$80,000" for "$25,000"; and made minor changes in style. Amendment effective February 27, 2015.

2005 Amendment: Chapter 162 in (2) at beginning inserted exception clause pertaining to certain energy audits and energy performance contracts; and made minor changes in style. Amendment effective April 7, 2005.

20-15-105. Courses of instruction — tuition and fees.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near middle of first sentence substituted "transfer, career and technical, and adult postsecondary" for "academic, occupational, and adult"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

20-15-106. Retirement systems for employees, teachers, and administrators.

Compiler's Comments

2009 Amendment: Chapter 282 in (1) at beginning after "Teachers" inserted "and administrators" and at end inserted "pursuant to the provisions of Title 19, chapter 20"; and in (2) at end inserted "pursuant to Title 19, chapters 2 and 3". Amendment effective July 1, 2009.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Part 2
Organization and Trustees

20-15-201. Requirements for organization of community college district.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) after "contiguous elementary" inserted "or K-12". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

20-15-202. Petition for organization of community college district.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near middle inserted "under 20-15-201" and after substituted "the board of county commissioners" for "the regents"; inserted (2) concerning the petition to be presented to the board of each county commissioner in each county when the area to be included within the proposed community college district lies in more than one county; inserted (3) concerning the items that must be included in the petition; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

Attorney General's Opinions

Creation of Community College District — Final Approval by Legislature — Ministerial Recommendation by Board of Regents: After local voters approve the creation of a new community college district, creation of the district is finally approved by the Legislature. Following legislative approval, the Board of Regents must make a recommendation, in the form of an organizational order, as to the advisability of creating the new district. 52 A.G. Op. 1 (2007).

20-15-203. Community college district organization election — notice — proposition statement.

Compiler's Comments

2021 Amendment: Chapter 351 substituted current (1) and (2) for former (1) and (2) (see 2021 Session Law for former text); in (3) near beginning after "the proposition" inserted "for organization"; in the proposition form in first paragraph after "(elementary" inserted "or K-12", substituted "transfer, career and technical, and adult postsecondary education" for "13th- and 14th-year courses", and at end inserted last sentence, including (1) and (2) of the proposition form concerning a portion of the operating costs of the community college district; and the repayment of bonds issued as authorized by law. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2015 Amendment: Chapter 49 throughout section substituted references to the county election administrator for references to the regents; in (1) in first sentence inserted "responsible for conducting elections pursuant to 20-15-208" and in second sentence inserted "notify the regents of the petition and"; in (2) substituted "the county election administrator shall notify the regents and" for "the regents shall order the elementary districts encompassed by the proposed community college district to" and substituted "that, pursuant to 13-1-504(4), is not less than 85 days after the order" for "except that an election required by a petition received by the regents less than 60 days before the regular school election day must be held at the regular school election in the following school fiscal year"; in (3) near end substituted "county election administrator" for "Board of Regents at Helena, Montana"; and made minor changes in style. Amendment effective November 4, 2015.

1999 Amendment: Chapter 51 in (3) near end of proposition form after "day of ...." substituted "20..." for "19..."; and made minor changes in style. Amendment effective January 1, 2000.

Attorney General's Opinions

Creation of Community College District — Final Approval by Legislature — Ministerial Recommendation by Board of Regents: After local voters approve the creation of a new community college district, creation of the district is finally approved by the Legislature. Following legislative approval, the Board of Regents must make a recommendation, in the form of an organizational order, as to the advisability of creating the new district. 52 A.G. Op. 1 (2007).

20-15-204. Election of trustees — districts from which elected — terms of office.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near beginning after "Pursuant to 20-15-208," deleted "the board of regents shall call and". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2019 Amendment: Chapter 69 inserted (2) concerning the county election administrator's determination of which candidates are elected trustees for a newly organized community college district; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 49 in (1) at beginning substituted "Pursuant to 20-15-208, the board of regents shall call and the county election administrator shall conduct" for "The regents shall provide for" and in middle substituted "at the same time as the election to be held" for "at the election held"; in (2) in middle after "part of a high school district" inserted "within the community college district" and near end substituted "the remaining trustees must be elected" for "three trustees"; and made minor changes in style. Amendment effective November 4, 2015.

Attorney General's Opinions

City Judge Not to Hold Office as Community College Trustee: The provisions of Art. VII, sec. 10, Mont. Const., apply to all judges, including City Judges. Because the position of trustee of a community college district is considered an elective public office, a City Judge is constitutionally prohibited from holding office as an elected trustee of a community college district. 44 A.G. Op. 21 (1991).

20-15-207. Notice of organization election.

Compiler's Comments

2015 Amendment: Chapter 49 at end substituted "county election administrator in accordance with 13-1-108" for "regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election"; and made minor changes in style. Amendment effective November 4, 2015.

20-15-208. Conduct of community college district elections.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near end after "community college district must be" deleted "supervised by the board of regents acting as the governing body for the election and"; in (2) near middle substituted "the initial elections" for "the initial election"; and deleted former (5) that read: "The cost of conducting an initial community college district election under subsection (1) must be paid by the university system." Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2015 Amendment: Chapter 49 in (1) in middle inserted "concurrent" and after "election of trustees" substituted current language concerning conduct and supervision of community college district elections for "for such community college district shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election"; inserted (2) regarding community college district's board of trustees as governing body for subsequent elections; inserted (3) regarding administration of an election for a district within more than one county; inserted (4) referencing Title 13, chapter 1, part 5; in (5) substituted current language requiring the university system to pay for initial elections for former language that read: "The cost of conducting such election shall be borne by the districts"; and made minor changes in style. Amendment effective November 4, 2015.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) in introductory clause at end of second sentence deleted "to the regents" and in third sentence near middle substituted "following an affirmative" for "following the"; inserted (1)(a) concerning items that must be submitted by the trustees-elect to the board of regents by August 15 following an affirmative election; in (1)(b) substituted current text for former text that read: "the regents shall inform the legislature of the results of the election and shall provide a recommendation to the legislature"; in (2) inserted second sentence concerning the legislature's consideration of a proposed community college district by joint resolution, in middle of third sentence substituted "the board of county commissioners of each county in which the proposed community college district is located" for "the regents", and at end inserted last sentence concerning notifying the board of regents of the district's organization"; in (3) in first sentence substituted "the board of trustees of the community college district shall set a date and notice an organization meeting" for "the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the elected trustees of their membership and of the organization meeting"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2019 Amendment: Chapter 69 in (1) substituted current third and fourth sentences for former text that read: "Approval for the organization of a new community college district must be granted at the discretion of the legislature acting on the recommendation of the regents. If the certificate of the election shows that the proposition to organize the community college district has received a majority of the votes cast in each county within the proposed district, the regents shall make an order declaring the community college district organized and cause a copy of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of the new district is located. If the proposition carries, the county election administrator shall determine which candidates have been elected trustees. If the proposition to organize the community college district fails to receive a majority of the votes cast, a tabulation may not be made to determine the candidates elected trustees." Amendment effective October 1, 2019.

2015 Amendment: Chapter 49 in (1) at end of first sentence deleted "and the coordinator of community college districts, from the results certified and attested", at beginning of second sentence inserted "The county election administrator", in fourth sentence after "the certificate of the" substituted "election" for "coordinator of community college districts", in fifth sentence substituted "county election administrator" for "regents"; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Composite Section: Section 20-15-209 was amended twice in 1971, once by Ch. 164, sec. 1 (approved March 3, 1971), and once by Ch. 407, sec. 2 (approved March 18, 1971). Neither amendment mentioned the other or included the changes made by the other. Chapter 164 deleted "or part of a county" after "county" in the present first and third sentences of the first paragraph and deleted a third sentence reading: "If the proposition carries in some county or counties or parts of counties but not in all portions of the area sought to be included within the district, the board of education shall determine whether the area in which the proposition carried by a majority vote meets the assessed valuation and high school pupil enrollment requirements for the organization of a community college district, and if so, shall establish the boundaries and make an order declaring the community college district organized in the area in which the proposition has carried by a majority vote."

Although Ch. 407 substituted "regents" for "board of education" in the above quoted sentence, perhaps indicating an intent that the sentence be left in the section, and did not delete "or part of the county" where deleted by Ch. 164, the compiler has made a composite section incorporating the changes made by both amendments since 20-15-201 requires that the proposed area of a district coincide with the boundaries of one or more counties and the changes made by Ch. 164 appear to make this section consistent with those requirements.

Chapter 407 also inserted the second sentence of the first paragraph, substituted "may" for "shall" in the third sentence shown in the text, and substituted "co-ordinator of community college districts" for "superintendent of public instruction" and "regents" for "board of education" throughout the section.

Attorney General's Opinions

Creation of Community College District — Final Approval by Legislature — Ministerial Recommendation by Board of Regents: After local voters approve the creation of a new community college district, creation of the district is finally approved by the Legislature. Following legislative approval, the Board of Regents must make a recommendation, in the form of an organizational order, as to the advisability of creating the new district. 52 A.G. Op. 1 (2007).

20-15-210. Qualification and organization of board of trustees.

Compiler's Comments

1995 Amendment: Chapter 260 in (2), in last sentence, deleted references to 20-9-206, 20-9-222, and 20-9-224; and made minor changes in style. Amendment effective July 1, 1995.

20-15-219. Qualifications for office of trustee — declaration of candidacy.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) substituted current language regarding submission of declaration of candidacy for former language that read: "(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated"; and made minor changes in style. Amendment effective November 4, 2015.

2013 Amendment: Chapter 251 in (2) in second sentence substituted "40 days" for "30 days". Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

20-15-221. Election of trustees after organization of community college district.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) substituted "20-20-105(1)" for "20-3-304", in third sentence inserted "Pursuant to 20-15-208" and substituted "county election administrator" for "component elementary school districts within the community college district", and in last sentence substituted "at least 85" for "not less than 40"; in (2) substituted "as provided in 13-1-108" for "by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, with the last insertion to be no more than 1 week prior to the date of the election. This notice is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws"; in (3) substituted "electors" for "voters" and at end deleted "In addition to the nominating petition required by 20-15-219(2), all"; in (4) substituted "county election administrator within the time period specified in 20-3-305(2)" for "secretary of the board of trustees of the community college district not less than 40 days prior to the date of election. If an electronic voting system is not used in the component elementary school district or districts that conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the community college district, but in all other respects the elections must be conducted in accordance with the school election laws"; in (5) deleted last sentence that read: "However, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election"; and made minor changes in style. Amendment effective November 4, 2015.

2013 Amendment: Chapter 251 in (3) in second sentence substituted "40 days" for "30 days". Amendment effective October 1, 2013.

2005 Amendment: Chapter 130 in (3) in third sentence near beginning after "system" substituted "is" for "or voting machines are"; and made minor changes in style. Amendment effective October 1, 2005.

20-15-222. Results of election — qualifying oath — term of office.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) substituted "county election administrator" for "component elementary districts"; in (2)(b) at end before "election" inserted "school"; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal.

Compiler's Comments

2015 Amendment: Chapter 49 in (1)(a) after "after the regular" inserted "school". Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-15-225. Powers and duties of trustees.

Compiler's Comments

2015 Amendment: Chapter 49 in (1)(j) after "call" deleted "and conduct". Amendment effective November 4, 2015.

20-15-227. Trustee removal procedure.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-15-228. Grounds for removal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-15-229. Audit of district.

Compiler's Comments

2021 Amendment: Chapter 110 in first sentence after "audit" deleted "by the legislative auditor"; in middle of second sentence substituted "shall contract" for "may contract"; and inserted third and fourth sentences concerning payment of contract costs and the provision of audit reports to the legislative auditor. Amendment effective July 1, 2021.

20-15-231. Annexation of territory of districts to community college district.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) in last sentence substituted "school election day that, pursuant to 13-1-504, is at least 85 days after the order for the election" for "general election day"; in (3) inserted "under 20-15-203" and substituted "act as the governing body for the election and the election may not include" for "perform the requirements of the board of regents and there shall not be"; in (5) in second sentence substituted "county election administrator" for "elementary districts encompassed in the proposed area to be annexed"; and made minor changes in style. Amendment effective November 4, 2015.

1985 Amendment: Inserted (2) relating to adoption of a plan.

1983 Amendment: In first sentence of (1), after "districts of" substituted "a county that is contiguous to the existing community college district" for "one county", before "order" changed "shall" to "may"; and in second sentence of (1) after "shall be" substituted "held on the next general election day" for "ordered within 60 days of the receipt of the petition".

20-15-241. Community college service regions — creation.

Compiler's Comments

2015 Amendment: Chapter 49 in (2)(c) substituted "a regular school election day in accordance with 20-15-208" for "a general election day". Amendment effective November 4, 2015.

2001 Amendment: Chapter 495 in (3)(a)(vi) inserted requirement of an estimate of the election's impact on homes valued at $100,000 and at $200,000 in terms of added property taxes and inserted last sentence allowing an impact statement as to homes of other values; and made minor changes in style. Amendment effective October 1, 2001.

Part 3
Finance

Part Attorney General's Opinions

Appropriations to Community Colleges — Budget Procedure: The budget for community college districts must be approved by the Board of Regents and fit into the Budget Act procedure of 17-7-101, et seq. It is a budget request that may be altered by the chief budget officer and which is ultimately subject to legislative approval. While 65% state funding of community colleges is the goal, the Legislature may or may not appropriate an amount equal to 65% of the districts' proposed budgets. If it does not, an additional levy, which must be approved by the voters in the district, is authorized to make up the deficiency. The General Appropriation Act of 1979 does no more than reflect this entire statutory scheme, especially the requirements of this part. The General Appropriation Act of 1979 properly appropriates state funds to the community colleges. 38 A.G. Op. 54 (1979).

20-15-301. Sources of financing for and types of capital expenditures.

Compiler's Comments

2017 Amendment: Chapter 421 in (1)(d) after "provisions of" inserted "20-15-327 and"; in (2) after "purposes of" inserted "20-15-327 and" and at end inserted "as described in 20-15-327"; and made minor changes in style. Amendment effective July 1, 2017.

1989 Amendment: In (1)(a), before "school buildings", substituted "purchase, lease, build, enlarge, alter, or repair" for "build, enlarge, alter, repair, or acquire by purchase"; in (1)(d), after "provisions of", substituted "chapter 9, part 4" for "the bonds chapter"; and made minor changes in phraseology.

Attorney General's Opinions

Community College District Statutory Borrowing Authority: A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues. A district may also enter into a promissory note loan agreement with a private lender whereby the district would repay the loan from college revenues. A college district election is not required to approve these construction project financing arrangements; however, a city is required to hold a public hearing prior to issuing industrial development revenue bonds. A district is subject to the election requirement in 20-6-603 when acquiring or constructing sites or buildings. 42 A.G. Op. 78 (1988).

County Revenue Bonds to Finance Community College District Construction: Flathead Valley Community College District may use funds that Flathead County raised by issuing revenue bonds for school construction either by borrowing the funds from the county or by leasing the buildings constructed by the county, subject to applicable school law. 42 A.G. Op. 29 (1987).

20-15-305. Adult education tax levy.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near beginning inserted "district created prior to January 1, 2021"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2001 Amendment: Chapter 574 near middle after "levy a" deleted "1 mill". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-15-309. Biennial budgeting.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 261 at end inserted "and to the legislature in accordance with 5-11-210". Amendment effective April 20, 2021.

Chapters 348 and 351 in first sentence near middle substituted "enrollment projections and other data necessary for calculating the state appropriation under 20-5-310" for "a proposed budget" and substituted "August 1" for "August 15", and deleted former second and third sentences (see 2021 Session Law for former text). Amendments effective July 1, 2021.

Transition: Section 8, Ch. 348, L. 2021, provided: "The legislature intends that fiscal years 2022 and 2023 be governed by the current community college funding formula and that revisions to the formula in [this act] be used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 6] [20-15-328]." Effective July 1, 2021.

Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

Legislative Finance Committee Bill: Chapter 495, L. 1981 (HB 69), was introduced at the request of the Legislative Finance Committee. See final report on community college funding study, Legislative Fiscal Analyst, June 1981.

20-15-310. Appropriation — definitions.

Compiler's Comments

2021 Amendment — Code Commissioner Correction — Coordination: Chapter 348 inserted (1) providing definitions of adjusted base, base year, concurrent enrollment, CTE FTE, dual enrollment, early college, FTE or full-time equivalent, FTE categories, FTE decrease funding factor, FTE increase funding factor, FTE weighting factor, general education FTE, inflationary factor, and weighted FTE; deleted former (2)(a)(i) through (7) (see 2021 Session Law for former text); inserted (3)(a) concerning the formula for determining state general fund appropriations for each community college in the first year of the next biennium and (3)(b) concerning the formula used in the second year of the next biennium; and made minor changes in style. Amendment effective July 1, 2021.

In (1) and (1)(a) the Code Commissioner inserted brackets around references to 20-15-328 to reflect that the effective date of that section is January 1, 2023, which is later than the effective date of the amendments made to this section by Ch. 348, L. 2021.

The amendment to this section made by sec. 20, Ch. 351, L. 2021, was rendered void by sec. 27(1), Ch. 351, L. 2021, a coordination section.

Transition: Section 8, Ch. 348, L. 2021, provided: "The legislature intends that fiscal years 2022 and 2023 be governed by the current community college funding formula and that revisions to the formula in [this act] be used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 6] [20-15-328]." Effective July 1, 2021.

2019 Amendment: Chapter 175 in (3) substituted current text concerning the state general fund appropriation for each full-time equivalent resident student for former text that read: "The state general fund appropriation for each full-time equivalent resident student at a community college may not exceed the lesser of $2,500 plus:

(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or

(b) the weighted average of state support per resident full-time equivalent student within the community college system"; in (4) substituted "2 consecutive fiscal years" for "24 consecutive academic months" and after "appropriation" inserted "in the subsequent fiscal year"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 336 in (2)(a) after "general fund appropriation" inserted "for each community college"; in (2)(b) after "state share" in two places inserted "for each community college"; inserted (3) providing for a maximum state general fund appropriation for each full-time equivalent resident student; inserted (4) and (5) providing for a lower state general fund appropriation and requiring submission of a business plan if enrollment is less than 200 full-time equivalent resident students; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

Severability: Section 26, Ch. 336, L. 2017, was a severability clause.

2013 Amendment: Chapter 3 inserted (4)(a) defining adjusted cost of education; in (4)(b) substituted "board of regents" for "commissioner of higher education, minus any reversion and one-time-only expenditures that are included"; in (4)(c) and (4)(d) inserted "adjusted" before "cost of education"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendment: Chapter 493 in (1) near middle inserted "designated funds"; in (2)(a) in introductory clause at end after "must be" substituted "determined as follows" for "based on a budget amount per full-time equivalent student, as determined by the legislature"; inserted (2)(a)(i) and (2)(a)(ii) concerning multiplication formula; inserted (2)(b) requiring determination of various amounts by the legislature; inserted (4) providing definitions; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 3, Ch. 493, L. 2007, provided: "[This act] is effective July 1, 2007, and applies to funds appropriated on or after July 1, 2007."

1989 Amendment: At end of first sentence substituted "be governed by the provisions of this part and the state general appropriations act" for "be controlled under provisions of the state general appropriations act"; and at beginning of second sentence substituted "The state general fund appropriation must be based on a budget amount" for "The unrestricted budget shall be based on a calculated dollar amount" and at end inserted "as determined by the legislature". Amendment effective July 1, 1989.

20-15-311. Funding sources.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near beginning substituted "annual current fund budget" for "annual operating budget" and near middle substituted "created on or after January 1, 2021, may" for "must"; in (1)(b) at end inserted "pursuant to 20-15-310"; inserted (1)(c) concerning the operating levy pursuant to 20-15-316; deleted former (2) and (3) that read "(2) subject to 15-10-420, a mandatory mill levy on the community college district; (3) subject to 15-10-420, the adult education levy authorized under provisions of 20-15-305"; inserted (2) concerning sources from which the annual fund budget for a community college district created prior to January 1, 2021 may be financed; deleted former (5) that read: "(5) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2001 Amendments — Composite Section: Chapter 495 at end of (5) inserted "and 15-10-425". Amendment effective October 1, 2001.

Chapter 574 in (3) before "adult education levy" deleted "1 mill". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in (2) and (3) inserted references to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1983 Amendment: Inserted (8) relating to income from community college service region.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

Applicability of Property Tax Freeze to Community College Funding — Mandatory Levy Frozen: The provisions of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) apply in freezing the mandatory levy on community college districts at the 1986 level. 42 A.G. Op. 21 (1987).

20-15-312. Review and approval of annual operating budget.

Compiler's Comments

2021 Amendment — Coordination: Chapter 351 substituted current (1) for former (1) (see 2021 Session Law for former text); in (2) in first sentence near beginning after "shall review" inserted "and approve" and at end of first sentence substituted "ensuring the proposed budget complies with applicable laws and accounting standards" for "and make any changes it determines necessary"; and made minor changes in style. Amendment effective July 1, 2021.

The amendments to this section made by sec. 7, Ch. 348, L. 2021, were rendered void by sec. 27(2), Ch. 351, L. 2021, a coordination section.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2007 Amendment: Chapter 493 in (1)(a) after "must" substituted "be determined pursuant to 20-15-310" for "represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified in the appropriations act appropriating funds to the community colleges for each biennium. This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature"; in (2)(b) in first sentence after "specified percentage of the" substituted reference to combined total of fixed and variable costs of education as defined in 20-15-310 for "budget amount per full-time equivalent student"; in (2)(e) inserted "or designated"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 3, Ch. 493, L. 2007, provided: "[This act] is effective July 1, 2007, and applies to funds appropriated on or after July 1, 2007."

1997 Amendment: Chapter 243 in (1), near beginning of first sentence, substituted "September 1" for "June 15"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In (1)(a) deleted introductory clause "General fund appropriation", at end of first sentence substituted "the budget amount per full-time equivalent student, as determined by the legislature" for "the total unrestricted budget authorized by the legislature and approved by the regents", and inserted last sentence relating to nonapplication of percentage to excess budget; in (1)(b) substituted language relating to mandatory levy for "An estimate of revenues to be generated by student tuition and fees, and all other unrestricted income, revenues, or balances shall be added to the state general fund appropriation and the total subtracted from the total unrestricted budget. The difference shall be obtained by a mandatory levy"; in (1)(c) inserted reference to subsection (a) of subsection (1) and inserted reference to revenue from tuition and fee schedules and other unrestricted income; deleted former (1)(g) that read: "(g) If revenues to the unrestricted budget exceed estimates, the excess shall be used to reduce the mandatory levy in the subsequent year"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Attorney General's Opinions

Applicability of Property Tax Freeze to Community College Funding — Mandatory Levy Frozen: The provisions of Initiative No. 105 and Senate Bill No. 71 (Ch. 654, L. 1987) apply in freezing the mandatory levy on community college districts at the 1986 level. 42 A.G. Op. 21 (1987).

20-15-313. Tax levy.

Compiler's Comments

2021 Amendment: Chapter 351 in (1) near middle after "district is located shall" deleted "subject to 15-10-420" and at end substituted "subject to statutory conditions and limitations, any district levy authorized by law" for "the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters"; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

2013 Amendment: Chapter 62 after "Thursday" inserted "after the first Tuesday". Amendment effective July 1, 2013.

2011 Amendment: Chapter 152 at beginning of first sentence substituted "By the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values" for "On the second Monday in August". Amendment effective April 10, 2011.

1999 Amendment: Chapter 584 in first sentence inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Attorney General's Opinions

Levies Designated for Community College District Retirement Costs Limited to Property Within District: The requirement in 20-9-501 that the County Superintendent of Schools determine each district's net retirement fund separately, together with the language in 20-9-142 requiring Boards of County Commissioners to fix and levy taxes on real and personal property in a district, indicates the Legislature's intent that levies designed for community college district retirement costs be limited to property in the community college district, not all property in the county. Therefore, the Board of County Commissioners of a county in which a community college district is located may not issue a tax levy to fund the teachers' retirement obligations of the community college district against property that is located in the county but outside the community college district. Rather, the levy may be imposed only on property within the community college district. 47 A.G. Op. 17 (1998).

20-15-314. Tax levy for community college service region.

Compiler's Comments

1999 Amendment: Chapter 584 in two places inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

20-15-315. Funding for new community college district.

Compiler's Comments

2021 Enactment: The enactment of this section by sec. 1, Ch. 351, L. 2021, was rendered void by sec. 27(3), Ch. 351, L. 2021, a coordination section. Pursuant to sec. 27(3), the text of sec. 1 was replaced.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

Effective Date: Section 28, Ch. 351, L. 2021, provided: "[This act] is effective July 1, 2021."

20-15-316. Operating levy for community college districts created on or after January 1, 2021.

Compiler's Comments

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

Effective Date: Section 28, Ch. 351, L. 2021, provided: "[This act] is effective July 1, 2021."

20-15-321. Current unrestricted subfund cash reserve.

Compiler's Comments

2021 Amendment: Chapter 351 in three places substituted "current unrestricted subfund" for "general fund". Amendment effective July 1, 2021.

Transition: Section 25, Ch. 351, L. 2021, provided: "For a proposed community college district or a community college district approved by the 2021 legislature, the legislature intends that [this act] apply to the district prospectively as of July 1, 2021."

20-15-323. Definition of emergency for budgeting purposes.

Compiler's Comments

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-324. Resolution for emergency budget — petition to board of regents.

Compiler's Comments

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-325. Emergency budget limitation, preparation, and adoption procedures.

Compiler's Comments

1995 Amendment: Chapter 260 in (4), after "county superintendent", deleted "the county treasurer"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.

Compiler's Comments

2001 Amendment: Chapter 574 in (3) near middle after "shall" deleted "subject to 15-10-420 and" and after "tax on the" inserted "taxable value of all". Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 42 in (3) substituted "subsection (2)(b)" for "subsection (2)(c)". Amendment effective March 12, 1997.

1995 Amendment: Chapter 260 in (1), near beginning, substituted "board of trustees" for "county treasurer"; in (2), near beginning, inserted "cash"; in (2)(a) and (2)(b), before "registered", deleted reference to outstanding warrants; deleted former (2)(b) that read: "(b) the amount of the cash balance in each fund included on the emergency budget that is available to finance the outstanding warrants or registered warrants"; in (2)(b), at beginning, deleted "after consideration of the available money in subsection (2)(b)"; and made minor changes in style. Amendment effective July 1, 1995.

Effective Date: Section 60(1), Ch. 767, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

20-15-327. Revenue-producing facilities — powers of board of trustees.

Compiler's Comments

Effective Date: Section 4, Ch. 421, L. 2017, provided: "[This act] is effective July 1, 2017."

20-15-328. Adjustments based on actual weighted FTE — special revenue account — statutory appropriation.

Compiler's Comments

Transition: Section 8, Ch. 348, L. 2021, provided: "The legislature intends that fiscal years 2022 and 2023 be governed by the current community college funding formula and that revisions to the formula in [this act] be used in the appropriations process for fiscal year 2024 and thereafter. For the 2025 biennium and each subsequent biennium, the community colleges shall provide FTE projections and other necessary data in order to implement the changes to the funding formula as described in 20-15-309, 20-15-310, and [section 6] [20-15-328]." Effective July 1, 2021.

Effective Date — Applicability: Section 10(3), Ch. 348, L. 2021, provided: "[Section 6] [20-15-328] is effective January 1, 2023, and applies to community college appropriations and budgets for fiscal years beginning on or after July 1, 2023."

Part 4
Relationship to Other Laws

20-15-403. Applications of other school district provisions.

Compiler's Comments

2015 Amendment: Chapter 84 in (1) following "17-6-204" inserted "17-6-205". Amendment effective February 27, 2015.

Code Commissioner Correction: In (1) substituted "Rules 4(k) and 15(c)" for "Rules 4D(2)(g) and 15(c)" to reflect revisions adopted by Supreme Court Order No. AF 07-0157 dated April 26, 2011.

2009 Amendments — Composite Section: Chapter 27 in (1) in list of sections inserted "50-71-112"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 282 in (1) in list of sections inserted "19-20-302"; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 286 in (1) after "7-13-110" deleted "7-13-210"; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clauses: Section 25, Ch. 27, L. 2009, was a saving clause.

Section 42, Ch. 286, L. 2009, was a saving clause.

Transition — Repealed: Section 43, Ch. 286, L. 2009, provided: "(1) Subject to subsection (2), a special district in existence on [the effective date of this act] [effective July 1, 2009] must comply with the provisions of [sections 1 through 20] [Title 7, chapter 11, part 10] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act] [effective July 1, 2009], the proposal is subject to the provisions of [section 20] [7-11-1029].

(2) A special district in existence on [the effective date of this act] [effective July 1, 2009] is required to comply with the provisions of [section 20] [7-11-1014] only upon alteration of its boundaries." This transition section was repealed by sec. 2, Ch. 97, L. 2019. See the code commissioner explanation under 7-11-1004.

1999 Amendment: Chapter 18 in (1) near end after "53-20-304" deleted "77-3-321". Amendment effective October 1, 1999.

1997 Amendments: Chapter 310 in (1) deleted 39-71-2206 from the list of sections. Amendment effective July 1, 1997.

Chapter 522 in (1), near middle of list of statutory references after "18-2-114", inserted "18-2-401"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 14, Ch. 310, L. 1997, was a severability clause.

Section 10, Ch. 522, L. 1997, was a severability clause.

1997 Statement of Intent: The statement of intent attached to Ch. 522, L. 1997, provided: "A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district."

Transition for Necessary Prevailing Wage Rates: Section 8, Ch. 522, L. 1997, provided: "(1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction."

Saving Clause: Section 10, Ch. 522, L. 1997, was a saving clause.

1993 Amendments: Chapter 525 in (1), after "15-70-301", deleted "15-70-322". Amendment effective January 1, 1994.

Chapter 539 in (1) substituted "15-16-605" for "15-16-601".

1992 Special Session Amendment: Chapter 10, Sp. L. July 1992, in (1) deleted reference to 15-55-106. Amendment effective August 6, 1992.

1987 Amendments: Chapter 370 in (1) deleted reference to 7-8-2215.

Chapter 512 in (1) deleted reference to 18-1-102 and 18-1-112.

Chapter 587 in (1) deleted reference to 15-18-108.

1985 Amendment: In (1) deleted reference to 18-1-105 and 19-1-602.

1983 Amendment: In (1), inserted "41-3-1132".

1981 Amendments: Chapter 495 deleted "15-24-502, 15-24-505", "18-2-115", and "40-8-124, 40-8-125, 40-8-128" from (1).

Chapter 570 deleted "15-30-221" from (1).

Chapter 575 deleted "15-24-502, 15-24-505" after "15-18-108" in (1).

20-15-404. Trustees to adhere to certain other laws.

Compiler's Comments

2007 Amendment: Chapter 94 in (6) after "20-9-461" substituted "20-9-464, and" for "through"; and made minor changes in style. Amendment effective October 1, 2007.

1997 Amendments: Chapter 42 in (4) substituted "Title 20, chapter 7, part 7" for "20-7-701 through 20-7-713". Amendment effective March 12, 1997.

Chapter 219 in (6), after "20-9-446", deleted "20-9-451 through 20-9-456".

Effective Date — Applicability: Section 23, Ch. 219, L. 1997, provided: "[This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act]."

1995 Amendments: Chapter 260 in (5) substituted "20-9-223" for "through 20-9-224"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 423 in (6) deleted reference to 20-9-409. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

1991 Amendment: In (5) deleted "subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165"; and made minor changes in style. Amendment effective May 15, 1991.

Retroactive Applicability: Section 59, Ch. 767, L. 1991, provided that this section applies retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1990.

1989 Amendment: In (3) inserted "20-6-604"; and in (5) inserted "20-9-512".

1987 Amendment: In (4) changed "20-7-712" to "20-7-713".

1983 Amendment: In (5), deleted internal reference to 20-9-209.

1981 Amendment: Deleted "20-9-501" from (7).

Attorney General's Opinions

Election Requirement Inapplicable to Community College Construction Project: The election requirement in 20-9-453 (now repealed) does not apply to a county's issuance of revenue bonds to finance a community college district's construction project because revenue bonds do not place the county in debt. 42 A.G. Op. 78 (1988), modifying any contrary holding in 42 A.G. Op. 29 (1987).

CHAPTER 20
SCHOOL ELECTIONS

Chapter Compiler's Comments

Extension of 2003 School Election Deadlines: Section 14, Ch. 550, L. 2003, provided: "In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 6, 2003, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2003 only, a school district may limit the regular school election scheduled for May 6, 2003, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 6, 2003, regular school election that fall on or before April 18 are extended to April 28, 2003, except that the timeline for posting the election notice is changed to April 28, 2003, through May 2, 2003." Effective May 1, 2003.

Retroactive Applicability. Section 18, Ch. 550, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003."

Extension of 2001 Deadlines Relating to School Elections: Section 22, Ch. 237, L. 2001, provided: "In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 8, 2001, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, for the regular school election scheduled for May 8, 2001, all statutory deadlines falling on or before April 13 are extended to April 20, 2001, except that the deadline for making the absentee ballots available is extended to April 25, 2001, and the timeline for posting the election notice is changed to April 20, 2001, through April 30, 2001."

Retroactive Applicability: Section 24, Ch. 237, L. 2001, provided: "[Section 22] [Extension of 2001 Deadlines Relating to School Elections] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 29, 2001."

Part 1
General Provisions

20-20-102. Precedence of school election provisions.

Compiler's Comments

Transition: Section 404, Ch. 571, L. 1979, was a transition section.

20-20-104. Forms.

Compiler's Comments

Section Not Codified: Part of section 75-6416, R.C.M. 1947, provided that the Superintendent of Public Instruction was to prepare the forms necessary for absentee voting in school elections. This language was not codified in the MCA because it is redundant with this section. However, the language has not been repealed and is still valid. Citation may be made to sec. 152, Ch. 5, L. 1971.

20-20-105. Regular school election day and special school elections — limitation — exception.

Compiler's Comments

2023 Amendments — Composite Section: Section 9, Ch. 396, L. 2023, in (4) at end substituted "20-3-322(6)" for "20-3-322(5)". Amendment effective October 1, 2023.

Section 8, Ch. 640, L. 2023, in (2) and (5) after "a proposition requesting" substituted "an increase in the over-BASE budget levy" for "additional funding"; in (5) near middle inserted "but prior to August 1"; and made minor changes in style. Amendment effective July 1, 2023.

2015 Amendment: Chapter 49 in (3) substituted "other" for "special"; and made minor changes in style. Amendment effective November 4, 2015.

2007 Amendment: Chapter 192 in (1) in first sentence at beginning inserted exception clause and in second sentence in exception clause inserted reference to subsection (4); inserted (4) concerning election in years in which legislature meets; and made minor changes in style. Amendment effective April 11, 2007.

Extension of School Election Deadlines — Applicability: Section 3, Ch. 192, L. 2007, provided: "In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 8, 2007, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2007 only, a school district may limit the regular school election scheduled for May 8, 2007, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. For any levy election rescheduled under this section, a resolution calling for the election may not be adopted later than 20 days before the scheduled election and final ballot language may not be adopted later than 10 days before the date of the election. In addition, all statutory deadlines for the May 2007 regular school election are extended to April 27, 2007."

1999 Amendment: Chapter 514 in first sentence in (1) substituted "first Tuesday after the first Monday of May" for "first Tuesday of April" and inserted second sentence authorizing one election each calendar year on regular school election day for proposition requesting funding and providing exception for unforeseen emergency; at beginning of (2) inserted "Subject to the provisions of subsection (1)"; inserted (3) authorizing rescheduling of election day in event of unforeseen emergency; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

Contingent 1987 Amendment: In first sentence substituted "The fourth Tuesday of March" for "The first Tuesday of April".

Section 14(1), Ch. 644, L. 1987, provided that the amendment to this section was effective on passage and approval of legislation or adoption of party rules establishing the fourth Tuesday of March as the presidential primary election date or caucus date in any two of the states of Idaho, Washington, or Oregon prior to August 1, 1987. Contingency did not occur.

Attorney General's Opinions

Tie Vote — Special Election Required: When an election for school trustee results in a tie vote, the school district board of trustees should conduct a special school election to fill the trustee position. 35 A.G. Op. 81 (1974).

20-20-106. Poll hours.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) after "political subdivision" deleted "under 13-1-104(3)" and after "polling place" inserted "pursuant to 13-1-305"; in (3) inserted "under 13-1-106"; and made minor changes in style. Amendment effective November 4, 2015.

1987 Amendment: At end of (1) changed "8 a.m." to "7 a.m.".

1985 Amendment: Near beginning of (2) after "on the same day as", substituted "an election held by a political subdivision under 13-1-104(3) and at the same polling place" for "a general, primary, or special election for another political subdivision", at end of (2) substituted "the school election" for "that election"; and inserted (3) relating to general or primary election hours.

20-20-107. Election expenses.

Compiler's Comments

2009 Amendment: Chapter 297 in (2) at beginning substituted "The trustees shall pay the election judges of a school election at least the state or federal minimum wage, whichever is greater" for "The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage" and at end inserted "including the number of hours required to attend training pursuant to 20-20-109"; inserted (3) providing unemployment insurance coverage exemption for election judges; and made minor changes in style. Amendment effective October 1, 2009.

20-20-109. Election judges — qualifications — training.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 2
Calling of and Preparation for School Elections

20-20-201. Calling of school election.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) substituted "70 days" for "40 days", inserted "or other entity or official authorized by law to call a school election", substituted "each election and whether, pursuant to 13-19-202, any election is requested to be by mail" for "the election and shall conduct it in accordance with the procedures required by law when"; deleted former (1)(a) through (1)(g) that read: "(a) an election must be held on the regular school election day;

(b) in their discretion, the trustees order an election for a purpose authorized by law;

(c) the county superintendent orders an election in accordance with the law authorizing an order;

(d) the board of public education orders an election in accordance with the law authorizing an order;

(e) the county commissioners order an election in accordance with the law authorizing an order;

(f) the board of trustees of a community college district orders an election in accordance with the law authorizing an order, in which case the community college district shall bear its share of the cost of the election; or

(g) a school election is required by law under any other circumstances"; in (2) inserted introductory clause regarding managing voter registration and preparing lists of registered electors; in (2)(a) substituted "3 days after the resolution is passed" for "35 days before the election in order to enable the administrator to close the registration and prepare the lists of registered electors as required by school election laws"; inserted (2)(b) regarding transmission of a written plan for an election conducted by mail; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Transition: Section 404, Ch. 571, L. 1979, was a transition section.

Case Notes

Petitions to Rescind Valid Bond Elections: There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already favorably voted upon, especially where no fraud is either alleged or shown in the conduct of the election already held. Schmiedeskamp v. Bd. of Trustees, 128 M 493, 278 P2d 584 (1955).

20-20-203. Resolution for poll hours, polling places, and judges.

Compiler's Comments

2009 Amendment: Chapter 297 in (1)(c) substituted "appoint at least three judges for each polling place" for "appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election"; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Near beginning of (1)(a) changed "20-20-106(2)" to "20-20-106(3)".

20-20-204. Election notice.

Compiler's Comments

2017 Amendment: Chapter 242 inserted (2)(f) regarding where and how late registrants may obtain ballot on election day; and made minor changes in style. Amendment effective May 3, 2017.

2015 Amendment: Chapter 49 in (1)(a) substituted "not less than 10 days or more than 40 days" for "not less than 20 days or more than 30 days"; inserted (1)(a)(iii) concerning posting notice on website; in (1)(b) inserted "or broadcast", substituted "by any recognized media organization in the district" for "in a radio or television broadcast", and substituted "the supplemental notification" for "that notification"; and made minor changes in style. Amendment effective November 4, 2015.

1997 Amendment: Chapter 144 in (1)(a)(i) inserted "if there is one" and at end substituted "and" for "or"; and made minor changes in style.

1987 Amendment: Inserted (1)(a)(i) relating to notice by newspaper publication; in (1)(b), after "notice in", deleted "a newspaper or by"; and made minor changes in phraseology.

Case Notes

Notice and Ballot Not Misleading: Under former law, where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the extent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P2d 264 (1936).

Actual Notice of Election Held to Be Sufficient: Under the rule that failure to give the statutory notice of an election is immaterial where actual notice was given and the electors participated generally in the election, where it appeared that the clerk of the district had mailed circular letters to the taxpaying freeholders of the district stating the time and place of holding the election, that the only newspaper in the district published a news item with relation thereto, that handbills referring to the election were distributed throughout the district, that the election was discussed generally by the people residing in the district, and that a larger number of votes was cast than at any previous election, failure to give the statutory notice by giving only 9 days' instead of 10 days' notice required by former statute did not render the election void and did not justify an injunction against collection of the tax, particularly where no proof was offered that any elector was deprived of the right to vote by reason of insufficient notice. Buckhouse v. Joint School District, 85 M 141, 277 P 961 (1929).

Part 3
Qualification and Registration of Electors

20-20-301. Qualifications of elector.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1987 Amendment: At end added clause concerning single-member districts.

Transition — 1979: Section 404, Ch. 571, L. 1979, was a transition section.

Similar Amendment Not Codified — 1971: Section 75-6410, R.C.M. 1947, was amended twice in 1971, once by Ch. 83, sec. 2, and once by Ch. 118, sec. 1. Both amendatory acts made similar changes in the language of subsections (2) and (3). In the original enactment by sec. 146, Ch. 5, L. 1971, these provisions read: "(2) He is twenty-one (21) years of age or older;

(3) He has resided in the state one (1) year and in the district thirty (30) days immediately preceding the election at which he offers to vote; and". The effective dates of the amendatory acts, Ch. 83 and Ch. 118, are February 27 and March 1, respectively. The language set forth above is that of Ch. 118, sec. 1.

Attorney General's Opinions

Eligibility as Trustee — Registered Voter: A person must be registered to vote in the school district to be eligible for the office of school trustee. "Eligibility", as used in 20-3-305, refers to the qualifications required of a school trustee to hold the office, not the qualifications to be elected. 37 A.G. Op. 145 (1978). (See also 35 A.G. Op. 91 (1974).)

Elector Residency Qualifications: An elector in a school election may be challenged on election day by any registered elector of the district and may be disqualified from voting by the election judges if he is not a resident of the school district in which the election is held. 35 A.G. Op. 56 (1974).

20-20-303. Elector challenges.

Compiler's Comments

2005 Amendment: Chapter 130 in (1) at end of first sentence after "provisions of" deleted "13-2-404 and"; and made minor changes in style. Amendment effective October 1, 2005.

Case Notes

No Authority in School Board to Remove Unqualified Voters From List of Registered Voters: Under 20-9-428 a school board of trustees removed from the certified list of registered voters the names of several persons who the board determined were disqualified to vote. The court held that 20-9-428 must be read with other statutes governing elections, including this section, concerning how an elector's qualifications may be challenged; 13-13-301, et seq., concerning how qualifications are determined; and 13-15-101, concerning general canvassing requirements. The court determined the school board had no authority to remove names of unqualified voters. Bischoff v. School District, 230 M 336, 749 P2d 533, 45 St. Rep. 253 (1988).

Attorney General's Opinions

Elector Residency Qualifications: An elector in a school election may be challenged on election day by any registered elector of the district and may be disqualified from voting by the election judges if he is not a resident of the school district in which the election is held. 35 A.G. Op. 56 (1974).

20-20-311. Voter registration.

Compiler's Comments

2015 Amendment: Chapter 49 at beginning inserted "Voter" and substituted "be as provided in Title 13, chapter 2" for "close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration"; and made minor changes in style. Amendment effective November 4, 2015.

20-20-312. Listing of registered electors — late registration.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) before "registration" inserted "regular"; inserted (2) regarding registration after close of regular registration; and made minor changes in style. Amendment effective November 4, 2015.

Part 4
Election Procedure

Part Compiler's Comments

Preamble: The preamble attached to Ch. 414, L. 2003, provided: "WHEREAS, the U.S. Supreme Court in Bush v. Gore, 531 U.S. 98 (2000), found that the lack of uniform procedures for determining voter intent in Florida during the 2000 presidential election led to a violation of the U.S. Constitution's Equal Protection Clause of the 14th Amendment; and

WHEREAS, at the request of the 57th Legislature, the State Administration and Veterans' Affairs Interim Committee devoted much of the 2001-2002 interim to a review of Montana election laws with respect to voting systems and counting processes in light of Bush v. Gore; and

WHEREAS, the interim study found that Montana's statutory provisions relating to ballots, voting systems, and vote counting processes needed to be updated, clarified, and in some instances revised to better define uniform standards and procedures to provide equal protection for votes cast by Montana voters; and

WHEREAS, the Subcommittee on Voting Systems of the State Administration and Veterans' Affairs Interim Committee agreed that statutory changes should be made with an eye on future technology but should also standardize current practices to the greatest extent possible.

THEREFORE, this legislation will enable the Secretary of State to adopt a statewide benchmark performance measure that voting systems must meet before they can be approved for use in the state; allow local election administrators to continue to choose which of the approved voting systems should be used locally; require the Secretary of State to adopt uniform statewide rules regarding ballot form, votes and vote counts, and other operational procedures specific to each voting system and to provide training to local election administrators; and require all counting boards to use the uniform counting procedures specified."

20-20-401. Trustees' election duties — ballot certification.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 49 in (2) in first sentence substituted "30 days" for "25 days", substituted "certify the ballot by preparing" for "prepare", after "on the ballot" inserted "subject to 13-37-126", and before "the official wording" inserted "certifying" and at end of third sentence deleted "except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election". Amendment effective November 4, 2015.

Chapter 214 in (2) inserted second sentence relating to candidate names. Amendment effective October 1, 2015.

1999 Amendment: Chapter 514 in first sentence in (2) substituted "25 days" for "15 days" and in third sentence substituted "at least 20 days before the election" for "at least 11 days before the election". Amendment effective July 1, 1999.

Effective Date — Applicability: Section 11(1), Ch. 514, L. 1999, provided that this section is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

1997 Amendment: Chapter 144 in (2), at end of third sentence, inserted exception clause; and made minor changes in style.

1987 Amendment: In (2) inserted third sentence concerning absentee ballots; and deleted former (3) that read: "(3) The trustees are authorized to and shall administer oaths to election judges."

1983 Amendment: At end of (1) inserted "unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417".

Transition — 1979: Section 404, Ch. 571, L. 1979, was a transition section.

20-20-411. Conduct of election.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Consolidation Election Void — Ballots Improperly Counted: Where judge's intentional withdrawal of five votes "for consolidation", rather than drawing by lot as required by statute, left the result of the election doubtful, then the election was void under 20-20-414 (since repealed). Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Validity of Ballots: Former statute relating to validity of ballots in general elections was applicable to school elections. Woolsey v. Carney, 141 M 476, 378 P2d 658 (1963).

Bond Election Void — Ballots Improperly Counted: Bond election was void under 20-20-414 (since repealed) where judges and clerks turned ballots right side up, placed "yes" ballots and "no" ballots in separate piles before counting them and then disallowed sufficient number of "no" ballots to allow "yes" ballots to prevail. Hehn v. Olson, 138 M 576, 358 P2d 431 (1960).

20-20-415. Trustees to canvass votes.

Case Notes

Failure to Canvass Bond Election: Failure of trustees to canvass vote as required by former statute did not make bonds issued by school district illegal and void. Long v. School District, 149 M 220, 425 P2d 822 (1967).

20-20-416. Certificate of election.

Compiler's Comments

2019 Amendment: Chapter 154 near end of fourth sentence substituted "25 days" for "15 days". Amendment effective July 1, 2019.

Applicability: Section 4, Ch. 154, L. 2019, provided: "[This act] applies to school years beginning on or after July 1, 2019."

1999 Amendment: Chapter 132 near beginning of second sentence after "trustee election" inserted "either by vote or by acclamation"; and made minor changes in style. Amendment effective March 23, 1999.

20-20-417. Request for county election administrator to conduct election.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) inserted last sentence regarding request by board of trustees; deleted former (2)(b) that read: "(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15"; in (3) after "request" inserted "and" and after "administrator" inserted "agrees"; and made minor changes in style. Amendment effective November 4, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-20-418. Tie votes.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

20-20-420. School recount board — duties — composition.

Compiler's Comments

Effective Date: Section 13, Ch. 347, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 30, 2013.

20-20-421. Voting systems.

Compiler's Comments

2003 Amendment: Chapter 414 near beginning substituted "a voting system, as defined in 13-1-101, is" for "voting machines or electronic voting systems are", substituted "voting system" for "voting devices", and substituted "voting system has been approved pursuant to 13-17-101 and if the election administrator complies with" for "voting machine or an electronic voting system shall do so in accordance with"; and made minor changes in style. Amendment effective October 1, 2003.

1981 Amendment: Substituted "chapter 17" for "chapters 17 or 18" and "that chapter" for "those chapters".

CHAPTER 25
UNIVERSITY SYSTEM

Chapter Compiler's Comments

Montana University System Restructuring Review Commission — Membership — Duties: Chapter 421, L. 2019, required the formation of a Montana university system restructuring review commission to consider the potential for restructuring 2-year education in the Montana university system to enhance offerings in career and technical education, among other objectives. The chapter was not codified because of its short duration. Effective May 9, 2019, and terminates June 30, 2021.

Preamble: The preamble attached to Ch. 421, L. 2019, provided: "WHEREAS, the Board of Regents and the Legislature incorporated the vocational-technical institutions into the Montana University System over 25 years ago; and

WHEREAS, enrollment at 2-year colleges remains relatively low compared to other states; and

WHEREAS, a reexamination of the structure of 2-year education in Montana is warranted."

Joint Committee on Postsecondary Education Policy (now Education and Local Government Interim Committee): Chapter 526, L. 1991, created a joint committee on postsecondary education policy and budget (now Education and Local Government Interim Committee).

Preamble: The preamble attached to Ch. 526, L. 1991, provided: "WHEREAS, the 1987 Legislature recognized the need to review the adequacy of the funding method for the Montana University System and appointed an eight-member committee to study University System funding issues in conjunction with the Commissioner of Higher Education and the Governor's Office of Budget and Program Planning; and

WHEREAS, the 1989 Legislature, through adoption of House Bill No. 354, provided for appointment of an eight-member, bipartisan postsecondary education study committee to study postsecondary education fiscal policy and accountability issues; and

WHEREAS, the Postsecondary Education Study Committee recognizes the need for ongoing communication between the Legislative and Executive Branches and the Board of Regents; and

WHEREAS, at present, there is no effective mechanism for these parties to communicate on a regular basis; and

WHEREAS, the Legislature recognizes not only the need to be regularly informed of the long-range plans and short-range goals developed by the Board of Regents for the Montana University System, the community colleges, and the vocational-technical center system but also the need to be informed of the success or failure in attaining those plans and goals; and

WHEREAS, the Legislature recognizes the need to develop a link between planning and funding in postsecondary education; and

WHEREAS, the Legislature endorses the concept of outcome assessment as an accountability tool in postsecondary education; and

WHEREAS, the Legislature acknowledges that the Montana Constitution gives the Board of Regents full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System and to supervise and coordinate other public educational institutions assigned by law; and

WHEREAS, the Legislature is vested with the exclusive authority to appropriate money; and

WHEREAS, the Legislature embraces its constitutional responsibility to ensure by law strict accountability of all revenue received and money spent by the state; and

WHEREAS, the Board of Regents has indicated its desire to work cooperatively with the Legislature for the benefit of the Montana University System and the State of Montana; and

WHEREAS, formation of a statutory joint committee on postsecondary education policy and budget [now Education and Local Government Interim Committee] would enhance communication among the Legislature, the Board of Regents, and the Executive Branch for the benefit of the State of Montana."

Powers and Duties of Committee: Section 8, Ch. 526, L. 1991, provided: "(1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;
(iii) long-range planning;
(iv) outcome assessment programs; and
(v) any other area that the committee considers to have significant educational or fiscal policy impact;
(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
(c) periodically review the results of outcome assessment programs;
(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;
(e) act as a liaison between both the legislative and executive branches and the board of regents;
(f) encourage cooperation between the legislative and executive branches and the board of regents; and
(g) report its activities, findings, recommendations, and any proposed legislation to the legislature."

Chapter Law Review Articles

Voters Wisely Reject Proposed Constitutional Amendment 30 to Eliminate the Montana Board of Regents, Aronofsky, 58 Mont. L. Rev. 333 (1997).

The Legal Status of the Montana University System Under the New Montana Constitution, Schaefer, 35 Mont. L. Rev. 189 (1974).

Constitutional Control of the Montana University System: A Proposed Revision, Waldoch, 33 Mont. L. Rev. 76 (1972).

Part 1
University System — General

20-25-101. Antidiscrimination.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

20-25-109. Authorized university system employee or individual activities.

Compiler's Comments

Effective Date: Section 3, Ch. 379, L. 2001, provided that this section is effective on passage and approval. Approved April 26, 2001.

Source: 51.912 Texas Statutes.

20-25-110. Student construction project — disclosure — immunity.

Compiler's Comments

Effective Date: Section 4, Ch. 521, L. 2005, provided that this section is effective July 1, 2005.

Applicability: Section 5, Ch. 521, L. 2005, provided: "[This act] applies to student labor on construction projects regardless of the completion date of the project if the disclosure provided for in [section 1(1)] [20-25-110(1)] is made."

Part 2
University Units

Part Compiler's Comments

Department of Administration Required to Develop Plan — Advisory Committee — Section Not Codified: Section 2, Ch. 202, L. 2019, provided: "(1) The department of administration shall develop a plan for a lease contract that provides an option to purchase for a colocated laboratory for facilities that conduct animal testing for pathogens that could impact public health.

(2) The department of administration shall organize an advisory committee composed of the following:
(a) two members of the house of representatives, one from the majority and one from the minority, appointed by the speaker of the house;
(b) two members of the senate, one from the majority and one from the minority, appointed by the committee on committees;
(c) a person appointed by the executive officer of the department of livestock knowledgeable in the veterinary diagnostic laboratory;

(d) a person appointed by the director of the department of fish, wildlife, and parks knowledgeable in the wildlife laboratory;

(e) a person appointed by the director of the department of agriculture knowledgeable in the analytical laboratory; and

(f) two members appointed by the president of Montana state university-Bozeman, one person representing the university and one person representing MSU extension.

(3) The department of administration shall assist the advisory committee in investigating a process to develop a lease contract.

(4) The director of the department of administration may invite additional federal, state, or private stakeholders to participate in the meetings of the advisory committee. The department may request assistance from the legislative fiscal division and the legislative services division regarding past studies and information on the state labs, including the results of the study commissioned by Chapter 352, Laws of 2017.

(5) The department of administration shall report:

(a) on a quarterly basis to the environmental quality council and the economic affairs interim committee about the progress of the advisory committee; and

(b) submit findings to each committee by September 1, 2020." Effective April 26, 2019.

Because the plan required under sec. 2, Ch. 202, L. 2019, must be developed in time to submit findings to the economic affairs interim committee and the environmental quality council by September 1, 2020, the section is construed as temporary and will not be codified.

Study of State Labs at Montana State University-Bozeman: Section 1, Ch. 352, L. 2017, provided: "(1) The legislative finance committee shall direct a study of the long-term future of and possible efficiencies to be gained from state-supported labs on the Montana state university campus in Bozeman, including:

(a) the veterinary diagnostic lab;

(b) the wool lab;

(c) the wildlife lab; and

(d) the seed lab.

(2) (a) The study analysis must be conducted by a bipartisan subcommittee consisting of the following:

(i) two members of the legislative finance committee, with one member from each political party;

(ii) two members of the economic affairs interim committee, with one member from each political party; and

(iii) two members of the environmental quality council, with one member from each political party.

(b) The committees and the environmental quality council shall elect their representatives to serve on the subcommittee.

(3) The subcommittee shall develop and analyze at least three economically viable proposals for each lab identified in subsection (1), including:

(a) necessary infrastructural changes and upgrades, their costs, and potential funding sources;

(b) organizational changes and any financial efficiencies they would create; and

(c) statutory changes needed to facilitate proposed infrastructural or organizational changes.

(4) Subject to direction provided by the legislative finance committee, the study may include but is not limited to:

(a) onsite visits to the labs and interviews with relevant state and university personnel;

(b) comparison with labs in other states that provide similar services, including North Dakota, South Dakota, Wyoming, Washington, Texas, and California;

(c) onsite visits to labs in other states; and

(d) comparison with labs that provide services unrelated to natural resources.

(5) The subcommittee may work with engineering and architectural consultants as needed.

(6) The appropriation provided for [section 3] [not codified] may be used for any purpose of the study, including but not limited to:

(a) conducting onsite lab visits;

(b) contracting with consultants pursuant to subsection (5);

(c) providing study-related training for legislators and legislative staff; and

(d) publication and communication costs." Section 1, Ch. 352, L. 2017, was effective May 7, 2017, and terminates December 31, 2018.

20-25-201. Units constituting university system.

Compiler's Comments

1995 Amendment: Chapter 308 substituted current text establishing reorganized University System with University of Montana campuses at Missoula, Butte, Dillon, and Helena and Montana State University campuses at Bozeman, Billings, Havre, and Great Falls for former text that provided system units, including: "(1) University of Montana, located at Missoula; (2) Montana state university, located at Bozeman; (3) Montana college of mineral science and technology, located at Butte; (4) Western Montana college of the university of Montana, located at Dillon; (5) Eastern Montana college, located at Billings; and (6) Northern Montana college, located at Havre"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In (4), after "Western Montana college", inserted "of the university of Montana". Amendment effective March 22, 1989.

Name change: Section 5, Ch. 224, L. 1989, provided: "In all sections of the Montana Code Annotated not contained in [this act] and in all provisions passed by the 51st legislature in which reference is made to western Montana college, the code commissioner shall change the reference to western Montana college of the university of Montana."

20-25-205. Purpose of university — law and forestry schools.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Case Notes

Restriction on Continuing Study of Law: The practices, policies, rules, and procedures under which the fitness of a student to continue the study of law is appraised, as applied to plaintiff, do not violate constitutional requirements of due process and equal protection or 37-61-204 (now repealed). Johnson v. Sullivan, 174 M 491, 571 P2d 798 (1977).

20-25-207. Bureau of government research — purpose — funding.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

20-25-211. Montana technological university — purpose — fees for assays.

Compiler's Comments

2019 Amendment: Chapter 3 in (1), (2), and (3) substituted "Montana technological university" for "Montana tech of the university of Montana". Amendment effective October 1, 2019.

1995 Amendment: Chapter 308 in (1) and (3) substituted "Montana tech of the university of Montana" for "Montana college of mineral science and technology"; in (2), after "established at", substituted "Montana tech of the university of Montana" for "the college"; in (3) and (4) substituted "chancellor" for "president"; and made minor changes in style. Amendment effective July 1, 1995.

20-25-212. Bureau of mines and geology — purpose.

Compiler's Comments

2019 Amendment: Chapter 3 in (12) substituted "Montana technological university" for "Montana tech of the university of Montana". Amendment effective October 1, 2019.

1995 Amendment: Chapter 418 in (11), near beginning, substituted "department of natural resources and conservation" for "department of state lands"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana college of mineral science and technology" to "Montana tech of the university of Montana".

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

20-25-221. Montana state university-Bozeman — designation and purpose.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Morrill Act: The Morrill Act of 1862, referred to in this section, is compiled in the U.S.C. as Title 7, §§ 301 through 308.

20-25-222. Agricultural experiment station — establishment and purpose.

Compiler's Comments

Hatch Act: The Hatch Act, referred to in subsection (1), is compiled in the U.S.C. as Title 7, §§ 361 through 379.

Case Notes

Agricultural Experiment Station and Extension Service Not Parts of Agricultural College: Under former law, the agricultural experiment station and the agricultural extension service were not parts of the agricultural college or component parts of the University of Montana (now University of Montana-Missoula). Hence, appropriations made for them could not be charged to receipts from the 1½-mill levy for state purposes authorized for the maintenance of the University. State ex rel. Jones v. Erickson, 75 M 429, 244 P 287 (1926).

20-25-225. Experimental farms.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) after "Montana" substituted "permanent fund" for "nonexpendable trust fund"; in (2) after "10%" deleted "in the aggregate" and at end after "Morrill permanent" deleted "trust"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: In middle of (1), substituted "Montana nonexpendable trust fund" for "Montana trust and legacy fund"; and at end of (2), substituted "trust fund" for "account in the Montana trust and legacy fund".

Morrill Act: The Morrill Act of 1862, referred to in this section, is compiled in the U.S.C. as Title 7, §§ 301 through 308.

20-25-226. Assents to acts of congress.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Reference to Federal Laws: The Act of March 16, 1906, was repealed by Act of August 11, 1955, c. 790, § 2, 69 Stat. 674. Existing rights and liabilities were not affected by the repeal.

The Act of May 8, 1914, is compiled in the U.S.C. as Title 7, §§ 341 through 348.

20-25-229. Montana seed laboratory — purpose — fees.

Compiler's Comments

2011 Amendment: Chapter 300 in (2) near beginning substituted "is to conduct effective" for "shall be the carrying on of effective", before "testing" substituted "or" for "and", and at end substituted "an analysis of grains and seeds as requested" for "a knowledge of grains and seeds as possible"; inserted (4) relating to duties of the laboratory; and made minor changes in style. Amendment effective April 29, 2011.

1989 Amendment: In (1) substituted "Montana seed laboratory" for "Montana grain and seed laboratory".

20-25-234. Purpose.

Compiler's Comments

1995 Amendment: Chapter 206 at end of (4) inserted "including ostriches, rheas, and emus".

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

Preamble: The preamble attached to Ch. 659, L. 1989, provided: "WHEREAS, an ever-increasing number of farmers and ranchers in Montana are seeking ways to adopt resource conserving, energy efficient, and economical production techniques that improve soil quality, protect ground and surface water resources, reduce soil erosion, and generate higher value cash crops; and

WHEREAS, over the long term, adoption of more diversified, resource conserving systems of agricultural production can benefit the producing, consuming, and tax-paying public; and

WHEREAS, the widespread adoption of environmentally sound and economically viable agriculture production management systems depends on a program that will allow effective broad-based transfer of low-input, sustainable agriculture information to Montana producers."

20-25-236. Report to legislature.

Compiler's Comments

1993 Amendment: Chapter 349 after "service" substituted "may" for "shall".

1991 Amendment: Near middle inserted reference to 5-11-210. Amendment effective March 20, 1991.

20-25-237. Local government center — purpose — funding.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

20-25-241. Montana forest and conservation experiment station established.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

20-25-242. Purpose of station.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

20-25-252. Donations to Montana state university-Billings.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "eastern Montana college" to "Montana state university-Billings".

20-25-253. Purpose of university of Montana-western.

Compiler's Comments

2001 Amendment: Chapter 38 substituted "The university of Montana-western" for "Western Montana college of the university of Montana". Amendment effective March 13, 2001.

1989 Amendment: After "Western Montana college" inserted "of the university of Montana". Amendment effective March 22, 1989.

20-25-254. Donations to university of Montana-western.

Compiler's Comments

2001 Amendment: Chapter 38 substituted "university of Montana-western" for "western Montana college of the university of Montana". Amendment effective March 13, 2001.

1989 Amendment: After "western Montana college" inserted "of the university of Montana". Amendment effective March 22, 1989.

20-25-255. Acceptance of public lands.

Compiler's Comments

2001 Amendment: Chapter 38 in two places substituted "university of Montana-western" for "western Montana college of the university of Montana"; and made minor changes in style. Amendment effective March 13, 2001.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "eastern Montana college" to "Montana state university-Billings.

1989 Amendment: In (1) and (2), after "western Montana college" inserted "of the university of Montana"; and made minor changes in phraseology. Amendment effective March 22, 1989.

Text of Enabling Act: The Enabling Act, referred to in this section, is set forth in Vol. 1, MCA Annotations, under the division titled "Federal Materials".

20-25-256. Purposes of Montana state university-northern.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "northern Montana college" to "Montana state university-northern".

Part 3
Administration of University System

20-25-301. Regents' powers and duties.

Compiler's Comments

2013 Amendment: Chapter 78 deleted former (10) that read: "(10) shall confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 114 in (16) in first sentence after "data" deleted "and information technology resources"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 308 in (9) inserted "or chancellor"; inserted (17) requiring Board of Regents to offer courses in vocational-technical education; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 349 deleted second sentence of (13) that read: "The regents shall prepare and, as provided in 5-11-210, submit a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information"; and made minor changes in style.

1991 Amendment: In second sentence of (13), after "prepare", inserted "and, as provided in 5-11-210, submit". Amendment effective March 20, 1991.

1987 Codification: The Code Commissioner has codified sec. 4, Ch. 592, L. 1987, requiring Board of Regents to assure an adequate level of security for data and information technology resources within the state University System, as (16).

1985 Amendment: Deleted former (5) that read: "adopt and use an official seal in the authentication of its acts"; deleted former (11) that read: "appoint an executive secretary of the system, who shall not be a unit president, fix his term of office and salary, and generally prescribe his duties. The executive secretary is not a member of the board, but he shall serve as the secretary for the regents"; deleted former (12) that read: "appoint every 2 years a budget committee composed of four members selected from the appointive members of the regents which shall review the budget requests presented by the units of the system and transmit such requests and its recommendations to the regents"; deleted former (16) that read: "investigate the needs of the units by each member of the regents visiting each unit at least once each year"; and in (15) deleted requirement that seal "shall remain in the custody of the executive secretary".

1983 Amendment: Deleted former (7), which read: "report as provided in 2-7-102".

Board of Regents Created — Cases Still Applicable: Following the adoption of the 1972 Montana Constitution, the control of the Montana University System passed from the State Board of Education to the Board of Regents of Higher Education, created by Art. X, sec. 9, Mont. Const. Because some or all of the reported cases dealing with the power and authority of the Board of Education over the Montana University System under the 1889 Constitution may be applicable to the Board of Regents, all of those cases have been included below.

Case Notes

DECISIONS UNDER 1972 CONSTITUTION

Board of Regents of Higher Education — Exclusive Authority to Regulate Firearms on College Campuses Granted by Constitution — Legislative Bill Held Unconstitutional. Bd. of Regents of Higher Educ. v. St., 2022 MT 128, 409 Mont. 96, 512 P.3d 748.

Open Public Meeting Laws Liberally Construed — University System Policy Committee Meetings Open to Public: Plaintiff media organizations sued the Commissioner of Higher Education, alleging that policy meetings between the Commissioner and other University System senior employees were subject to state open meeting laws. The District Court concluded that the meetings should be open to the public, and on appeal, the Supreme Court concurred.

The Legislature created open meeting laws with the intent that deliberations of state agencies be conducted openly, and to that end, the open meeting laws are liberally construed. In the context of 2-3-203, public or governmental bodies means a group of individuals organized for a governmental or public purpose. Although the university policy committee was not formally created by a government entity to accomplish a specific function, the committee brought together public officials for an undeniably public purpose. The committee was not merely a staff meeting or factfinding body, nor was it an ad hoc group that came together to consider a specific matter or to gather facts on a particular issue. Rather, the group met to deliberate on matters of substance that were the public's business and thus was considered a public body within the meaning of Art. II, sec. 9, Mont. Const., whose meetings were required to be open to the public. The Commissioner argued that: (1) even if the committee was considered a public body, it did not hold meetings as contemplated in the open meeting laws; (2) because the committee's membership was not fixed, no number of members were required to attend to constitute a quorum; and (3) neither direct action nor votes were taken at committee meetings. The Supreme Court disagreed. A quorum of any body of an indefinite number consists of the members who attend a meeting. All that is required under 2-3-202 is that a quorum of the membership convene to conduct public business, not that the meeting produces some particular result or action or that a vote be taken. The constitution protects the public's right to observe the deliberations of public bodies, and the policy committee meetings were required to be open to the public. Assoc. Press v. Crofts, 2004 MT 120, 321 M 193, 89 P3d 971 (2004).

Uniformity Doctrine of 1889 Constitution Embodied in Equal Protection Clause of 1972 Constitution: Plaintiffs challenged the constitutionality of 20-25-439, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate government purpose. The 1889 Montana Constitution contained a uniformity doctrine that required a tax to be levied by a general law that is uniform within the same class of subjects within the territorial limits of the authority levying the tax; however, that uniformity doctrine does not appear in the plain language of the 1972 Montana Constitution. Nevertheless, plaintiffs asserted that the uniformity doctrine is still a constitutional requirement apart from equal protection guarantees. The state argued that because the uniformity doctrine is not part of the 1972 Montana Constitution, the levy could not be violative of the doctrine. The District Court agreed with the state and plaintiffs appealed. The Supreme Court agreed that the statement defining the uniformity doctrine in Hilger v. Moore, 56 M 146, 182 P 477 (1919), was subsequently applied in post-1972 cases, but disagreed that the definition supports any stricter limitation on taxation than that imposed by equal protection. The framers of the 1972 Montana Constitution intended to preserve the uniformity doctrine only as it is equivalent to equal protection requirements. Thus, the uniformity doctrine as interpreted under the 1889 Montana Constitution, which provided for equal protection in the area of taxation, is still embodied in the 1972 Montana Constitution in the equal protection clause. Analysis of the constitutionality of the levy in question was therefore conducted under the equal protection clause. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002).

Failure to Obtain Degree — University's Discretion — Summary Judgment Upheld: The University was entitled to summary judgment against plaintiff's claim of bad faith and breach of contract when plaintiff failed to fulfill his duties under the contract he alleged. The discretion vested in the University is the core substantive principle entitling it to summary judgment. The University did not abuse its discretion. Bindrim v. Univ. of Mont., 235 M 199, 766 P2d 861, 45 St. Rep. 2316 (1988).

Letter Removing Chairman of English Department Privileged Publication: Small brought suit alleging that he had been libeled when he was removed as chairman of the English Department at Eastern Montana College (now Montana State University-Billings). The basis of the libel charge was the letter informing him that he was being removed and detailing the reasons for the removal. The court found that McRae had the authority to remove Small and that the letter was a privileged publication because it was made in the proper discharge of an official duty. Since the letter was within the proper discharge of an official duty, it enjoyed an absolute privilege and could therefore not be the subject of libel action. Small v. McRae, 200 M 497, 651 P2d 982, 39 St. Rep. 1896 (1982).

Nontenured Professor — Acceptance of Termination Contract: Because of alleged personal misconduct, a nontenured professor was offered a contract to teach one more year and then be terminated. He requested but was denied a formal hearing on the matter. The professor's subsequent demand for a tenured contract did not, as he contends, amount to acceptance of the termination contract that he was offered. Leland v. Heywood, 197 M 491, 643 P2d 578, 39 St. Rep. 704 (1982).

Discrimination Regarding Teacher Tenure — State Action Violating Equal Protection: The Montana university tenure system is maintained under authority of state statutes by the Board of Regents and the presidents of the Montana University System's institutions. Therefore, any action by the Board or a president in regard to tenure is state action, and a discriminatory application of the tenure process would be a denial of equal protection. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Tenure Standards — Use of Single Factor as Basis for Equal Protection Violation Claim: Differences in treatment of persons in regard to promotions do not all constitute deprivation of either due process or equal protection, particularly where the difference is one of evaluating facts rather than in resolving them. Where college evaluated tenure candidates in three basic areas and balanced all the factors and appellant teacher who was denied tenure claimed discrimination in that he had published an article and two candidates granted tenure had published no articles, publication being one of the factors, there was no equal protection violation. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Property Interest in Teacher Tenure — Proof — School's Codification of Tenure Matters: College's codification of rank and tenure matters, specifically drafted to clarify the faculty contract and a college handbook issued to the faculty, approved by a committee as not in conflict with the contract or with the handbook, stated to be an operating manual for the college rank and tenure committee, limited to reference and informational use, and subject to future contract negotiations, was by its nature a pseudoextension of the faculty contract but was not a part of the contract. Therefore, the codification could not be the source for a property interest in teacher tenure to which due process protection would attach. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Denial of Teacher Tenure — Due Process Property Right — Burden of Proof: The question of whether due process protections of teacher denied tenure were violated would not be considered unless he established the existence of a property right or liberty interest that is accorded due process protection. That tenure was denied would not benefit teacher in his pursuit of other employment, but it did not place such a stigma on him as to deprive him of a liberty interest. A vested property right protected by due process did not accrue to teacher upon his meeting the eligibility for tenure standards of requisite number of years of teaching and the rank of assistant professor, for beyond that, teacher was required by college policy to present evidence showing excellence in teaching, research, and public service. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Contracts — Procedures Not Constituting Breach — Time and Proper Party for Dean's Recommendation: College's codification of teacher tenure matters stated that with respect to the procedure to determine whether tenure would be granted, the rank and tenure committee was to request the teacher's dean to examine the teacher's package and make a written recommendation. Assuming the codification to be part of the teacher's contract, it was not a breach of the contract for the dean to send his recommendation to the academic vice-president rather than to give it to the rank and tenure committee first. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Tenure Actions — Admissibility of Evidence — Decisions as to Other Teachers:

Teachers' union member who was denied tenure offered evidence, in suit arising from the denial, that union member who had resigned from the teachers' negotiating team shortly before he applied for tenure was granted tenure. The offered evidence was refused as irrelevant. On appeal, the Supreme Court stated that the evidence was relevant but affirmed the ruling below, saying that the evidence would only have shown that a teacher who resigned from the bargaining team was thereafter granted tenure and that one union member was granted tenure and another was not. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Whether college's academic vice-president acted impermissibly in the tenure application process of a different individual under a different contract in a different academic year was not relevant to vice-president's actions in appellant's tenure evaluation, and it was proper to refuse, for lack of relevance, to admit exhibit and testimony on it relating to a report on the tenure evaluation of another person. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Continuous Tenure Defined: The District Court's conclusion that a director of a department within the Montana University System, who was tenured as to professional rank and salary under the terms of her previous contract, could nevertheless be paid at a reduced rate in the following year because her duties were diminished from director to professor must be overturned. Reversal is required because of the nature of continuous tenure, which connotes "freedom and economic security", and because of the fact that the respondent university had it completely within its power to describe tenured rights otherwise. Keiser v. Bd. of Regents, 193 M 35, 630 P2d 194, 38 St. Rep. 674 (1981).

Employment Relationship of Regents With Faculty: Since Board of Regents is competent body for determining priorities in higher education and an important priority is hiring and keeping competent personnel, appropriations bill which controlled salaries of university employees denied the Board power to function effectively by setting its own personnel policies and determining its own priorities and was unconstitutional. Bd. of Regents of Higher Educ. v. Judge, 168 M 433, 543 P2d 1323 (1975).

DECISIONS UNDER 1889 CONSTITUTION

Delegation of Powers: The State Board of Education is restricted from delegating to college officials its power to select teachers or instructors. Brown v. St. Bd. of Educ., 142 M 547, 385 P2d 643 (1963).

Actions Against State Board of Education: The State Board of Education may be sued for a breach of contract without the consent of the state to the action. Meens v. St. Bd. of Educ., 127 M 515, 267 P2d 981 (1954).

Employment Relationship With Faculty: The relationship between the State Board of Education and a professor of the state university is that of employer and employee, contractual in character. State ex rel. Phillips v. Ford, 116 M 190, 151 P2d 171 (1944).

Resignation of Faculty Member — Report Required: A provision of the rules of the State Board of Education that the president of the state university shall report appointments and resignations of members of the faculty and other employees did not authorize the president to accept the resignation of a professor of the institution but merely required him to report it to the State Board. State ex rel. Phillips v. Ford, 116 M 190, 151 P2d 171 (1944).

Vested Right Created by Regulation: A regulation of the State Board of Education providing that reappointment of a professor after 3 years of service shall be deemed a permanent appointment, under which the Board had functioned for some 21 years, was valid and clearly within its authority under Art. XI, sec. 11, 1889 Mont. Const. (now Art. X, sec. 9, Mont. Const.), and this section. Reappointment of a professor after such years of service was a permanent appointment, and his status was not changed by the Board's striking the regulation from its rules and regulations printed on the back of the sixth contract because he came within the regulation upon execution of his fourth annual contract. State ex rel. Keeney v. Ayers, 108 M 547, 92 P2d 306 (1939), distinguished in Eastman v. School District, 120 M 63, 180 P2d 472 (1947).

Implied Authority to Construct Building: The State Board of Education, proceeding under Ch. 24, Ex. L. 1933-34 (an emergency measure), continued in force until July 1, 1937, by Ch. 135, L. 1935, and under chapters 79 through 83, R.C.M. 1935, had implied authority to authorize the construction of a chemistry-pharmacy building at the state university with funds granted by the federal government in addition to those to be secured by a bond issue. State ex rel. Dragstedt v. St. Bd. of Educ., 103 M 336, 62 P2d 330 (1936).

Pledge of Land-Grant Income Allowed: Under the facts presented and under prior decisions, a pledging of a portion of the income and interest from the land grant is permissible. State ex rel. Dragstedt v. St. Bd. of Educ., 103 M 336, 62 P2d 330 (1936). See also State ex rel. Wilson v. St. Bd. of Educ., 102 M 165, 56 P2d 1079 (1936).

Exclusive Control of Funds Derived From Land Grant: The State Board of Education was vested with exclusive power to receive and control the funds derived from lands granted the state for the use of its institutions of learning, among them the state normal school, and therefore was free from the limitations and restrictions of the state constitution as to the expenditures of the ordinary revenues of the state, namely, only on appropriations made by the Legislature and on warrants drawn by the State Auditor. State ex rel. Blume v. St. Bd. of Educ., 97 M 371, 34 P2d 515 (1934).

Implied Powers: The power expressly granted to the State Board of Education to manage and control the business and finances of the state education institutions carried with it the implied power to do all things necessary and proper to the exercise of its general powers. State ex rel. Veeder v. St. Bd. of Educ., 97 M 121, 33 P2d 516 (1934).

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

Authority to Regulate Alcoholic Beverages: The regents of the Montana University System have the authority to allow or prohibit the possession and consumption of alcoholic beverages in a student's room in a residence hall on a campus of a unit of the Montana University System. 34 A.G. Op. 42 (1972).

Law Review Articles

Putting Notice to the Right to Know and Participate: Creating a Policy for the Montana University System Campuses, Pasque, 77 Mont. L. Rev. 387 (2016).

20-25-302. Revenue-producing facilities — powers of regents.

Compiler's Comments

1997 Amendment: Chapter 243 in (2) deleted third and fourth sentences regarding increase of student building fees (see 1997 Session Law for former text); and made minor changes in style. Amendment effective July 1, 1997.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

1987 Amendment: At end of last sentence of (2) substituted "made pursuant to 20-25-421 for nonresident students" for "made to nonresident students as defined in 20-25-421".

Case Notes

Leasing of University Facilities to Private Persons Consistent With Established "Academic Purposes": The Duck Inn filed an action seeking an injunction against Montana State University-Northern (Northern), alleging that Northern's decision to lease its facilities to private persons and organizations placed Northern in direct competition with the Duck Inn's business, in violation of state statutes and the Montana Constitution. The District Court dismissed the Duck Inn's complaint, ruling that Northern's leasing activities under this section did not violate Art. VIII, sec. 1, Mont. Const. On appeal, the Supreme Court affirmed, ruling that this section is not an unconstitutional delegation of legislative authority to the Board of Regents. Northern's leasing activities under this section appear to have "public purposes" as that term is used in Art. VIII, sec. 1, Mont. Const. Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179, 54 St. Rep. 1295 (1997).

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

20-25-305. President — powers and duties.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 58, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2005 Amendment: Chapter 139 inserted (5) authorizing presidents of university system units, under supervision of regents, to offer athletic coaches multiyear contracts; and made minor changes in style. Amendment effective October 1, 2005.

20-25-306. Designation of holidays by board of regents.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-307. Disposition of land.

Compiler's Comments

1997 Amendment: Chapter 425 deleted (1)(b) authorizing Board of Regents to sell, exchange, and lease lands and grant easements and licenses on land that "was not granted to the state, the board of regents, or the system in trust"; inserted (6)(a)(ii) requiring Board to provide proof that land proposed for sale or lease is free of use restrictions, encumbrances, or conditions; inserted (6)(a)(iii) and (6)(a)(iv) authorizing sale or lease only upon compliance with Montana Environmental Policy Act and Montana antiquities laws; in (6)(b)(ii) substituted language authorizing Board not to concur if criteria in requests or sale procedure and selection process did not provide public reasonable opportunity to submit proposal or have proposals selected for "the sale procedure did not provide the public a reasonable opportunity to submit proposals to purchase the land"; at end of (6)(b)(iii), after "state", deleted "or system"; inserted (6)(b)(iv) authorizing Board not to concur in sale or lease if University System has not complied with subsection (6)(a); and made minor changes in style.

Effective Date: Section 5, Ch. 370, L. 1995, provided: "[This act] is effective July 1, 1995."

20-25-308. Prohibition on transfer to foundation.

Compiler's Comments

2007 Amendment: Chapter 419 in (3) at beginning inserted exception clause. Amendment effective May 3, 2007.

2005 Amendment: Chapter 130 at beginning of former (1) deleted "Except as provided in subsection (2)"; deleted former (2) that read: "(2) Subsection (1) does not apply to the lease for the athletic complex at Montana state university-Bozeman provided for in section 5, Chapter 478, Laws of 1995. The land lease for the athletic complex must be of a term not to exceed 7 years from the date of approval of the lease"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 478 at beginning of (1) inserted exception clause; inserted (2) concerning athletic complex at Montana State University (now Montana State University-Bozeman); adjusted internal references; and made minor changes in style. Amendment effective April 14, 1995.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

Effective Date: Section 3, Ch. 371, L. 1995, provided: "[This act] is effective July 1, 1995."

20-25-309. Exemption from state construction and contract laws for certain university projects.

Compiler's Comments

Effective Date: Section 5, Ch. 419, L. 2007, provided that this section is effective on passage and approval. Approved May 3, 2007.

20-25-311. Motor vehicle regulation — parking and operation.

Case Notes

Vehicle Registration and Penalties — Constitutionality: Montana State University (now Montana State University-Bozeman) had authority under this section to make regulations for the registration of student vehicles and to assess a penalty for failure to pay fines within 7 days, and this section was not unconstitutional under Art. III, sec. 1, Mont. Const., as being an improper delegation of legislative powers. Mont. St. Univ. v. Ransier, 167 M 149, 536 P2d 187 (1975).

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals.

Compiler's Comments

2003 Amendment: Chapter 220 in (1)(b) near middle after "published schedule" inserted "approved by the regents" and at end after "unit" deleted "in an amount not to exceed $10 per offense"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendments: Chapter 91 in (1)(a) substituted text concerning assessment of fees for parking on campus after regents' consultation with the student governing body of the respective unit for "assess fees not to exceed $10 per quarter for parking on campus".

Chapter 160 in (1)(e) after "subject to" deleted "the concurrence of the state auditor under".

Case Notes

Vehicle Registration and Penalties — Constitutionality: Montana State University (now Montana State University-Bozeman) had authority under this section to make regulations for the registration of student vehicles and to assess a penalty for failure to pay fines within 7 days, and this section was not unconstitutional under Art. III, sec. 1, Mont. Const., as being an improper delegation of legislative powers. Mont. St. Univ. v. Ransier, 167 M 149, 536 P2d 187 (1975).

20-25-321. Security department members — appointment — campus security officer powers.

Compiler's Comments

2003 Amendment: Chapter 416 in (1) at end of first sentence deleted "as such security departments are constituted on July 1, 1971, or may thereafter be constituted" and at beginning of second sentence after "Persons" inserted "who are qualified under 7-32-303 to be campus security officers" and after "compensated" substituted "by a security department as campus security officers" for "as members of the security departments when so appointed"; inserted (1)(c) allowing the exercise of authority pursuant to agreement; inserted (3) allowing any university system security department to seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

DUI Arrest on Street Contiguous to University Campus Proper Under Jurisdiction Agreement Between University, City, and County: O'Neill was arrested for DUI by a University of Montana security officer on a street contiguous to but outside the boundaries of the university campus. O'Neill moved for dismissal on grounds that the arrest was unlawful because the offense occurred outside the geographic boundaries of the officer's jurisdiction. However, in 1993, the university entered an agreement with the city and county of Missoula under 20-25-322 that expanded the jurisdiction of campus security officers to make arrests for parking and moving violations on streets and alleys contiguous to the campus. The officer was patrolling the campus when he observed O'Neill's vehicle, and as a result, the streets contiguous to the campus were within the officer's jurisdiction. Thus, denial of O'Neill's motion to dismiss on jurisdictional grounds was proper. Missoula v. O'Neill, 2004 MT 328, 324 M 124, 102 P3d 21 (2004).

20-25-322. Traffic citations — agreements with city or county.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Off-Campus Stop Following On-Campus Traffic Violation — Extension of Campus Security Officer's Jurisdiction: Howard ran a red light at 2:30 a.m. on the University of Montana campus. However, despite pursuit by a campus security officer, Howard did not stop his vehicle until he was about 1 mile off campus. Following arrest and conviction for a traffic violation and felony DUI, Howard asserted that the officer did not have jurisdiction to make a traffic stop off campus and that because the violation occurred at a time when there was little traffic on the road, the offense did not pose an imminent threat to public safety. The Supreme Court disagreed with both arguments and affirmed. The offense occurred within the officer's jurisdiction, and campus police had authority under a joint university-city agreement to enforce, within city limits, traffic and criminal offenses that occurred on campus in the officer's presence and that posed an imminent threat to public safety. Despite light traffic, Howard's conduct did pose a threat to public safety, and the officer did not lose jurisdiction simply because Howard failed to stop until he was beyond campus parameters. St. v. Howard, 2008 MT 173, 343 M 378, 184 P3d 344 (2008).

DUI Arrest on Street Contiguous to University Campus Proper Under Jurisdiction Agreement Between University, City, and County: O'Neill was arrested for DUI by a University of Montana security officer on a street contiguous to but outside the boundaries of the university campus. O'Neill moved for dismissal on grounds that the arrest was unlawful because the offense occurred outside the geographic boundaries of the officer's jurisdiction. However, in 1993, the university entered an agreement with the city and county of Missoula under this section that expanded the jurisdiction of campus security officers to make arrests for parking and moving violations on streets and alleys contiguous to the campus. The officer was patrolling the campus when he observed O'Neill's vehicle, and as a result, the streets contiguous to the campus were within the officer's jurisdiction. Thus, denial of O'Neill's motion to dismiss on jurisdictional grounds was proper. Missoula v. O'Neill, 2004 MT 328, 324 M 124, 102 P3d 21 (2004).

20-25-323. Control and direction of security department.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-324. Firearms.

Compiler's Comments

1991 Amendment: After "board of regents" substituted language relating to consulting with the student body government for "(1) between 5 p.m. and 8 a.m.; and
(2) whenever guarding money or other valuables".

1981 Amendment: Inserted "who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy" after "security guards"; changed "shall be authorized to" to "may"; granted policymaking authority to the board of regents; changed "between sunrise and sunset" to "between 5 p.m. and 8 a.m."; and made minor changes in phraseology.

20-25-331. Definitions.

Compiler's Comments

Effective Date: Section 4, Ch. 545, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

20-25-332. Competition between for-profit fitness centers and university fitness centers prohibited — exception.

Compiler's Comments

Effective Date: Section 4, Ch. 545, L. 2001, provided that this section is effective on passage and approval. Approved May 1, 2001.

Part 4
Miscellaneous Finance

Part Compiler's Comments

Extension of Termination Date: Section 1, Ch. 381, L. 1995, amended sec. 11, Ch. 387, L. 1993, by extending the termination date imposed by that chapter. Effective April 12, 1995.

Preamble: The preamble attached to Ch. 431, L. 1995, provided: "WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

WHEREAS, approximately 450 of these students are nonbeneficiary students who do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, the tribal community colleges currently subsidize the costs of providing services to nonbeneficiary students, allowing them to continue their educations at a lower cost to the state; and

WHEREAS, without support, tribal community colleges will not be able to serve nonbeneficiary students without increasing student fees, which may result in students dropping out of college."

Appropriation: Section 1, Ch. 431, L. 1995, provided: "(1) There is appropriated from the general fund to the board of regents $1.4 million for the biennium ending June 30, 1997, to provide financial assistance to tribally controlled community colleges for enrolled nonbeneficiary students.

(2) Each tribal community college shall apply for this assistance to the board of regents. Except as provided in subsection (6), the money appropriated in subsection (1) must be distributed on a prorated basis according to the resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the Montana university system by the board of regents. The distribution to any student is limited to a maximum of $1,500 each year per full-time equivalent student. Any remaining balance in this appropriation on June 30, 1997, must revert to the general fund and may not be diverted to other purposes.

(3) An expenditure from this appropriation is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest association of schools and colleges;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the board of regents to provide the board with information relating to eligibility of nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the Montana university system; and

(c) filing with the board of regents evidence that the college's enrollment of Indian students is at least 51% as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) It is the intent of the legislature that the appropriation in subsection (1) be considered an amount in addition to the Montana university system budget appropriation for the biennium ending June 30, 1997.

(5) All funds appropriated under subsection (1) that are unspent revert to the general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall:

(a) grant to resident nonbeneficiary students who meet the residency requirements, as prescribed for the Montana university system by the board of regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the university system bears to the total enrollment in the university system; and

(b) subtract the costs of nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed." Effective April 13, 1995.

Interim Committee on Postsecondary Education Policy and Budget (now Education and Local Government Interim Committee): Chapter 387, L. 1993, provided: "Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget [now education and local government interim committee] created in [section 2].

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106 [now repealed].

Section 2. Joint committee on postsecondary education policy and budget [now education and local government interim committee] — appointment and composition. (1) There is a joint committee on postsecondary education policy and budget [now education and local government interim committee].

(2) The committee is composed of:

(a) four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis. One of the legislative members shall serve as presiding officer upon election by a vote of committee members.

(b) two regents appointed by the chairman of the board of regents and one student of the university system appointed by the governor; and

(c) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session.

Section 3. Term of office. (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until the legislator's term of office is ended.

(2) Appointments of members of the board of regents and the student to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The appointment of an executive branch representative to the committee is for 2 years.

Section 4. Vacancies. (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. Officers — quorum — meetings. (1) The committee shall select one of its legislative members as presiding officer and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly.

Section 6. Compensation. (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503.

Section 7. Staff assistance. The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303.

Section 8. Powers and duties of committee. (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents; and

(h) report its activities, findings, recommendations, and any proposed legislation to the legislature." The Committee was established April 19, 1993, and terminates July 1, 1995.

20-25-402. Borrowing by regents.

Compiler's Comments

2009 Amendment: Chapter 489 inserted (2) concerning tax credit bonds; and made minor changes in style. Amendment effective May 14, 2009.

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

20-25-403. State not obligated.

Attorney General's Opinions

Legislative Appropriation of University System "Excess" Revenue: The Attorney General concluded in an advisory opinion (in answer to question concerning hypothetical legislative action) that the Legislature may not appropriate revenue generated from sources pledged to cover university system revenue bond requirements when the revenue obtained from these sources exceeds the bond requirements. The law grants the Board of Regents authority to use pledged revenue in a variety of ways to discharge its statutory duties. Any legislative appropriation of those "excess" revenues would interfere with or prevent the discharge of those duties. 40 A.G. Op. 67 (1984).

20-25-407. Prior obligations not affected.

Compiler's Comments

Effective Date: The effective date of Ch. 85, Title 75, R.C.M. 1947, was January 18, 1971.

20-25-421. Charges for tuition — waivers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 455, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 240 in (2)(c)(i) after "are enrolled members of a" deleted "state-recognized or". Amendment effective April 19, 2021.

2015 Amendments — Composite Section: Chapter 73 in (2) inserted first sentence concerning recruitment of students; in (2)(a) after "waive" inserted "or discount" and substituted "including nonresident students" for "not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students"; deleted former (3) that read: "(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year"; and made minor changes in style. Amendment effective February 27, 2015.

Chapter 235 in (2)(c)(vi) substituted "state military duty" for "state active duty". Amendment effective April 13, 2015.

2013 Amendment: Chapter 280 in (2)(c)(i) substituted "persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and" for "persons of one-fourth Indian blood or more". Amendment effective July 1, 2013.

2007 Amendments — Composite Section: (Temporary version) Chapter 27 in (2)(e) near middle of first sentence after "program" substituted "which" for "established by" and near end after "affairs" inserted "is authorized to establish"; and made minor changes in style. Amendment effective March 22, 2007.

(Version effective July 1, 2011) In (3) near middle after "accordance with the" inserted "Montana" and near end after "program" substituted "which the department of military affairs is authorized to establish" for "provided for in 10-1-121"; and made minor changes in style. The code commissioner has not codified the amendment made by Ch. 27 to subsection (3) because it was rendered meaningless by the amendment made by Ch. 44.

(Version effective July 1, 2011) Chapter 44 in (3) at end deleted "[in accordance with the national guard education benefit program provided for in 10-1-121]".

Extension of Termination Date: Section 2, Ch. 27, L. 2007, amended sec. 5, Ch. 577, L. 2005, by extending the termination date imposed by Ch. 577 to June 30, 2011. Effective March 22, 2007.

2005 Amendments — Code Commissioner Correction: Chapter 577 inserted (2)(e) providing a tuition waiver for up to 5,000 credits each academic year in accordance with the Montana national guard education benefit program and providing that the credits are available for up to 5 years after a person qualifies; deleted former (3) that read: "(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in 10-1-121"; and made minor changes in style. Amendment effective May 2, 2005, and terminates June 30, 2009.

In (3) the code commissioner inserted the brackets to reflect the repeal of the national guard education benefit program in 10-1-121.

Saving Clause: Section 2, Ch. 577, L. 2005, was a saving clause.

Effective Date — Applicability: Section 4, Ch. 577, L. 2005, provided: "[This act] is effective on passage and approval and applies to waivers granted on or after [the effective date of this act." Effective May 2, 2005.

2003 Amendment: Chapter 255 in (2)(c)(ii) at end after "52-5-112" inserted "or 53-1-214". Amendment effective July 1, 2003.

Retroactive Applicability: Section 5, Ch. 255, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a person exonerated on or before [the effective date of this act]." Effective July 1, 2003.

1997 Amendments: Chapter 41 inserted (2)(c)(vi) allowing waiver for the spouse and children of a National Guard member who dies while in the line of duty; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 418 inserted (3) relating to fee waivers for the National Guard; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (4)(b) substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At beginning of (2), after "waive", deleted "at their discretion"; inserted (4) relating to waiver of tuition and fees; inserted (5) relating to waiver of tuition charges for certain qualified survivors; and made minor changes in punctuation and style. Amendment effective March 20, 1989.

Composite Section: Section 75-8601, R.C.M. 1947, was amended three times in 1971, once by Ch. 231, sec. 1 (approved March 9, 1971), once by Ch. 286, sec. 1 (approved March 11, 1971), and once by Ch. 432, sec. 1 (approved March 18, 1971). None of the amendments mentioned any of the other amendments. The compiler has made a composite section incorporating the changes made by all the amendments. Chapter 432 deleted a first subsection reading: "Except in the law and medicine departments and for extra studies, tuition shall ever be free to all students who shall have been residents of the state for not less than one year next preceding their admission to any unit of the University of Montana" ["Montana university system" in Ch. 231 and 286] and redesignated subsections (2) and (3) as (1) and (2). Chapter 432 rewrote subsection (2)(a), which read: "prescribe tuition rates for students enrolled in the law school or for extra studies, and for nonresident students; and". In subsection (2)(b), Ch. 231 added . . . "except . . . mineral engineering education"; Ch. 286 substituted "full-time . . . year" for "total number of students enrolled at that unit"; and Ch. 432 substituted "their" for "its" before "discretion".

Attorney General's Opinions

Status of Mandatory Student Fees — Expenditures: Since the authority to impose mandatory student fees is vested in the Board of Regents, a division of state government, and ultimate control and supervision of these funds rest with the regents, mandatory student fees are public funds. Whether a student committee can expend these funds to remove an elected public officer requires a decision by the regents or their delegated agents that such expenditure is a public purpose. Electing a political officeholder would not be an expenditure for a public purpose. 35 A.G. Op. 74 (1974).

20-25-422. Support of university system.

Compiler's Comments

2009 Amendment: Chapter 465 in (1)(a) at end after "77-1-109" deleted "and Title 77, chapter 1, part 6". Amendment effective July 1, 2009.

1999 Amendment: Chapter 122 in (1)(a) near end inserted reference to 77-1-108. Amendment effective July 1, 1999.

1995 Amendment: Chapter 370 in (1)(a), near beginning after "income", inserted "the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307"; and made minor changes in style. Amendment effective July 1, 1995.

Repeal of Termination Date: Section 3, Ch. 157, L. 1995, repealed sec. 12, Ch. 533, L. 1993, that terminated this section. Repealer effective June 30, 1995.

1993 Amendment: Chapter 533 in (1)(a), at end, inserted "to the university fund after any deductions made under Title 77, chapter 1, part 6"; and made minor changes in style. Amendment effective June 30, 1993, and terminates June 30, 1995.

20-25-424. Receipt of funds.

Compiler's Comments

2013 Amendment: Chapter 78 near end of first sentence after "expended" deleted "by the executive board". Amendment effective October 1, 2013.

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

1985 Amendment: Near beginning of (2) substituted "December 1" for "September 1".

Reference to Federal Acts: The second Morrill Act, referred to in this section, is compiled in the U.S.C. as Title 7, §§ 321 through 328. The Nelson amendment is compiled as Title 7, § 322.

20-25-426. Donations, grants, gifts.

Compiler's Comments

2011 Amendment: Chapter 202 in first sentence after "name" inserted "or to the Montana university system assistance program established by 20-25-455"; and made minor changes in style. Amendment effective July 1, 2011.

Applicability: Section 6, Ch. 202, L. 2011, provided: "[This act] applies to the 2011 academic year and subsequent academic years."

20-25-427. Allocation of indirect cost reimbursements.

Compiler's Comments

2009 Amendment: Chapter 489 at beginning inserted "Subject to the conditions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5"; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2003 Amendment: Chapter 114 before "current fund" deleted "university". Amendment effective October 1, 2003.

Effective Date: Section 3, Ch. 624, L. 1989, provided that this section is effective July 1, 1990.

20-25-428. Tribal college payment for services provided to resident nonbeneficiary students.

Compiler's Comments

2019 Amendment: Chapter 161 in (1), (2)(a) in two places, (3) in introductory clause, (3)(b)(ii), and (7) substituted references to tribal college for references to tribal community college; in (1), (2)(a), (2)(c), and (3) in introductory clause substituted "payment" for "reimbursement"; in (3)(b) at end substituted "provide the regents with documentation on" for "provide the regents with information relating to eligibility"; in (3)(b)(i) substituted "the number of resident nonbeneficiary students for whom the tribal college is entitled to a payment under this section" for "of resident nonbeneficiary students"; in (3)(b)(ii) at beginning deleted "documentation on"; inserted (4) requiring a tribal college to submit the current academic year eligible enrollment numbers for calculation of the state payment and requiring the regents to calculate payment based on the submission and distribute funds; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 105 in (1) near middle after "nonbeneficiary students who" deleted "except as provided in subsection (8)"; in (2) near middle after "for the system by the regents and" deleted "except as provided in subsection (8)"; in (3)(c) after "enrolled" deleted "except as provided in subsection (8)"; deleted former (8) that read: "(8) The limit of financial assistance to nonbeneficiary students is limited to students enrolled in courses for which credit is transferable to another Montana college or university"; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 286 in (1) substituted "a reimbursement" for "financial assistance"; in (2) in first sentence substituted "apply to the regents for this reimbursement" for "apply for this assistance to the regents" and in last sentence substituted "distribution for any resident nonbeneficiary student reimbursement must be limited to a maximum annual amount of $3,280" for "distribution for any student is limited to a maximum of $3,024 each year"; in (3) substituted "A reimbursement" for "An expenditure"; inserted (9) defining resident nonbeneficiary student; and made minor changes in style. Amendment effective July 1, 2015.

2007 Amendment: Chapter 255 in (3)(a) at end substituted "northwest commission on colleges and universities" for "northwest association of schools and colleges"; and in (8) near middle after "nonbeneficiary students" inserted "is limited to students" and at end after "university" deleted "does not apply to a nonbeneficiary student enrolled in a course directly related to a vocational degree program or to a 2- to 4-year degree program or certificate program". Amendment effective April 26, 2007.

2005 Amendment: Chapter 147 in (1) at end inserted exception clause and language requiring eligible tribal community college students to be taking courses for which credit is transferable to another Montana college or university; in (2) in second sentence and in (6) before "resident" inserted "eligible"; in (2) in third sentence at end inserted exception clause and language requiring eligible tribal community college students to be taking courses for which credit is transferable to another Montana college or university and in fourth sentence increased per student distribution from $1,500 to $3,024; inserted (3)(c) providing that expenditure is contingent upon tribal community college providing regents with documentation that certain credits taken by nonbeneficiary students will be accepted at another Montana college or university; deleted former (6)(b) that read: "(b) subtract the costs of resident nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed"; inserted (8) exempting transfer requirement for courses directly related to vocational degree program or to a 2- or 4-year degree program or certificate program; and made minor changes in style. Amendment effective July 1, 2005.

Preamble: The preamble attached to Ch. 362, L. 1997, provided: "WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

WHEREAS, resident nonbeneficiary students do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, as a result of House Bill No. 544, enacted by the 1995 Legislature, the Board of Regents entered into contracts with tribal community colleges to provide financial assistance to approximately 589 resident nonbeneficiary students in the 1997 biennium; and

WHEREAS, without continuing state support, tribal community colleges will not be able to serve resident nonbeneficiary students without increasing student fees, which may result in students dropping out of college."

Effective Date: Section 4, Ch. 362, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 22, 1997.

20-25-439. Vocational-technical education — mill levy required.

Compiler's Comments

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Effective Date — Applicability: Section 38(2), Ch. 308, L. 1995, provided: "[Section 34] [20-25-439] is effective January 1, 1996, and applies to the operation of the vocational-technical system beginning in fiscal year 1997."

Case Notes

Equal Protection Analysis of Vocational-Technical School Levy — Rational Basis Test Applied: Plaintiffs challenged the constitutionality of this section, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate government purpose. The District Court found that the levy is constitutional because it is rationally related to the legitimate government interest of supporting the schools, in that the schools provide specific benefits to their individual counties. The Supreme Court agreed that the rational basis analysis applied. The constitutional tax provisions in Art. VIII, sec. 1 and 3, Mont. Const., are broad directives whose specifics are left to the Legislature, so no constitutionally significant interests are implicated that require greater than a rational basis analysis. A tax classification under the rational basis test will be upheld if it is reasonable and not arbitrary and if it applies equally to all who fall within the same classification. A classification is not reasonable if it confers particular privileges or imposes particular disabilities on a class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to privileges conferred or disabilities imposed. Neither the uniformity doctrine nor equal protection prevent the state from making classifications that result in different state taxes among the various counties as long as the classifications are rationally related to a legitimate government purpose. Simply because other state taxes for education funding are assessed in every county does not mean that the Legislature is prohibited from creating subclasses for tax purposes. Attendance at vocational-technical schools by local residents and course offerings related to local interests serve as a rational basis for putting the five counties in a separate class for purposes of the levy. Counties with vocational-technical schools are not arbitrarily selected from the rest of the state because those counties do not stand in the same relation to the greater privileges conferred on those counties by the schools than the rest of the state, so the disability of the levy is rationally imposed. The constitutionality of this section was affirmed. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002), following Leuthold v. Brandjord, 100 M 96, 47 P2d 41 (1935), and distinguishing State ex rel. Woodahl v. Straub, 164 M 141, 520 P2d 776 (1974), Allegheny Pittsburgh Coal Co. v. County Comm'rs of Webster County, W. Va., 488 US 336 (1989), and Roosevelt v. Dept. of Revenue, 1999 MT 30, 293 M 240, 975 P2d 295 (1999).

Uniformity Doctrine of 1889 Constitution Embodied in Equal Protection Clause of 1972 Constitution: Plaintiffs challenged the constitutionality of this section, asserting that the tax levy for vocational-technical schools resulted in an unequal tax burden on five counties where the schools are located, even though the schools are part of the statewide University System. The state contended that the levy is not unconstitutional because it is rationally related to a legitimate government purpose. The 1889 Montana Constitution contained a uniformity doctrine that required a tax to be levied by a general law that is uniform within the same class of subjects within the territorial limits of the authority levying the tax; however, that uniformity doctrine does not appear in the plain language of the 1972 Montana Constitution. Nevertheless, plaintiffs asserted that the uniformity doctrine is still a constitutional requirement apart from equal protection guarantees. The state argued that because the uniformity doctrine is not part of the 1972 Montana Constitution, the levy could not be violative of the doctrine. The District Court agreed with the state and plaintiffs appealed. The Supreme Court agreed that the statement defining the uniformity doctrine in Hilger v. Moore, 56 M 146, 182 P 477 (1919), was subsequently applied in post-1972 cases, but disagreed that the definition supports any stricter limitation on taxation than that imposed by equal protection. The framers of the 1972 Montana Constitution intended to preserve the uniformity doctrine only as it is equivalent to equal protection requirements. Thus, the uniformity doctrine as interpreted under the 1889 Montana Constitution, which provided for equal protection in the area of taxation, is still embodied in the 1972 Montana Constitution in the equal protection clause. Analysis of the constitutionality of the levy in question was therefore conducted under the equal protection clause. Kottel v. St., 2002 MT 278, 312 M 387, 60 P3d 403 (2002).

20-25-440. Honors college program building.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Effective Date: Section 4, Ch. 22, L. 1993, provided: "[This act] is effective on passage and approval." Approved February 8, 1993.

20-25-441. Lease of university of Montana-Missoula property for stadium authorized.

Compiler's Comments

Name Change — Directions to Code Commissioner: Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "university of Montana" to "university of Montana-Missoula".

Preamble: The preamble attached to Ch. 477, L. 1985, provided: "WHEREAS, the Legislature consented to the Board of Regents' authorization to the University of Montana [now University of Montana-Missoula] to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana [now University of Montana-Missoula] through adoption by the 48th Legislature of Senate Joint Resolution No. 14; and

WHEREAS, private funding for the construction of the project is available through the University of Montana [now University of Montana-Missoula] Foundation, a private nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the University of Montana [now University of Montana-Missoula]; and

WHEREAS, some of the funding is available in the form of in-kind donations of goods and services; and

WHEREAS, the laws of the State of Montana governing public contracts for the construction of public facilities are not compatible with the provision of in-kind goods and services; and

WHEREAS, the best interests of the people of the State of Montana would be served by allowing the University of Montana [now University of Montana-Missoula] Foundation to help in any way it can to provide an improved stadium at the University; and

WHEREAS, the Legislature wishes to facilitate the project while protecting vital state interests in life/safety and long-term maintenance responsibilities."

Legislative Authorization: SJR 14 of the 48th Legislature, referred to in this section, provided: "WHEREAS, the University of Montana [now University of Montana-Missoula] stadium is inadequate and potentially unsafe; and

WHEREAS, the University of Montana [now University of Montana-Missoula] participates in the Big Sky Athletic Conference and Division 1-AA of the National Collegiate Athletic Association but has a stadium facility that is far below standard for this participation; and

WHEREAS, a special study committee of students, faculty, staff, and community representatives is developing a plan for improvement of the stadium; and

WHEREAS, the funding for renovation of the current stadium or construction of a new stadium will be from private gifts and from sources other than Student building fees, Regent building fees, or state-appropriated money, and no State Long-Range Building Program funds will be sought; and

WHEREAS, the project cost will reflect the option of renovation or construction finally approved, but is estimated not to exceed an amount of $4.5 million; and

WHEREAS, this project may need to begin during the coming biennium; and

WHEREAS, the Board of Regents has approved this project in principle, subject to a review of the project proposal and final authorization by the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature consents to the Board of Regents' authorization to the University of Montana [now University of Montana-Missoula] to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana [now University of Montana-Missoula]."

20-25-452. Student organizations functioning as political committees — funding.

Compiler's Comments

Effective Date: Section 27, Ch. 494, L. 2021, provided: "[This act] is effective July 1, 2021."

Severability: Section 25, Ch. 494, L. 2021, was a severability clause.

20-25-455. Montana university system assistance program — purpose — duties of board of regents.

Compiler's Comments

Effective Date: Section 5, Ch. 202, L. 2011, provided that this section is effective July 1, 2011.

Applicability: Section 6, Ch. 202, L. 2011, provided: "[This act] applies to the 2011 academic year and subsequent academic years."

20-25-456. Voluntary contribution account for Montana's universities, colleges, and community colleges.

Compiler's Comments

Effective Date: Section 5, Ch. 202, L. 2011, provided that this section is effective July 1, 2011.

Applicability: Section 6, Ch. 202, L. 2011, provided: "[This act] applies to the 2011 academic year and subsequent academic years."

Part 5
University Students — Qualifications and Rights

Part Case Notes

Damages for Course Terminated: When students enrolled in a 6-quarter aviation course that, after 3 quarters, was terminated due to lack of funds, the state was liable for damages to the students. Peretti v. St. Bd. of Educ., 464 F. Supp. 784, 36 St. Rep. 254 (D.C. Mont. 1979), reversed on other grounds, 661 F2d 756 (9th Cir. 1981).

Relationship Between School and Student: The relationship between a public postsecondary educational institution and a student enrolled there is contractual in nature. Peretti v. St. Bd. of Educ., 464 F. Supp. 784, 36 St. Rep. 254 (D.C. Mont. 1979), reversed on other grounds, 661 F2d 756 (9th Cir. 1981).

20-25-501. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1997 Amendment: Chapter 42 deleted definition of emancipated minor that read: ""Emancipated minor" means a person under the age of 18 years who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 308 in (1)(e)(ii), after "school", inserted "who is a citizen or resident alien of the United States"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Indigent Student's Right to County Medical Assistance — Residence Question: A college student born and raised in Cascade County was injured far from home. During recuperation at her parents' residence in Cascade County, she applied for medical assistance. She was denied. The Supreme Court of Montana found her to be a resident of Cascade County for purposes of county medical assistance, noting that she gives the county as her permanent address and intends to reside there after she finishes school and citing the rule that it is customary to look to the parents' residence in order to determine the residence of the student. Michels v. Dept. of Social and Rehabilitation Services, 187 M 173, 609 P2d 271, 37 St. Rep. 546 (1980).

20-25-503. Presumptions and rules as to domicile.

Compiler's Comments

2021 Amendment: Chapter 426 inserted (8) concerning member of the Montana national guard qualifying for in-state tuition classification. Amendment effective July 1, 2021.

1997 Amendment: Chapter 243 in (6)(a), at end, substituted "and" for "or". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in (6), after "graduates", inserted "who are citizens or resident aliens of the United States"; and made minor changes in style. Amendment effective July 1, 1995.

Case Notes

Indigent Student's Right to County Medical Assistance — Residence Question: A college student born and raised in Cascade County was injured far from home. During recuperation at her parents' residence in Cascade County, she applied for medical assistance. She was denied. The Supreme Court of Montana found her to be a resident of Cascade County for purposes of county medical assistance, noting that she gives the county as her permanent address and intends to reside there after she finishes school and citing the rule that it is customary to look to the parents' residence in order to determine the residence of the student. Michels v. Dept. of Social and Rehabilitation Services, 187 M 173, 609 P2d 271, 37 St. Rep. 546 (1980).

Attorney General's Opinions

Rebuttable Presumption of Nonresidence Not Violative of Due Process: The holding of the U.S. Supreme Court in Vlandis v. Kline, 412 US 441, that a permanent irrebuttable presumption of nonresidence of students who were nonresidents at the time of enrollment in Connecticut's University System violated the Due Process Clause of the federal Constitution does not affect Montana's residency law dealing with payment of fees at units of the Montana University System, because the Montana law establishes only a rebuttable presumption of nonresidence. 35 A.G. Op. 18 (1973).

20-25-504. Evidence as to domiciliary intent — changes in status.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Rebuttable Presumption of Nonresidence Not Violative of Due Process: The holding of the U.S. Supreme Court in Vlandis v. Kline, 412 US 441, that a permanent irrebuttable presumption of nonresidence of students who were nonresidents at the time of enrollment in Connecticut's University System violated the Due Process Clause of the federal Constitution does not affect Montana's residency law dealing with payment of fees at units of the Montana University System, because the Montana law establishes only a rebuttable presumption of nonresidence. 35 A.G. Op. 18 (1973).

20-25-511. Student's right of privacy — legislative intent.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "peace officers" for "police".

20-25-512. Contracts waiving right to privacy prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-513. Written notice required for entry to student's room — emergency.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-515. Release of student records.

Case Notes

Request for Release of Educational Records — Actual Expectation of Privacy: The District Court ordered the University of Montana to release a student's educational records, finding that the student did not have a subjective or actual expectation of privacy in his educational records because the information was already substantially available to the public through unsealed court records and significant media coverage of a related criminal trial. Alternatively, the District Court reasoned that even if a privacy interest existed for the records, the public's right to know outweighed the student's privacy interest. On appeal, the Supreme Court reversed, finding that neither of the exceptions to 20-25-215 were applicable and the student did not occupy a position of public trust, so the student had an actual expectation of privacy in his records. Krakauer v. St., 2019 MT 153, 396 Mont. 247, 445 P.3d 201.

Request for Release of Student's Disciplinary Records — Remand to Determine Whether Exception Under FERPA Applies: The District Court ordered the defendant, a university system, to release certain student disciplinary records to the plaintiff, an out-of-state journalist. The defendant appealed, arguing that the university system was prohibited from releasing the records under the Family Educational Rights and Privacy Act of 1974 (FERPA) and 20-25-515. The plaintiff contended that the requested information could be provided under an exception to FERPA. The Supreme Court concluded that it was unable to determine whether the exception applied and remanded the matter for the District Court to perform an in camera review of the documents to determine whether they fell under the FERPA exception and whether the student's right to privacy exceeded the public's right to know. Krakauer v. St. Comm'r of Higher Educ., 2016 MT 230, 384 Mont. 527, 381 P.3d 524.

Student's Right to Privacy Against Public Right to Know — Remand for In Camera Inspection of Records and Weighing of Each Right: The District Court ordered the defendant, a university system, to release a certain student's disciplinary records to the plaintiff, an out-of-state journalist. On appeal, the defendant argued that the District Court erred in finding that the student did not have a reasonable expectation of privacy for his redacted disciplinary records. The Supreme Court ruled that the District Court should have conducted an in camera inspection of the records and remanded to have the District Court consider what records, if any, could be released after weighing the constitutional rights against each other. Krakauer v. St. Comm'r of Higher Educ., 2016 MT 230, 384 Mont. 527, 381 P.3d 524.

Law Review Articles

Krakauer II: Student Privacy Over Record Disclosure, Bruner, 82 Mont. L. Rev. 429 (2021).

Putting Notice to the Right to Know and Participate: Creating a Policy for the Montana University System Campuses, Pasque, 77 Mont. L. Rev. 387 (2016).

20-25-516. Academic records to be kept separate — student's right to examine records.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-517. Awarding credit for military service — policy.

Compiler's Comments

Effective Date: Section 3, Ch. 77, L. 2013 provided: "[This act] is effective on passage and approval." Approved March 20, 2013.

20-25-518. Discrimination against student organizations prohibited.

Compiler's Comments

Effective Date: Section 5, Ch. 234, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 15, 2021.

Severability: Section 4, Ch. 234, L. 2021, was a severability clause.

20-25-519. Antiharassment and freedom of speech protections for students.

Compiler's Comments

Effective Date: Section 5, Ch. 234, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 15, 2021.

Severability: Section 4, Ch. 234, L. 2021, was a severability clause.

Part 6

Health Education — Drug and Alcohol Instruction

20-25-603. Teacher instruction — course required of education students.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-604. Department in advisory capacity.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Part 7

Work-Study Program

20-25-703. Limitation on use of funds.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-707. Antidiscrimination.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1997 Amendment: Chapter 472 near end substituted "disability" for "handicap"; and made minor changes in style.

20-25-709. Contributions from employers.

Compiler's Comments

Severability Clause: Section 75-9111, R.C.M. 1947, was a severability clause.

Part 8
Medical Education Agreements

20-25-801. Western Regional Higher Education Compact approved.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

20-25-806. Appointment of commissioners to the western interstate commission for higher education.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

20-25-810. Contract requirements for university of Washington cooperative medical education program.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Applicability: Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

20-25-811. Idaho college of osteopathic medicine cooperative medical education program.

Compiler's Comments

Effective Date: Section 5, Ch. 418, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 9, 2019.

Part 9
Family Education Savings Program

Part Compiler's Comments

Effective Date: Section 15, Ch. 540, L. 1997, provided: "[This act] is effective July 1, 1997."

20-25-901. Family education savings program oversight committee — membership — powers and duties.

Compiler's Comments

2003 Amendment: Chapter 566 in (5)(a) after "act as the" deleted "depositories and"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 deleted former (2)(b) that read: "(b) the director of the department of commerce or the director's designee"; in (2)(d) increased the general public's representation on the committee from three members to four members; and made minor changes in style. Amendment effective July 1, 2001.

Implementation of Staggered Terms: Section 13, Ch. 540, L. 1997, provided: "(1) To implement the staggered-term system provided for in [section 6] [20-25-901], the first terms of the members are as follows:

(a) one member shall serve a 1-year term;
(b) two members shall serve 2-year terms;
(c) two members shall serve 3-year terms; and
(d) two members shall serve 4-year terms.

(2) Upon expiration of the terms provided for in subsection (1), each member shall serve a 4-year term."

20-25-902. Board — powers and duties.

Compiler's Comments

2021 Amendment: Chapter 349 in (1)(a) substituted "administer, manage, promote, and market the program" for "retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts"; substituted current (1)(c) through (1)(h) for former (1)(c) through (1)(g) (see 2021 Session Law for former text); in (1)(j) substituted "participation agreements" for "participating trust agreements"; and made minor changes in style. Amendment effective April 30, 2021.

Although sec. 49, Ch. 503, L. 2021, purported to amend this section by substituting "qualified education expenses" for "qualified higher education expenses" in former (1)(f) and (1)(f)(iii)(B), the amendment was rendered ineffective by sec. 10, Ch. 349, L. 2021, which deleted those subsections.

Applicability: Section 12, Ch. 349, L. 2021, provided: "[This act] applies to tax years beginning after December 31, 2020."

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

2005 Amendment: Chapter 549 inserted (1)(h) through (1)(j) granting additional powers to board; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 566 in (1)(e) after "act as the" deleted "depository and". Amendment effective October 1, 2003.

Part 10
Motorcycle Safety Training Program

20-25-1001. Definitions.

Compiler's Comments

Effective Date: Section 15, Ch. 181, L. 1999, provided that this section is effective July 1, 1999.

20-25-1002. State motorcycle safety account — proceeds earmarked for account.

Compiler's Comments

2001 Amendment: Chapter 574 in (2) near beginning substituted "motorcycle safety fees" for "motorcycle registration fees". Amendment effective July 1, 2001.

Effective Date: Section 15, Ch. 181, L. 1999, provided that this section is effective July 1, 1999.

20-25-1003. Motorcycle safety promotion.

Compiler's Comments

1999 Amendment: Chapter 181 near beginning after "justice" substituted "and the board of regents" for "and the superintendent of public instruction" and near end after "encouraging" inserted "both publicly and privately offered". Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1004. Motorcycle safety advisory committee.

Compiler's Comments

1999 Amendment: Chapter 181 throughout section substituted "board of regents" for "superintendent of public instruction"; in (3)(b) substituted "instructor of motorcycle safety training" for "motorcycle safety instructor" and substituted "20-25-1005" for "20-7-512"; in (5)(b) near beginning substituted "instructor of motorcycle safety training" for "motorcycle safety instructor" and near middle substituted "an instructor of motorcycle safety training certification" for "a motorcycle safety instructor certification"; and made minor changes in style. Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1005. Standards for motorcycle safety training.

Compiler's Comments

1999 Amendment: Chapter 181 in two places substituted reference to board of regents for reference to superintendent of public instruction and substituted "20-25-1006" for "20-7-513". Amendment effective July 1, 1999.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1989.

20-25-1006. Motorcycle safety training course — tuition.

Compiler's Comments

2001 Amendment: Chapter 307 in (4) near middle after "purchases" deleted "or award grants". Amendment effective July 1, 2001.

1999 Amendment: Chapter 181 in (1) substituted language pertaining to the board of regents prescribing tuition rates and the disposition of the tuition collected for former (1) that read: "(1) The superintendent may charge a fee for the cost of conducting motorcycle safety training courses. The fee must be deposited in the state traffic education account, as provided in 20-7-504"; in (2) substituted language allowing board of regents to delegate authority to conduct motorcycle safety training courses and the approval of instructors for former (2) that read: "(2) The superintendent may contract with qualified persons throughout the state to conduct motorcycle safety training courses outside of the formal education system at times and places that will attract the greatest number of students"; and in (4) near middle substituted "board of regents" for "superintendent" and substituted "motorcycle safety account" for "traffic education account". Amendment effective July 1, 1999.

1991 Amendment: Deleted former (1) that read: "(1) The superintendent shall conduct motorcycle safety training courses throughout the state to the extent that funds are available"; in (1) and (4) substituted reference to state traffic education account for reference to motorcycle safety training account; at end of (1) substituted "20-7-504" for "61-2-406"; in (2), after "training", inserted "courses"; in (3), after "safety", inserted "training"; and made minor changes in style. Amendment effective July 1, 1991.

Termination Provision Repealed: Section 8, Ch. 701, L. 1991, repealed sec. 10, Ch. 324, L. 1989, which terminated this section June 30, 1993. Repealer effective July 1, 1991.

Effective Date: Section 9, Ch. 324, L. 1989, provided that this section is effective July 1, 1990.

Part 13
Group Benefits

Part Compiler's Comments

Effective Date: Section 8, Ch. 256, L. 1999, provided that this part was effective July 1, 1999.

20-25-1303. Duties of commissioner — group benefits plans and employee premium levels not mandatory subjects for collective bargaining.

Compiler's Comments

2021 Amendment: Chapter 242 in (2)(a) at beginning inserted exception clause; inserted (2)(b) requiring group benefit plans designed under the part to include coverage for telehealth services; and made minor changes in style. Amendment effective January 1, 2022.

20-25-1315. Legislative findings and purpose.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

20-25-1316. Hold harmless.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

20-25-1317. Disclosures by air ambulance service.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

20-25-1318. Independent dispute resolution.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

20-25-1319. Independent dispute resolution procedure — exemptions.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

20-25-1320. Insurance commissioner duties — independent reviewer qualifications.

Compiler's Comments

Effective Date: Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

Part 14

Self-Insured Student Health Plan

Part Compiler's Comments

Effective Date: This part is effective October 1, 2011.

20-25-1403. Authorization to establish self-insured health plan for students — requirements — exemption.

Compiler's Comments

2021 Amendment: Chapter 242 in (5)(a) at beginning inserted exception clause; inserted (5)(b) requiring a self-insured student health plan to include coverage for telehealth services; and made minor changes in style. Amendment effective January 1, 2022.

2017 Amendment: Chapter 231 inserted (4) pertaining to applicability; and made minor changes in style. Amendment effective April 25, 2017.

Applicability: Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

Preamble: The preamble attached to Ch. 231, L. 2017, provided: "WHEREAS, House Joint Resolution No. 29 (2015) requested a study of the availability, billing practices, and insurer network participation of air ambulance services; and

WHEREAS, the study revealed significant gaps between some air ambulances' billed charges and some insurers' reimbursement rates; and

WHEREAS, these gaps have resulted in some air ambulance patients receiving crippling balance bills and in the proliferation of air ambulance subscription programs; and

WHEREAS, this problem is compounded by deficiencies in insurer networks with respect to air ambulances; and

WHEREAS, certain marketing tactics and a lack of subscription program reciprocity result in consumers purchasing air ambulance subscriptions that lack adequate coverage areas."

Severability: Section 12, Ch. 231, L. 2017, was a severability clause.

2013 Amendment: Chapter 363 in (4) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 2013, and terminates December 31, 2017.

Part 15
Expressive Activity on Campuses

Part Compiler's Comments

Effective Date: Section 11, Ch. 231, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 15, 2021.

Preamble: The preamble attached to Ch. 231, L. 2021, provided: "WHEREAS, the First Amendment of the United States Constitution and Article II, sections 5 through 7, of the Montana Constitution protect the rights of freedom of religion, freedom of association, freedom of speech, freedom of the press, and to petition the government for all citizens; and

WHEREAS, the United States Supreme Court has called public universities "peculiarly the 'marketplace of ideas', " where young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others' exercise of the same rights, and therefore there is "no room for the view that... First Amendment protections should apply with less force on college campuses than in the community at large," Healy v. James, 408 U.S. 169, 180 (1972); and

WHEREAS, the Montana Legislature views the exercise of First Amendment rights on the public postsecondary institutions' campuses in Montana as a critical component of the education experience for students and requires that each public postsecondary institution in Montana ensures free, robust, and uninhibited debate and deliberations by students whether on or off campus; and

WHEREAS, the United States Supreme Court has warned that if public universities stifle student speech and prevent the open exchange of ideas on campus, "our civilization will stagnate and die," Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957); and

WHEREAS, the Montana Legislature has determined that a significant amount of taxpayer dollars is appropriated to public postsecondary institutions each year, and therefore the Montana Legislature shall ensure that all postsecondary institutions receiving state funds recognize freedom of speech as a fundamental right for all."

Severability: Section 10, Ch. 231, L. 2021, was a severability clause.

CHAPTER 26
STUDENT FINANCIAL ASSISTANCE

Part 1
Resident Student Assistance
General Provisions

20-26-101. Short title.

Compiler's Comments

2019 Amendment: Chapter 300 after "Montana Resident Student Financial" substituted "Aid Program Act" for "Assistance Program". Amendment effective July 1, 2019.

20-26-102. Purpose — legislative intent.

Compiler's Comments

2019 Amendment: Chapter 300 in (1) after "provide financial" substituted "aid" for "assistance" and after "resident Montana postsecondary" inserted "undergraduate and graduate"; inserted (2)(a) through (2)(c) describing three types of financial aid programs; inserted (3) providing intent to maximize federal need-based aid and work-study awards; inserted (4) providing for continued support of graduate exchange programs for Montana residents pursuing professional degrees out of state; and made minor changes in style. Amendment effective July 1, 2019.

20-26-103. Definitions.

Compiler's Comments

2019 Amendment: Chapter 300 substituted current definition of postsecondary institution for former definition that read: ""Postsecondary institution" includes the units of the university system and any private postsecondary institution"; and made minor changes in style. Amendment effective July 1, 2019.

2013 Amendment: Chapter 39 deleted definition that read: ""Program advisory council" means the student loan advisory council created by 2-15-1520"; and made minor changes in style. Amendment effective July 1, 2013.

2001 Amendment: Chapter 7 near middle of definition of postsecondary institution substituted "private postsecondary institution" for "postsecondary institution accredited or licensed under chapter 30 of this title". Amendment effective October 1, 2001.

1997 Amendment: Chapter 243 in definition of Program Advisory Council, before "student loan advisory council", deleted "guaranteed". Amendment effective July 1, 1997.

1985 Amendment: In (3) substituted "guaranteed student loan advisory council created by 2-15-1520" for "resident student financial assistance program advisory council created by 2-15-1517".

20-26-104. Montana resident student financial aid program created.

Compiler's Comments

2019 Amendment: Chapter 300 substituted "Montana resident student financial aid program" for "resident student financial assistance program". Amendment effective July 1, 2019.

2013 Amendment: Chapter 39 at end after "education" deleted "in consultation with the program advisory council". Amendment effective July 1, 2013.

20-26-105. Montana resident student financial aid program — reporting requirements.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 59, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 19(1), Ch. 300, L. 2019, provided that this section is effective July 1, 2019.

Part 2
Resident Student Assistance
Administration of Program

20-26-201. Duties of commissioner of higher education relative to program.

Compiler's Comments

2019 Amendment: Chapter 300 in (1) near beginning substituted "policies" for "rules" and substituted "Montana resident student financial aid program" for "resident student financial assistance program"; in (2) at end substituted "financial aid awards" for "grants"; in (3) at end inserted "including the reports required under 20-26-105"; and made minor changes in style. Amendment effective July 1, 2019.

2013 Amendment: Chapter 39 at beginning deleted "In consultation with the program advisory council"; and made minor changes in style. Amendment effective July 1, 2013.

20-26-202. Administrative costs.

Compiler's Comments

2019 Amendment: Chapter 300 made minor changes in style. Amendment effective July 1, 2019.

20-26-203. Deposit of funds.

Compiler's Comments

2019 Amendment: Chapter 300 substituted "the Montana resident student financial aid program" for "the resident student financial assistance program"; and made minor changes in style. Amendment effective July 1, 2019.

Part 6
Scholarship Programs

Part Compiler's Comments

Preamble: The preamble attached to Ch. 489, L. 2005, provided: "WHEREAS, if Montana is to achieve success in attracting new businesses and in promoting a healthier climate for economic growth to provide quality, high-paying jobs for Montana citizens, it is essential that Montana's most talented high school graduates become the "engines" that drive the state's future economic growth; and

WHEREAS, the purpose of establishing the Governor's Postsecondary Scholarship Program is to provide Montana residents with greater access to Montana's postsecondary institutions and Montana's private colleges, through scholarship grants based on academic achievement and financial need, with a goal of alleviating student debt burdens, which will allow more Montanans to stay in the state upon graduation."

Implementation: Section 9(2), Ch. 489, L. 2005, provided: "(2) If the appropriation provided pursuant to subsection (1) is insufficient to fully fund the scholarship program provided for in [this act], after meeting the obligation to provide continuing scholarships for returning sophomore, junior, and senior students, the board shall reduce the number of scholarships awarded in each category under [section 6(2)] [20-26-612(2), now repealed] in proportion to the amount of money appropriated and notify the office of budget and program planning of the reduction. Following consultation with the council, the board shall adopt procedures to implement this section."

Effective Date — Applicability: Section 11, Ch. 489, L. 2005, provided: "[This act] is effective on passage and approval and applies to the 2006 academic year." Approved April 28, 2005.

20-26-603. Definitions.

Compiler's Comments

2019 Amendment: Chapter 300 deleted former definition that read: ""Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524"; in definition of postsecondary institution in (c) after "accredited tribal" deleted "community"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 385 inserted definitions of Montana high school and STEM or health care major; and made minor changes in style. Amendment effective July 1, 2015.

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

2011 Amendment: Chapter 140 in definition of Montana private college after "institution" deleted "as defined in 15-30-2326(3)(b)", inserted (a) concerning main campus and operations in the state, and inserted (b) concerning education on the level of a baccalaureate degree and accrediting standards; and made minor changes in style. Amendment effective October 1, 2011.

Applicability: Section 6, Ch. 140, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2007 Special Session Amendment: Chapter 1 deleted definition of at-large student that read: ""At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college"; deleted definition of certificate program or certificate that read: ""Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program"; deleted definition of nontraditional student that read: ""Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree"; in definition of scholarship substituted "the cost of attendance at a qualifying postsecondary institution" for "tuition and mandatory fees, excluding room and board"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-26-606. Public and private sources of funding — restrictions on use — accounting.

Compiler's Comments

2019 Amendment: Chapter 300 in (1) near middle inserted "for the Montana STEM scholarship program"; in (2) at beginning deleted "Except when a donor of private funds designates that scholarship funds must be given to students attending a private college" and near end before "20-26-614" deleted "20-26-602 and"; in (4) near beginning substituted "the Montana STEM scholarship program account" for "an account", near middle substituted "20-26-617" for "17-2-102", and at end deleted "or, when designated by the donor, in Montana private colleges"; in (5) in two places after reference to a postsecondary institution deleted reference to a Montana private college; in (7) in two places substituted "Montana STEM scholarship program" for "governor's postsecondary scholarship program"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 385 in (2) at end inserted "and 20-26-614"; and in (7) substituted "the governor's postsecondary scholarship program" for "this part". Amendment effective July 1, 2015.

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Effective Date: Section 31, Ch. 1, Sp. L. May 2007, provided: "[This act] is effective July 1, 2007."

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-26-614. Montana STEM scholarship program.

Compiler's Comments

2019 Amendment: Chapter 300 in (2) at end inserted "and satisfying current and anticipated economic and workforce development needs in Montana"; in (3) at end substituted "this part" for "20-26-614 through 20-26-617"; and made minor changes in style. Amendment effective July 1, 2019.

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Effective Date: Section 16, Ch. 385, L. 2015, provided: "[This act] is effective July 1, 2015."

20-26-615. Eligibility requirements — ineligibility.

Compiler's Comments

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Effective Date: Section 16, Ch. 385, L. 2015, provided: "[This act] is effective July 1, 2015."

20-26-616. STEM scholarship amounts — renewal requirements.

Compiler's Comments

2019 Amendment: Chapter 300 in (2) at end of first sentence substituted "an additional scholarship for up to 3 subsequent academic years" for "a $2,000 scholarship for the student's second academic year" and near middle of second sentence substituted "a subsequent academic year" for "the student's second academic year"; in (2)(a)(i) at end inserted "to be eligible for a $1,500 scholarship in the second academic year"; inserted (2)(a)(ii) and (2)(a)(iii) providing criteria for scholarships available in third and fourth academic years; in (3) substituted current text for former text that read: "The board shall adopt a policy regarding the award of scholarships when the funds in the account established in 20-26-617 are insufficient to fully fund the STEM scholarship program. The policy must prioritize scholarships in the following order:

(a) Renewals for qualified applicants of scholarships that were previously awarded have the highest priority.

(b) If funds remain after renewal scholarships are awarded pursuant to subsection (3)(a), then the number of new scholarships must be reduced but the individual award amounts must meet the requirements of subsections (1) and (2)"; and made minor changes in style. Amendment effective July 1, 2019.

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Effective Date: Section 16, Ch. 385, L. 2015, provided: "[This act] is effective July 1, 2015."

20-26-617. Montana STEM scholarship program state special revenue account.

Compiler's Comments

2019 Amendment: Chapter 300 in (2) at end deleted former last sentence that read: "Every student who is eligible under the provisions of 20-26-615 and 20-26-616 must be awarded a Montana STEM scholarship"; in (3) near middle substituted "in the amounts required by 20-26-616, the excess funds must" for "as required by subsection (2), the excess funds may"; inserted (4) authorizing proration of scholarships if program is not fully funded; in (6) at end substituted "this part" for "20-26-614 through 20-26-616"; and made minor changes in style. Amendment effective July 1, 2019.

Preamble: The preamble attached to Ch. 385, L. 2015, provided: "WHEREAS, the Montana Lottery was originally created by the voters of Montana in 1986 to have its proceeds be used for educational purposes; and

WHEREAS, this legislation is an effort to restore the will of the Montana electorate; and

WHEREAS, initiating merit-based higher education opportunities for the youth of Montana in areas of science, technology, engineering, and mathematics will steer those students toward living-wage jobs in the Montana marketplace that tend to be readily available; and

WHEREAS, the Montana Lottery is encouraged to develop and implement program and marketing strategies to grow the STEM scholarship fund to at least $5 million per year."

Effective Date: Section 16, Ch. 385, L. 2015, provided: "[This act] is effective July 1, 2015."

20-26-621. Short title.

Compiler's Comments

Effective Date: Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

20-26-622. Purpose.

Compiler's Comments

Effective Date: Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

20-26-623. Montana promise grant program — student eligibility — administration.

Compiler's Comments

Effective Date: Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

20-26-633. Montana foster youth higher education assistance program — administration — eligible institutions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Termination: Section 4, Ch. 629, L. 2023, provided: "[Sections 1 and 2] [20-26-633 and 20-26-634] terminate June 30, 2031. It is the intent of the legislature to review the program before it terminates."

20-26-634. Montana foster youth higher education assistance program — program requirements — student participant eligibility.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Termination: Section 4, Ch. 629, L. 2023, provided: "[Sections 1 and 2] [20-26-633 and 20-26-634] terminate June 30, 2031. It is the intent of the legislature to review the program before it terminates."

Part 11
Guaranteed Student Loan Program

20-26-1101. Definitions.

Compiler's Comments

2015 Amendment: Chapter 227 deleted definition that read: ""Delinquency" means the failure of a debtor to abide by the terms of payment on a promissory note or other obligation created in return for an educational student loan, which failure has existed for at least 6 months and has resulted in an arrearage equal to or greater than six monthly payments called for by the note or obligation"; deleted definition that read: ""License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration"; deleted definition that read: ""Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license"; deleted definition that read: ""Order suspending a license" means an order issued by the agency to suspend a license. The order must contain the name of the debtor, the type of license, and the social security number of the debtor"; deleted definition that read: ""Payment plan" includes but is not limited to a plan approved by the agency that provides sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended, and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment of the debt outstanding"; and made minor changes in style. Amendment effective April 10, 2015.

2013 Amendment: Chapter 39 deleted definition that read: ""Council" means the student loan advisory council established in 2-15-1520"; and made minor changes in style. Amendment effective July 1, 2013.

1997 Amendments: Chapter 243 substituted agency for corporation as defined term and substituted "entity" for "corporation"; in definition of Council, before "student loan", deleted "guaranteed"; in definition of eligible educational institution substituted "secretary" for "commissioner" and before "student loan program" deleted "guaranteed"; inserted definition of eligible lender; substituted student loan program for guaranteed student loan program as defined term; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 446 inserted definitions of agency, delinquency, license, licensing authority, order suspending a license, and payment plan; deleted definition of corporation that read: ""Corporation" means the corporation designated by the board to administer student loans"; and made minor changes in style.

1993 Amendment: Chapter 205 inserted definition of corporation; and deleted definition of nonprofit corporation.

20-26-1102. Authorization to establish student loan program.

Compiler's Comments

1997 Amendment: Chapter 243 in (1) and (2), before "student loan program", deleted "guaranteed"; and made minor changes in style. Amendment effective July 1, 1997.

20-26-1103. Duties of board.

Compiler's Comments

2001 Amendment: Chapter 38 at end of (6) inserted "and other student financial aid-related activities for the benefit of students as determined by the board"; and made minor changes in style. Amendment effective March 13, 2001.

1997 Amendment: Chapter 243 in introductory clause and in (4), (5), and (6), before "student loan program", deleted "guaranteed"; in (1), near beginning after "guarantor", inserted "and administrator"; in (2), after "or credit institutions", deleted "insurance companies" and before "student loans" deleted "guaranteed"; in (4), after "United States", substituted "secretary" for "commissioner"; in (5), at beginning, substituted "provide" for "contract with a corporation", before "loan approval" substituted "conduct" for "provide", after "preclaims assistance" inserted "supplemental preclaims assistance", and after "lender" inserted "and school"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 205 near beginning of (5), before "corporation", deleted "nonprofit"; and made minor changes in style.

20-26-1105. Student loan account.

Compiler's Comments

1997 Amendment: Chapter 243 in (1), in (2), in two places, and in (4), before "student loan", deleted "guaranteed"; in (3), near middle after "guarantor", inserted "and administrator"; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: In (1) substituted "federal" for "other"; and made minor changes in grammar. Amendment effective July 1, 1989.

1987 Amendment: In (1) substituted "other special revenue funds" for "federal special revenue fund".

1983 Amendment: In (1), substituted "account within the federal special revenue fund provided for in 17-2-102" for "revolving account within the university student loan fund provided for in 17-2-102(11)".

20-26-1106. No state obligation.

Compiler's Comments

1997 Amendment: Chapter 243 in two places, before "student loan", deleted "guaranteed" and near middle of second sentence substituted "agency" for "nonprofit corporation". Amendment effective July 1, 1997.

20-26-1107. Dissolution — disposition of money.

Compiler's Comments

1997 Amendment: Chapter 243 in (1), near beginning, and in (2), near middle before "student loan", deleted "guaranteed"; in (1), after "and all loans", deleted "guaranteed" and at end inserted "or have been otherwise accounted for under Title IV of the Higher Education Act of 1965, as amended"; and made minor changes in style. Amendment effective July 1, 1997.

Part 15

Health Care Provider Incentive Programs

20-26-1501. Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.

Compiler's Comments

2017 Amendment: Chapter 436 in second sentence inserted reference to 20-25-810; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

2007 Amendment: Chapter 361 in first sentence substituted "an incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations" for "a rural physician incentive" and after "account" deleted "in the state treasury" and in second sentence inserted reference to 17-1-511. Amendment effective July 1, 2008.

1999 Amendment: Chapter 389 throughout section substituted "account" for "fund" and in first sentence substituted "state special revenue account" for "expendable trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

20-26-1502. Fee assessments — deposits.

Compiler's Comments

2017 Amendment: Chapter 436 in (2) at beginning inserted exception clause; in (3) inserted "provided for in 20-25-810 and this section"; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

2007 Amendment: Chapter 361 in second sentence increased fee from "8%" to "16%" and in third sentence after "deposited in the" deleted "rural physician incentive". Amendment effective July 1, 2008.

Applicability: Section 9(2), Ch. 361, L. 2007, provided: "(2) [Section 4] [20-26-1502] applies to fees charged after June 30, 2008."

1999 Amendment: Chapter 389 near end of third sentence substituted "state special revenue account" for "trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

20-26-1503. Use of incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 310 in (4) substituted "$150,000" for "$100,000". Amendment effective July 1, 2017.

Chapter 436 in (3) in second sentence inserted reference to 20-25-810; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

2007 Amendment: Chapter 361 in (1) substituted "state special revenue account established in 20-26-1501" for "rural physician incentive state special revenue account"; in (1)(a) near beginning before "physicians" deleted "rural", after "practice in" inserted "rural areas or", and near middle inserted reference to medically underserved populations; in (1)(b) before "incentive program" deleted "rural physician"; in (2) in middle of first sentence substituted "rural areas and medically underserved areas or populations" for "areas" and in second sentence near beginning after "eligible area" inserted reference to eligible population and near middle after "area" inserted reference to population; in (3) in first sentence near beginning after "area" inserted reference to serving a population and in last sentence after "eligible area" inserted reference to ceasing to serve the eligible population; in (4) substituted reference to physician practicing in rural area or medically underserved area or for medically underserved population for "rural physician" and increased maximum debt payment from "$45,000" to "$100,000"; in (5) substituted "state special revenue account established in 20-26-1501" for "rural physician incentive state special revenue account"; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 9(3), Ch. 361, L. 2007, provided: "(3) [Section 5] [20-26-1503] applies to applications made after June 30, 2009, for payment of educational debt."

1999 Amendment: Chapter 389 in (1) and (5) substituted "state special revenue account" for "trust fund"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 89 in (4) increased maximum debt payment from "$30,000 over a 4-year period" to "$45,000 over a 5-year period".

Effective Date: Section 6, Ch. 394, L. 1991, provided: "[This act] is effective July 1, 1991."

Applicability: Section 5, Ch. 394, L. 1991, provided: "[This act] applies to students enrolling in a professional school on or after July 1, 1992."

20-26-1511. Institutional nursing incentive program.

Compiler's Comments

Effective Date: Section 4, Ch. 379, L. 2009, provided: "[This act] is effective July 1, 2009."

CHAPTER 31
FIRE SERVICES TRAINING SCHOOL

Part 1
General Provisions

20-31-101. Definitions.

Compiler's Comments

1989 Amendment: In definition of board substituted "board of regents" for "board of public education", substituted "Article X, section 9, subsection (2)" for "Article X, section 9, subsection (3)", and substituted "2-15-1505" for "2-15-1507". Amendment effective July 1, 1989.

20-31-102. Fire services training school — creation — supervision by board of regents.

Compiler's Comments

1989 Amendment: In three places substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Administrative Rules

ARM 10.51.104 Responsibility assigned by statute.
ARM 10.51.106 Agency functional chart.

20-31-103. Purpose of school.

Compiler's Comments

1987 Amendment: Substituted (1) through (5) (see 1987 Session Law for text) for former (1) through (7) that read: "(1) reduce the loss of life and personal injury caused by fire;

(2) reduce property damage and loss caused by fire;

(3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

(4) provide training in investigating the cause of fire;

(5) develop new methods of fire prevention and firefighting;

(6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention."

20-31-104. Coordination with other agencies.

Compiler's Comments

2007 Amendment: Chapter 38 inserted (2) allowing the fire services training school to make its resources available to local fire protection entities in an emergency; and made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 2
Director

20-31-202. Duties of director.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 3
Advisory Council

20-31-301. Organization — procedural rules — compensation of members.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (2) substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

Part 4
Miscellaneous Provisions

20-31-401. Acceptance of gifts and grants — contractual agreements.

Compiler's Comments

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

20-31-402. Cost recovery fee.

Compiler's Comments

2017 Amendment: Chapter 146 near end substituted "in accordance with the higher education fund structure" for "to the general fund"; and made minor changes in style. Amendment effective April 3, 2017.

1989 Amendment: Substituted "board of regents" for "board of public education". Amendment effective July 1, 1989.

CHAPTER 32
MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

Part 1
General

Part Compiler's Comments

Preamble: The preamble attached to Ch. 622, L. 1991, provided: "WHEREAS, the school funding reform legislation in House Bill No. 28 (Chapter 11), Special Laws of June 1989, promotes the use of telecommunications technology for the purpose of enhancing the equal educational opportunities provided to students in the Montana public school system; and

WHEREAS, the Department of Administration, the Superintendent of Public Instruction, and the Montana University System, with the assistance of private consulting services and other private and public entities, have followed the directive in House Bill No. 28 and have completed the needs assessment and network design for improvements in the Montana education system through telecommunications technology; and

WHEREAS, Montana's future depends on the ability to provide quality educational opportunities and on the ability to train and retrain the state's work force, regardless of location in the state; and

WHEREAS, telecommunications can contribute to equal educational opportunity for all Montanans through improved access to a wide range of educational needs, such as specialized coursework in languages, mathematics, and the sciences, college credit coursework, adult education, teacher inservice training, and preparation for professional recertification; and

WHEREAS, by both past actions and future commitments, the private sector has demonstrated its willingness to share in the funding for development and enhancement of an educational telecommunications network in Montana."

Effective Date: Section 9, Ch. 622, L. 1991, provided that this part is effective on passage and approval. Approved April 24, 1991.

20-32-101. Purpose — definition.

Compiler's Comments

1995 Amendment: Chapter 308 in (3)(b), after "system", deleted "the vocational-technical centers". Amendment effective July 1, 1995.

20-32-102. Agency cooperation — responsibilities.

Compiler's Comments

1995 Amendment: Chapter 308 in (1)(c) and (4)(d), after "system", deleted "the vocational-technical centers"; in (4)(f), after "colleges", deleted "and vocational-technical centers"; and made minor changes in style. Amendment effective July 1, 1995.

20-32-103. Fee collection and disposition for operational costs.

Compiler's Comments

1997 Amendment: Chapter 243 in second sentence, after "commissioner of higher education", deleted "by July 1". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in first sentence, after "system", deleted "vocational-technical centers" and after "units" deleted "centers". Amendment effective July 1, 1995.

1993 Amendment: Chapter 547 in first sentence, after "exceed", substituted "$5" for "$1"; in second sentence, after "July 1", deleted "of the fiscal year, beginning with fiscal year 1992"; and at end of third sentence deleted "as provided in 20-32-104". Amendment effective April 28, 1993.

TITLE 21
RESERVED

20-32-103. Fee collection and disposition for operational costs.

Compiler's Comments

1997 Amendment: Chapter 248 in second sentence, after "commissioner of higher education", deleted "by July 1". Amendment effective July 1, 1997.

1995 Amendment: Chapter 308 in first sentence, after "system", deleted "vocational-technical centers" and after "units" deleted "centers". Amendment effective July 1, 1995.

1993 Amendment: Chapter 347 in first sentence, after "exceed", substituted "$5" for "$1"; in second sentence, after "July 1", deleted "of the fiscal year, beginning with fiscal year 1992"; and at end of third sentence deleted "as provided in 20-32-104". Amendment effective April 28, 1993.

TITLE 22
LIBRARIES, ARTS, AND ANTIQUITIES

CHAPTER 1
LIBRARIES

Chapter Law Review Articles

?Por Que No Podemos Leer en la Biblioteca?: Questioning the Application of Official English Legislation to Public Libraries, Nicolino, 10 J. Gender, Race & Just. 531 (2007).

Law and Libraries: The Public Library, Bubrick, 97 L. Libr. J. 167 (2005).

The Right to Receive Information, Mart, 95 L. Libr. J. 187 (2003).

Part 1
State Library Commission

Part Administrative Rules

Title 10, chapter 101, ARM State Library Commission.

22-1-101. State library commission established.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (4) substituted "shall be compensated and receive travel expenses as provided for in 2-15-124" for "shall receive no compensation for their services except their travel expenses, as provided for in 2-18-501 through 2-18-503".

1983 Amendment: In (1) and (2), substituted language establishing commission and providing for its membership for "A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the university of Montana, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve 1, 2, and 3 years respectively. As these terms expire, annually thereafter one person shall be appointed for a term of 3 years."

22-1-102. Librarian and assistants.

Attorney General's Opinions

Authority to Classify Positions of State Librarian and Director of Montana Historical Society: Although repeals by implication are not favored, it would frustrate the purpose of the classification and pay plan law to hold that the positions of state librarian and Director of the Montana Historical Society are exempt from classification when the Legislature has not expressly approved such exemption in 2-18-103. Thus, the provisions of 22-3-107 and 22-1-102, which authorize the Board of Trustees of the historical society and the State Library Commission to set salary, are superseded by the classification and pay plan law, Title 2, ch. 18, parts 1 through 3. The Board and the Commission retain the authority to hire and to assign duties and responsibilities. 40 A.G. Op. 68 (1984).

22-1-103. State library commission — authority.

Compiler's Comments

2005 Amendment: Chapter 73 in (9) after "areas for" substituted "and establish" for "the establishment of" and after "libraries" deleted "and designate the headquarters library for the federations". Amendment effective October 1, 2005.

1997 Amendment: Chapter 472 in (6) substituted "for individuals with physical disabilities" for "physically handicapped"; and made minor changes in style.

1995 Amendment: Chapter 339 inserted (3)(b) relating to gifts, donations, bequests, and legacies to Montana State Library; and made minor changes in style. Amendment effective July 1, 1995.

Administrative Rules

Title 10, chapter 101, subchapter 2, ARM State Library Commission — procedural rules.

Title 10, chapter 102, subchapter 11, ARM Public library development.

Title 10, chapter 102, subchapter 51, ARM Federation areas.

ARM 10.102.3604 Arbitration of disputes within federations.

Part 2
State Library

Part Administrative Rules

Title 10, chapter 102, subchapter 70, ARM Real time network.
Title 10, chapter 102, subchapter 91, ARM Montana Land Information Act.

22-1-202. Basic library services account.

Compiler's Comments

2021 Amendment: Chapter 138 inserted (2) regarding transfers to the basic library services account; and made minor changes in style. Amendment effective July 1, 2021, and terminates June 30, 2023.

Effective Date: Section 20(1), Ch. 351, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2017."

Severability: Section 19, Ch. 351, L. 2017, was a severability clause.

22-1-203. Digital library services special revenue account.

Compiler's Comments

Effective Date: Section 5, Ch. 451, L. 2019, provided: "[This act] is effective July 1, 2019."

22-1-211. Definitions.

Compiler's Comments

2015 Amendment: Chapter 348 in the definition of state publication in (b) substituted "2-6-1003" for "2-6-102". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2007 Amendment: Chapter 95 inserted definition of depository library; deleted former definition of print that read: ""Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda"; in definition of state agency at beginning substituted "means any entity established or authorized by law to govern operations of the state, such as a" for "includes every", after "division" inserted "section", after "commission" inserted "council", and after "state and" deleted "where applicable"; in definition of state publication in (a) substituted "means any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark" for "includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print or purchased for distribution by the state, the legislature, constitutional officers, any state department, committee, or other state agency supported wholly or in part by state funds" and inserted (b) excluding certain information from the definition of state publication; and made minor changes in style. Amendment effective October 1, 2007.

22-1-212. Administration of state publications depository library program — rulemaking.

Compiler's Comments

2007 Amendment: Chapter 95 in (1) substituted "The state library shall administer a state publications depository library program to identify, acquire, catalog, preserve, and provide access to state publications" for "There is hereby created, as a division of the state library and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment of an orderly depository library system"; inserted (2) allowing the state library to contract for the publications depository library program; and made minor changes in style. Amendment effective October 1, 2007.

Administrative Rules

Title 10, chapter 102, subchapter 81, ARM Depository procedures for state documents.

22-1-213. State publications — notification and availability requirements.

Compiler's Comments

2007 Amendment: Chapter 95 at beginning substituted "State agencies shall notify the state library of their state publications and shall make their state publications available to the state library as provided by rule" for "Every state agency shall deposit upon release at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide interlibrary loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications" and near beginning of second sentence after "shall" substituted "if requested by the agency" for "also", after "agency for" substituted "state" for "additional", after "required" substituted "to be made available when" for "where", and after "necessitate" substituted "unreasonable" for "additional printing or other"; and made minor changes in style. Amendment effective October 1, 2007.

22-1-218. Exemptions.

Compiler's Comments

2007 Amendment: Chapter 95 in (1) at end of introductory clause after "apply to" deleted "officers of or affect the duties concerning publications distributed by"; in (1)(a) at end after "library" inserted "in connection with the collection described under 22-1-501"; inserted (1)(d) excluding the Montana university system; inserted (2) allowing the state library to collect, catalog, and make available selected university system publications; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 545 in (3), after "legislative", substituted "services division" for "council"; and made minor changes in style. Amendment effective July 1, 1995.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1983 Amendment: Deleted former (2), which read: "the secretary of state in connection with his duties under 2-15-401(13)".

22-1-219. Permanent public access to state publications.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

22-1-225. Montana state library trust — interest retention.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) after "account in the" substituted "governmental fund category state special revenue fund type" for "fiduciary fund category expendable trust fund type". Amendment effective July 1, 2001.

Effective Date: Section 6, Ch. 339, L. 1995, provided that this section is effective July 1, 1995.

22-1-226. Use of Montana state library trust.

Compiler's Comments

2001 Amendment: Chapter 34 in (1) near middle after "22-1-225 is" deleted "intended to be an expendable trust". Amendment effective July 1, 2001.

Effective Date: Section 6, Ch. 339, L. 1995, provided that this section is effective July 1, 1995.

22-1-230. Administration of state reference network — rulemaking.

Compiler's Comments

Effective Date: Section 4, Ch. 425, L. 2023, provided: "[This act] is effective July 1, 2023."

Administrative Rules

Title 10, chapter 102, subchapter 70, ARM Real time network.

22-1-231. Enterprise fund account for state reference network operations.

Compiler's Comments

Effective Date: Section 4, Ch. 425, L. 2023, provided: "[This act] is effective July 1, 2023."

Administrative Rules

Title 10, chapter 102, subchapter 70, ARM Real time network.

Part 3
Free Public Libraries

Part Administrative Rules

Title 10, chapter 102, subchapter 11, ARM Public library development.
Title 10, chapter 102, subchapter 36, ARM Public library grants.

Part Case Notes

Refusal to Order Libraries Created as De Facto Public Corporations or to Estop Denial of Their Creation: The record supported a conclusion that County Commissioners agreed and contracted to help provide towns with libraries and assisted in funding, but there was no persuasive evidence that the Commissioners intended to create county libraries under the library statutes then in effect or that the Commissioners complied with the statutory requirements for the establishment of county libraries. Therefore, the town libraries did not meet the requirements for creation of de facto public corporations, and the court would not order the county to continue funding them in the face of a county decision to cease the funding. The court would not apply public policy estoppel theory to prevent the county from challenging the existence of the libraries as county libraries. There never were county libraries or purported county libraries. Each town provided its own library facilities and ran its own library. The county only helped with funding, an insufficient basis to apply estoppel to the county. Choteau Library Bd. of Trustees v. Teton County Bd. of Comm'rs, 283 M 87, 938 P2d 1357, 54 St. Rep. 507 (1997).

22-1-301. Definitions.

Compiler's Comments

2009 Amendment: Chapter 47 in definition of public library inserted (b) to include libraries created under Title 7; deleted former definition of state multilibrary card that read: ""State multilibrary card" means a card that is issued to a Montana resident by a public library created under Title 7 or under 22-1-303 and that may be used for library services in every public library in the state"; and made minor changes in style. Amendment effective July 1, 2009.

1991 Amendment: In definition of state multilibrary card, after "created", inserted reference to Title 7. Amendment effective April 4, 1991.

1989 Amendment: Inserted definitions of Commission, public library, and state multilibrary card; and made minor changes in phraseology. Amendment effective July 1, 1989.

Case Notes

Authority of Board of Trustees to Determine Compensation of Public Library Employees: The plain language of 22-1-310 grants a public library board of trustees, not the county, the authority to determine the salaries and compensation of library employees. Bd. of Trustees, Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 M 326, 221 P3d 1175 (2009).

22-1-303. Creation of public library.

Compiler's Comments

1995 Amendment: Chapter 387 in (3)(d), after "special election", substituted "The special election must be held in conjunction with a regular or primary election" for "which date shall be as soon as the procedures for establishing a special election will allow"; and made minor changes in style.

Attorney General's Opinions

City Property — Exemption from County Library Tax Levy: When a city and county have entered into an agreement under which the city provides a building and services for a branch of the county library, the city's withdrawal from the agreement alone does not allow the city to exempt city property from the county library tax levy pursuant to 22-1-313. Instead, the city must create or have its own existing "tax-supported public library" and must notify the county of its desire to not participate in the county library system. 53 A.G. Op. 5 (2010).

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to this section may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

Tax Freeze Limitations Applicable to Pre-1986 Library Services: A county that offered library services prior to 1986 may not form a new taxing unit to avoid the limitations on property taxes imposed under Initiative Measure No. 105 by establishing a public library pursuant to this section or by forming a multijurisdictional service district to provide library services pursuant to 7-11-1105 (now repealed). 46 A.G. Op. 19 (1996).

22-1-304. Tax levy — special library fund — bonds.

Compiler's Comments

2015 Amendment: Chapter 49 in (2)(a) substituted "at least 85 days" for "at least 75 days" and at end after "voted on" inserted reference to the deadline for election and reference to 13-1-504; in (2)(b) in middle substituted "an election conducted" for "the next election or at a special election" and near end substituted "at least 85 days" for "at least 90 days"; and made minor changes in style. Amendment effective November 4, 2015.

2005 Amendment: Chapter 453 deleted former (3) that read: "(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 and 7-6-4453"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendments — Composite Section: Chapter 495 in (1) in three places substituted "tax" for "special tax" and in second and third sentences substituted "on the taxable valuation of" for "on the dollar on" (amendment in second and third sentences rendered void by Ch. 574 amendment); in (2)(a) in first sentence substituted "imposing a tax levy" for "exceeding the maximum tax levy provided in subsection (1)" and substituted "an election as provided in 15-10-425" for "the next appropriate election or at a special election as provided in Title 13"; in (2)(b) in first sentence after "for the purpose of" substituted "imposing a" for "exceeding the maximum", substituted "15-10-425" for "Title 13", and substituted "imposing the mill levy" for "exceeding the maximum mill levy"; deleted (2)(c) through (2)(e) that read: "(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.

(e) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in (1) deleted former last two sentences that read: "The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city"; in (2)(a) at end of first sentence substituted "question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425" for "question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors at the next appropriate election or at a special election as provided for in Title 13"; in (2)(b) in first sentence near beginning after "purpose of" substituted "imposing a mill levy" for "exceeding the maximum mill levy" and at end substituted "provided in 15-10-425 the question of imposing the mill levy" for "provided for in Title 13 the question of exceeding the maximum mill levy"; deleted former (2)(c) through (2)(e) that read: "(c) The question must be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.

(e) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the time specified on the ballot; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded"; near end of (3) deleted reference to 7-6-4452; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendments — Composite Section: Chapter 333 in (2)(a) and (2)(b) in first sentence after "election" inserted "or at a special election as provided for in Title 13" and in second sentence before "election" deleted "general"; inserted (2)(d) requiring ballots to specify time proposed increase exceeding maximum mill levy is to be in effect; in (2)(e)(i) at end substituted "time specified on the ballot" for "year in which the vote was taken"; in (6) substituted present language listing the uses for which bonds may be issued for former language that read: "(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 584 at beginning of (1) inserted reference to 15-10-420; in (2)(a) in first sentence substituted "next appropriate election" for "next general election"; in (2)(b) in first and second sentences substituted "election" for "general election"; and made minor changes in style. Amendment effective May 10, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1985 Amendment: In (2)(a) in second sentence, substituted "75 days" for "60 days".

1983 Amendment: In (1), increased permissible mill levies from 3 to 5 mills for counties and from 4½ to 7 mills for cities; and inserted (2) establishing voting procedures for adoption of resolution for exceeding maximum tax levy for library fund and (3) clarifying additional municipal tax.

Case Notes

Allocation of Costs — Permitted: A city has general authority in financing the construction of city vehicle repair shop complex and has implied power to allocate the proportionate share of costs among various city departments using the facility. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Attorney General's Opinions

Library Board Alone Has Authority to Spend Its Reserve Funds — Library's Proposed Budget Subject to Approval by Local Governing Body — Local Governing Body Has Sole Discretion to Levy Mills in Support of Library: Prior to 2001, a library board had complete control over its budget. While a library board still has the sole discretion to determine how to use the library's unspent funds under 22-1-309, its budget must be approved by the local governing body. Moreover, the local governing body, not the library board, determines the number of mills to levy in support of the library. Finally, the local governing body has no obligation to continue to levy any certain number of mills for the library in perpetuity. 54 A.G. Op. 7 (2012).

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by this section (see 2001 amendment). To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999). See also 54 A.G. Op. 7 (2012).

Joint City-County Library — County Taxes Levied on City Property: A city and county may join to establish and maintain a joint city-county library. Other than maximum mill levies, no parameters have been set by the Legislature with regard to funding a joint library enterprise. Expenses of the joint city-county library may be apportioned between the city and county pursuant to the contract establishing the joint library, and the entities have broad discretion in negotiating the apportionment of expenses and funding for the provision of library services. Under 22-1-316, both the city and county may levy taxes as provided in this section, and there is no statutory exemption from the county levy for property located in the city. 47 A.G. Op. 6 (1997).

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to 22-1-303 may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999). However, see 54 A.G. Op. 7 (2012), which concluded that the local governing body alone has the authority to determine the number of mills to levy in support of the library.

22-1-308. Public library — board of trustees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

22-1-309. Trustees — powers and duties.

Case Notes

Powers of Board of Trustees — Limitations: While the Board of Trustees is not a "public employer" for the purposes of the Collective Bargaining for Public Employees Act, there is no inconsistency between the Library Systems Act and the collective bargaining law since the Board of Trustees is given independent powers to manage and operate the library under the Library Systems Act. Local 2390 v. Billings, 171 M 20, 555 P2d 507 (1976).

Allocation of Costs — Permitted: A city has general authority in financing the construction of city vehicle repair shop complex and has implied power to allocate the proportionate share of costs among various city departments using the facility. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

Attorney General's Opinions

Removal of Library Trustee: After a town passed a resolution creating a free public library, a question arose as to the proper procedure for removal of library trustees. The procedure for removing a trustee is a matter for the board of trustees to consider as part of its duty and ability to adopt bylaws and rules for the government of the library. A mayor's power under 7-4-4303 to remove nonelective officers does not include the power to remove public library board trustees because they are not officers necessary to carry out the provisions of Title 7. 57 A.G. Op. 3 (2018).

Library Board Alone Has Authority to Spend Its Reserve Funds — Library's Proposed Budget Subject to Approval by Local Governing Body — Local Governing Body Has Sole Discretion to Levy Mills in Support of Library: Prior to 2001, a library board had complete control over its budget. While a library board still has the sole discretion to determine how to use the library's unspent funds under 22-1-309, its budget must be approved by the local governing body. Moreover, the local governing body, not the library board, determines the number of mills to levy in support of the library. Finally, the local governing body has no obligation to continue to levy any certain number of mills for the library in perpetuity. 54 A.G. Op. 7 (2012).

County Commission Generally Obligated to Fund Library Budget — County Allowed to Bind Itself to Fund Library Budget Through Interlocal Agreement: The Board of County Commissioners is generally obligated to fund the county library budget, as submitted by the library board pursuant to this section, within the limits set in 15-10-420. The 2001 statutory changes did not delete a library board's authority to determine the amount of financial support required by the library, nor did the changes confer on the Board of County Commissioners the authority to modify a library budget submitted by the library board. Further, nothing in the 2001 tax and budget amendments prevents a county from voluntarily entering an interlocal agreement to provide that the county would accept a library board's budget proposal and levy the necessary mills to fund it. 49 A.G. Op. 16 (2002). See also 41 A.G. Op. 91 (1986), and 48 A.G. Op. 3 (1999). However, see 54 A.G. Op. 7 (2012), which concluded that the local governing body alone has the authority to determine the number of mills to levy in support of the library.

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by 22-1-304. (See 2001 amendment to 22-1-304.) To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999). See also 54 A.G. Op. 7 (2012).

City Library Board Decision to Retain Property Not Subject to City Commission Override: A city commission did not have authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs. 42 A.G. Op. 98 (1988). See also 48 A.G. Op. 3 (1999).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999). However, see 54 A.G. Op. 7 (2012), which concluded that the local governing body alone has the authority to determine the number of mills to levy in support of the library.

22-1-310. Chief librarian — personnel — compensation.

Case Notes

Authority of Board of Trustees to Determine Compensation of Public Library Employees: The plain language of 22-1-310 grants a public library board of trustees, not the county, the authority to determine the salaries and compensation of library employees. Bd. of Trustees, Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 M 326, 221 P3d 1175 (2009).

Trustees as "Public Employer" of Library Employees — Discharge of Employee: The local governing body and not the Board of Trustees is the "public employer" for the purposes of the Collective Bargaining for Public Employees Act, and the trustees may not discharge an employee because that Act is subject to the agreement. Local 2390 v. Billings, 171 M 20, 555 P2d 507 (1976).

Attorney General's Opinions

Power of County Commissioners to Regulate Library Funded by County General Fund — Limitations as if Funded by Five-Mill Levy: The fact that Big Horn County funds its library through the county general fund does not allow the County Commissioners to usurp the library trustees' statutory authority for setting the library's budget and compensation for the library staff. If the County Commissioners fund the library's budget through the county general fund, the power to decide the library staff compensation still rests with the library trustees. The Commissioners may limit the overall funding of the library budget to 5 mills, as if the library were being funded pursuant to the 5-mill tax levy authorized by 22-1-304. (See 2001 amendment to 22-1-304.) To hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. 48 A.G. Op. 3 (1999). See also 54 A.G. Op. 7 (2012).

Authority of Library Trustees — Obligation of County Commissioners to Levy Property Taxes: County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. 41 A.G. Op. 91 (1986). See also 48 A.G. Op. 3 (1999). However, see 54 A.G. Op. 7 (2012), which concluded that the local governing body alone has the authority to determine the number of mills to levy in support of the library.

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes.

Attorney General's Opinions

City Property — Exemption from County Library Tax Levy: When a city and county have entered into an agreement under which the city provides a building and services for a branch of the county library, the city's withdrawal from the agreement alone does not allow the city to exempt city property from the county library tax levy pursuant to 22-1-313. Instead, the city must create or have its own existing "tax-supported public library" and must notify the county of its desire to not participate in the county library system. 53 A.G. Op. 5 (2010).

22-1-315. City library may assume functions of county library.

Attorney General's Opinions

Formation of Multijurisdictional Library Service Districts — Statutory Requirements — Equalization of Tax Burden Among Users: A city and a county may form a multijurisdictional library service district if they meet the statutory requirements of Title 7, ch. 11, part 11, and Title 15, ch. 10, part 4, and if any existing contract for providing library services involving residents of one or more of the participating jurisdictions has expired. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service; however, one increased service of the district may be to equalize the tax burden among users as long as the district provides services in the manner required by 7-11-1101 (now repealed). 46 A.G. Op. 23 (1996), distinguishing 44 A.G. Op. 11 (1991).

Power of County to Contract With Municipal Libraries: A county that has established a county free library pursuant to 22-1-303 may contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund. 46 A.G. Op. 19 (1996).

22-1-316. Joint city-county library.

Compiler's Comments

1999 Amendment: Chapter 584 in (3) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Attorney General's Opinions

Joint City-County Library — County Taxes Levied on City Property: A city and county may join to establish and maintain a joint city-county library. Other than maximum mill levies, no parameters have been set by the Legislature with regard to funding a joint library enterprise. Expenses of the joint city-county library may be apportioned between the city and county pursuant to the contract establishing the joint library, and the entities have broad discretion in negotiating the apportionment of expenses and funding for the provision of library services. Under this section, both the city and county may levy taxes as provided in 22-1-304, and there is no statutory exemption from the county levy for property located in the city. 47 A.G. Op. 6 (1997). However, see 53 A.G. Op. 5 (2010), which held that when a city and county have entered into an agreement under which the city provides a building and services for a branch of the county library, the city's withdrawal from the agreement alone does not allow the city to exempt city property from the county library tax levy pursuant to 22-1-313. Instead, the city must create or have its own existing "tax-supported public library" and must notify the county of its desire to not participate in the county library system.

Creation of Multijurisdictional Service District Within Existing Library District to Increase Allowable Mill Levy Improper: A multijurisdictional service district within an existing service district may not be created for the purpose of increasing the total mill levy within the existing district when the proposed service district would not increase the existing service area, serve people not currently receiving the service, or equalize the tax burden among those who would use the service. 44 A.G. Op. 11 (1991).

22-1-317. City-county library — board of trustees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

22-1-325. Short title.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-326. State aid to public libraries.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 621, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 203 in (2) at end of first sentence inserted text regarding public library districts; in (2)(a) and (2)(b) at end inserted references to public library districts; in (3) at end of first sentence inserted reference to public library districts and in second sentence after "library" inserted "or district"; and made minor changes in style. Amendment effective October 1, 2005.

1991 Amendment: Inserted (1) defining public library. Amendment effective April 4, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-327. State aid — per capita — per square mile.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 621, L. 2023. Amendment effective July 1, 2023.

Extension of Termination Date: Section 3, Ch. 621, L. 2023, amended sec. 5, Ch. 244, L. 2013, and sec. 4, Ch. 621, L. 2023, amended sec. 1, Ch. 340, L. 2017, by extending the termination dates imposed by those sections to July 1, 2029. Effective May 19, 2023.

Extension of Termination Date: Section 1, Ch. 340, L. 2017, amended sec. 5, Ch. 244, L. 2013, by extending the termination date imposed by Ch. 244 to July 1, 2023. Effective May 7, 2017.

Contingent Voidness: Section 2, Ch. 340, L. 2017, as amended by sec. 32, Ch. 429, L. 2017, a coordination section, provided: "If the certified unaudited general fund revenue and transfers into the general fund received in fiscal year 2017 are less than $2,217,000,000, as determined by the state treasurer on or before August 15, 2017, the statutory appropriations in 22-1-327 for fiscal years 2018 and 2019 are void." On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was $2,139,414,715.40.

2013 Amendment: Chapter 244 inserted (2) providing funding formula for public libraries; inserted (3) providing statutory appropriation; and made minor changes in style. Amendment effective July 1, 2015, and terminates July 1, 2017.

2005 Amendment: Chapter 203 near middle inserted reference to public library districts. Amendment effective October 1, 2005.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4003 Direct state aid to public libraries for per capita and per square mile served.

22-1-328. Statewide interlibrary resource-sharing program.

Compiler's Comments

2009 Amendment: Chapter 47 deleted former (1) that read: "(1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission"; inserted first sentence concerning statewide interlibrary resource-sharing program, at beginning of second sentence, substituted: "The purpose of the program is to administer funds appropriated by the legislature to support and facilitate resource-sharing among libraries in Montana, including but not limited to" for "Libraries eligible for interlibrary loan reimbursement under this section include", after "public libraries" inserted "public library districts", and after "universities" inserted "tribal libraries"; deleted former (3) that read: "(3) Notwithstanding subsections (1) and (2), the following types of interlibrary loans are not eligible for reimbursement:

(a) a loan between public school libraries located within the same public school district;

(b) a loan between an elementary school library and a high school library located within school districts with overlapping school district boundaries;

(c) a loan between libraries administered by a public or private, nonprofit college or university; and

(d) a loan between libraries administered by a public library"; and made minor changes in style. Amendment effective July 1, 2009.

1999 Amendment: Chapter 183 in (2) near end after "private" inserted "medical"; inserted (3) listing types of interlibrary loans ineligible for reimbursement; and made minor changes in style. Amendment effective October 1, 1999.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4001 Resource sharing.

22-1-329. Statewide library access program.

Compiler's Comments

2009 Amendment: Chapter 47 near beginning after "develop a" inserted "voluntary statewide library access", and after "program" substituted "whereby a participating library may allow access to the library's materials and services by patrons registered and in good standing with another library" for "to allow Montana libraries to issue to residents a state multilibrary card as defined in 22-1-301". Amendment effective July 1, 2009.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

22-1-330. Commission rulemaking authority.

Compiler's Comments

2009 Amendment: Chapter 47 in (1) at end after "basis" inserted "as provided in 22-1-327"; in (2) substituted "the statewide library access program provided for in 22-1-329" for "issuance of state multilibrary cards"; and in (3) substituted "the statewide interlibrary resource-sharing program provided for in 22-1-328" for "reimbursement for interlibrary loan lending"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 203 in (1) near middle inserted reference to public library districts. Amendment effective October 1, 2005.

1999 Amendment: Chapter 183 inserted (4) allowing commission to adopt rules for distribution of base grants; inserted (5) allowing commission to adopt rules for the composition of the library federation board of trustees; and made minor changes in style. Amendment effective March 26, 1999.

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

ARM 10.102.4001 Resource sharing.

ARM 10.102.4003 Direct state aid to public libraries for per capita and per square mile served.

22-1-331. Base grants.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 670, L. 1989, provided: "This bill requires a statement of intent because [section 6] [22-1-330] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;
(2) developing a state multilibrary card program;
(3) approving or denying requests for state multilibrary cards;
(4) governing the usage of multilibrary cards;
(5) reimbursing individual libraries for participation in interlibrary loan programs; and
(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding."

Effective Date: Section 11, Ch. 670, L. 1989, provided that this section is effective July 1, 1989.

Part 4
Library Systems

22-1-402. Library federations — definition.

Compiler's Comments

2005 Amendment: Chapter 73 in (2) substituted first sentence allowing governing body of library to participate in federation for former sentence that read: "The governing body of a public library may agree by contract to form a federation with the governing board of other public, school, special, college, or university library if one of the parties is or maintains a library that has been designated by the state library commission as a headquarters library for that federation area" and at end of second sentence after "libraries" deleted "specified in the contract"; in (3) after "participating libraries" deleted "as agreed upon in the contract", deleted former second sentence that read: "The funds of the federation must be maintained as a separate account as provided in the contract", and deleted former third sentence that read: "Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction"; and in (4) at end substituted "federation's bylaws" for "contract by the action of its governing body". Amendment effective October 1, 2005.

2001 Amendment: Chapter 80 deleted former (1) that read: "(1) Library systems must include library federations or library networks"; in (2) in first sentence at beginning substituted "The governing body of a library" for "Two or more cities, towns, or counties; a city and one or more counties; or school, special, college, or university libraries" and after "federation" substituted "with the governing body of another public, school, special, college, or university library" for "by action of their respective governing bodies or duly created boards of library trustees"; deleted former (3) that read: "(3) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for exchange of information or to provide specific library services not provided in existing library federations"; in (4) after "governing body" deleted "or by a majority of its qualified voters at a general or special election" and deleted former second sentence that read: "A special election must be held in conjunction with a regular or primary election"; inserted (5) authorizing a federation to contract with certain other entities to provide federation services; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in (2)(a) in second sentence after "public" inserted "school, special, college, or university"; in (2)(b) near beginning after "more counties" inserted "or school, special, college, or university libraries"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 387 in (2)(d), at end, inserted "A special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Library Federations: Library federations established under this section as of March 1986 include the Golden Plains Federation headquartered at the Glasgow City-County Library, Pathfinder Federation headquartered at the Great Falls Public Library, Sagebrush Federation headquartered at the Miles City Public Library, South Central Federation headquartered at the Parmly Billings Library, Tamarack Federation headquartered at the Missoula City-County Library, and Broad Valleys Federation headquartered at the Bozeman Public Library.

1981 Amendment: Deleted "apportioned between or among the towns, cities, and counties involved on such basis" and inserted "based on funds received from the state or participating libraries" after "shall be" near the beginning of subsection (1)(c); substituted the last sentence of subsection (1)(c) relating to accounting of money for "The treasurer of one of the participating units, as shall be provided in the contract, shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semiannually to him all moneys collected for the free library fund in their respective jurisdiction."

22-1-404. Board of trustees — coordinator.

Compiler's Comments

2005 Amendment: Chapter 73 in (1) in first sentence after "advisory powers only" substituted "appointed according to the federation's bylaws" for "the operation of the library federation having been specified by contract"; in (2) at beginning substituted "The federation membership shall appoint a coordinator of the federation who shall serve" for "The library director or a designee of the headquarters library shall serve as the coordinator of the federation and"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 80 in (2) substituted "library director or a designee" for "librarian". Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in (1) substituted second and third sentences authorizing state library commission to adopt rules governing federation board of trustees and requiring majority of federation board trustees to be trustees of a public library for former second sentence that read: "The board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of trustees"; and made minor changes in style. Amendment effective October 1, 1999.

22-1-412. Purpose.

Compiler's Comments

1997 Amendment: Chapter 42 near beginning substituted "22-1-413 and this section" for "22-1-412 and 22-1-413". Amendment effective March 12, 1997.

1981 Amendment: Substituted "and 22-1-413" for "through 22-1-416" after "22-1-412" in the first sentence of the section; inserted "may be" after "state funds" near the beginning of the section; deleted "may be allocated among three different grant programs. Such program of state funding is intended" after "library commission" near the middle of the section.

22-1-413. Administration by Montana state library commission.

Compiler's Comments

2001 Amendment: Chapter 80 in third sentence substituted "annually" for "semiannually". Amendment effective October 1, 2001.

1999 Amendment: Chapter 183 in third sentence after "shall" inserted "submit annual plans for the expenditure of state funds and"; and made minor changes in style. Amendment effective October 1, 1999.

1981 Amendment: Substituted "among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103" for "to three types of grant programs according to 22-1-415 and shall make grants to duly constituted library federations according to program applications submitted to and approved by the commission" after "such appropriation" in the second sentence; substituted "state funds from the commission" for "grant moneys" after "receiving" near the beginning of the third sentence; deleted "grants have been" and inserted "was" after "state funding" in the third sentence; changed "report" to "reports" after "received, which" in the third sentence; substituted "state" for "grant" after "for all" near the end of the section.

Statement of Intent: The statement of intent attached to SB 88 (Ch. 373, L. 1981) provided: "A statement of intent is required for this bill because it provides for rulemaking in section 2 [22-1-413]. When the provisions being amended by this bill were adopted, it was intended that the formula for allocating appropriations to library federations would be used. The formula proved to be unworkable and has not been in use. Therefore, there is a need for rules to provide guidance for the allocation of funding, to establish funding formulas, and to determine what type of grant programs should be implemented. The rules authorized by this bill should address the preceding concerns and should incorporate flexibility because the needs change and the funding should accommodate the varying needs."

Administrative Rules

ARM 10.102.5102 Allocation of funding between federations and grant programs.

Part 5
Law Library

Part Law Review Articles

The Twenty-First Century Law Library, Danner, Kauffman, and Palfrey, 101 L. Libr. J. 143 (2009).

By the Book: Thoughts on the Future of Our Print Collections, Reusch, 100 L. Libr. J. 555 (2008).

Preserving Our Heritage: Protecting Law Library Core Missions Through Updated Library Quality Assessment Standards, Lee, 100 L. Libr. J. 9 (2008).

Perception Versus Reality: Electronic Data Interchange in the Law Library Environment, Bluh, 93 L. Libr. J. 269 (2001).

22-1-501. State law library created.

Compiler's Comments

Legislative Intent: Section 5, Ch. 566, L. 2021, provided: "It is the intent of the legislature that the judicial branch confer with the Montana state library and other states' law libraries to evaluate whether a fee for service model would be appropriate given the services offered by the state law library."

Preamble: The preamble to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

1991 Amendment: Near middle of second sentence, after "in the law library", deleted "in the capitol building" and at end substituted reference to 22-1-502 for "herein"; and made minor changes in style.

22-1-502. Location — control by board of trustees.

Compiler's Comments

1981 Amendment: Deleted "the capitol building at" after "located in" in the middle of the section.

22-1-503. Authority of board.

Compiler's Comments

1983 Amendment: Deleted former (6), which read: "to report as provided in 2-7-102".

22-1-504. Duties of librarian — library staff state employees.

Compiler's Comments

2001 Amendment: Chapter 585 inserted (2) designating members of staff of state law library, except librarian, as state employees; and made minor changes in style. Amendment effective July 1, 2002.

Saving Clause: Section 55, Ch. 585, L. 2001, was a saving clause.

22-1-506. Liability for injury to books or failure to return.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 6
Interstate Library Compact

22-1-601. Library compact.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 7
Public Library Districts

Part Compiler's Comments

Effective Date: This part is effective October 1, 2001.

22-1-702. Creation or enlargement of public library district.

Compiler's Comments

2005 Amendment: Chapter 203 deleted former (8) that read: "(8) Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library." Amendment effective October 1, 2005.

22-1-703. Election on creation of district.

Compiler's Comments

2015 Amendment: Chapter 49 in (1) substituted "in accordance with Title 13, chapter 1, part 5" for "as provided in Title 13". Amendment effective November 4, 2015.

22-1-705. Consolidation of existing public libraries and public library districts.

Compiler's Comments

2005 Amendment: Chapter 203 in (1)(a) at end substituted "the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the library is included in the district boundaries. The governing body of the city or county that established the public library shall hold a public hearing on the question of whether the territory served by the library should be included in the district. If the governing body determines that the territory served by the public library should be consolidated into the district, it shall adopt a resolution, following the public hearing, to that effect. If the governing body of the city or county that established the public library determines that the territory served by the library should not be included in the district, it shall adopt a resolution to that effect and the boundaries of the district must be adjusted to exclude the territory served by the public library" for "the territory served by the public library may be consolidated into the district upon the adoption of a resolution, following a public hearing, by the governing body of the city or county that established the public library and by the board of trustees of the district"; and in (1)(b) near middle inserted reference to library district. Amendment effective October 1, 2005.

22-1-706. Election of board of trustees — compensation — removal — single-member trustee districts.

Compiler's Comments

2015 Amendment: Chapter 49 in (2) substituted "in accordance with Title 13, chapter 1, part 5" for "in conjunction with the annual school elections held pursuant to 20-3-304"; in (3)(a) substituted "file a declaration of candidacy" for "be nominated by petition, signed by at least five electors of the district and filed" and substituted "within the time period specified in 13-1-502" for "not earlier than 135 days or later than 75 days prior to the election day"; in (3)(b) substituted "declaration of candidacy" for "petition for nomination" and substituted "who will be conducting the election pursuant to 13-1-505" for "whose county contains the largest percentage of territory in the district"; in (4) in middle substituted "declaration of candidacy" for "nomination petition" and substituted "conducting the election" for "containing the largest percentage of the territory in the public library district"; in (5) in first sentence after "is elected" deleted "and qualified"; in (6) substituted "of a successor" for "and qualification of an elected successor" and substituted "in accordance with Title 13, chapter 1, part 5" for "at the next scheduled school election held pursuant to 20-3-304"; and in (8) substituted "that conducted the election pursuant to 13-1-505" for "containing the largest percentage of territory in the public library district". Amendment effective November 4, 2015.

22-1-707. Duties and powers of board of trustees.

Compiler's Comments

2005 Amendment: Chapter 203 in (2)(c)(i) near middle inserted text regarding owning buildings and facilities; inserted (2)(h) relating to depreciation reserve fund; and made minor changes in style. Amendment effective October 1, 2005.

22-1-708. Public library district budget — property tax levy.

Compiler's Comments

2015 Amendment: Chapter 49 near end substituted "pursuant to" for "in". Amendment effective November 4, 2015.

22-1-709. Election to change maximum property tax mill levy.

Compiler's Comments

2015 Amendment: Chapter 49 in (4) in middle substituted "an election held in accordance with Title 13, chapter 1, part 5" for "the next regular or primary election" and deleted second sentence that read: "The election must be held as provided in Title 13"; and made minor changes in style. Amendment effective November 4, 2015.

22-1-710. Dissolution of public library district.

Compiler's Comments

2015 Amendment: Chapter 49 in (4) in second sentence after "schedule" inserted "and conduct" and at end substituted "in accordance with Title 13, chapter 1, part 5" for "in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13"; and made minor changes in style. Amendment effective November 4, 2015.

22-1-712. Multijurisdictional public library districts — administration.

Compiler's Comments

Saving Clause: Section 42, Ch. 286, L. 2009, was a saving clause.

Transition — Repealed: Section 43, Ch. 286, L. 2009, provided: "(1) Subject to subsection (2), a special district in existence on [the effective date of this act] [effective July 1, 2009] must comply with the provisions of [sections 1 through 20] [Title 7, ch. 11, part 10] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act] [effective July 1, 2009], the proposal is subject to the provisions of [section 20] [7-11-1029].

(2) A special district in existence on [the effective date of this act] [effective July 1, 2009] is required to comply with the provisions of [section 10] [7-11-1014] only upon alteration of its boundaries." This transition section was repealed by sec. 2, Ch. 97, L. 2019. See the code commissioner explanation under 7-11-1004.

Effective Date: Section 44, Ch. 286, L. 2009, provided that this section is effective July 1, 2009.

22-1-716. Library depreciation reserve fund.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 11

Library Records Confidentiality Act

Part Compiler's Comments

Source: Chapter 476, L. 1985, is derived from the "Library Confidentiality Act", Model Suggested State Legislation, 1984-85, Council of State Governments.

CHAPTER 2
ARTS

Part 1
Montana Arts Council

Part Administrative Rules

Title 10, chapter 111, ARM Montana Arts Council.

22-2-102. Membership of council — appointment.

Compiler's Comments

1989 Amendment: At end deleted "without compensation"; and made minor changes in grammar.

Administrative Rules

Title 10, chapter 111, subchapter 6, ARM Financial grants.

22-2-103. Council membership — tenure — compensation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Near beginning, after "5 years", deleted clause concerning terms of first appointees, in second sentence, after "serve", substituted "in those capacities" for "as such", and in last sentence, after "council", substituted "must be compensated and receive travel expenses as provided in 2-15-124" for "shall not receive any compensation for their services but shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the performance of their duties as members of the council"; and made minor changes in phraseology.

22-2-106. Council duties.

Compiler's Comments

2005 Amendment: Chapter 115 inserted (5) requiring the council to provide three nominees for poet laureate to the governor; and made minor changes in style. Amendment effective March 24, 2005.

1983 Amendment: Deleted former (5), which read: "report as provided in 2-7-102".

22-2-107. Gifts and donations.

Compiler's Comments

2009 Amendment: Chapter 2 near end substituted "national endowment for the arts" for "national foundation on the arts"; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

22-2-109. Financing of council.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Part 3
Cultural and Aesthetic Projects

Part Compiler's Comments

Cultural and Aesthetic Grants: The cultural and aesthetic grants approved and funded by the 1995 Legislature are contained in Ch. 548, L. 1995.

Part Administrative Rules

Title 10, chapter 111, subchapter 6, ARM Financial grants.

Title 10, chapter 111, subchapter 7, ARM Montana Arts Council cultural and aesthetic project grants.

Title 10, chapter 121, subchapter 8, ARM Montana Historical Society cultural and aesthetic project grants.

Part Law Review Articles

Creative Purposes and Public Programs, Lovell, 31 J. Arts Mgmt., L. & Soc'y 175 (2001).

22-2-301. Cultural and aesthetic projects grants.

Compiler's Comments

1991 Amendment: Near end of (1) substituted "Montana arts council" and "August 1" for "Montana historical society" and "September 1".

1983 Amendment: In (1), substituted the cultural and aesthetic projects advisory committee for the board of trustees of the Montana historical society; changed the grant submission date from December 1 to September 1; inserted "regular" before "legislative session" at end of (1); deleted first sentence of (2), which read: "The board of trustees of the Montana historical society shall present to the legislature by the 15th day of any legislative session a list of grant proposals to be made from the cultural and aesthetic projects account to any department, agency, board, commission, or other division of the state government or to any local government unit."; deleted former (3) and (4) that required legislative appropriation before a grant could be awarded and provided that grant proposals be approved by the Legislature and administered by the historical society.

22-2-302. Advisory committee — powers and duties.

Administrative Rules

ARM 10.111.706 Evaluation criteria.

ARM 10.111.707 Criteria for recommendations.

22-2-303. Rulemaking authority.

Compiler's Comments

1985 Amendment: Inserted (2) requiring arts council to adopt rules to implement three sections.

1985 Statement of Intent: The statement of intent attached to Ch. 732, L. 1985, provided: "A statement of intent is required for this bill because section 22-2-303, MCA, is amended to include rulemaking by the Montana arts council to implement sections 1 and 2 of the bill [22-2-308 and 22-2-309].

The rules should address specific criteria that the Montana arts council intends to employ in determining whether local support is being given to public and private facilities and, if so, how much support is involved.

The rules must also address the requirements for matching funds, for both capital grants and challenge grants. Involved in these rules should be a method for an applicant to determine what constitutes donated goods and services, and what time periods for the receipt of gifts are involved to qualify for matching funds.

The rules should address the incremental disbursements of grants. Grantees must be able to conform their cash flow upon reliance of receipt of regular grant disbursements, and to this end the Montana arts council should in the rules provide explanations of proper allowable costs and proper unexpended prior grant balances it will examine prior to making further disbursements."

1983 Statement of Intent: The statement of intent attached to HB 110 (Ch. 99, L. 1983) read: "A statement of intent is required for this bill because it grants rulemaking authority to the Montana Historical Society and the Montana Arts Council for the purpose of specifying the criteria the advisory committee shall use when evaluating and making recommendation on cultural and aesthetic grant proposals submitted to the legislature.

It is contemplated that the Montana Historical Society and the Montana Arts Council will adopt rules that specify the following general criteria that the advisory committee will consider in making recommendations:

(1) Quality - ability/experience of project staff; excellence of performers.

(2) Cultural impact - how important is the project to the cultural development of the state? Will the project stimulate a large number of people or a number of communities?

(3) Project diversity - a variety of different interests and disciplines should be served.

(4) Geographical diversity - to the extent possible, the grants should assist the entire state.

(5) Project costs - if grant funds are limited, some preference should be given to projects requiring smaller grants.

(6) Seed money requests - will a grant enable the project or its sponsors to generate other funds or otherwise to make the project self-supporting?

(7) Availability/appropriateness - have applicants attempted to procure other funds? Are there other sources that are appropriate?

(8) Self-help - does the applicant seek full funding from coal tax funds, or has he arranged alternate financing to the extent possible?

(9) Creativity - is the project so innovative, beneficial, and practical that by example it will stimulate other projects?"

Administrative Rules

Title 10, chapter 111, subchapter 7, ARM Montana Arts Council cultural and aesthetic project grants.

22-2-304. Cultural and aesthetic project appropriations — administration.

Compiler's Comments

1992 Special Session Amendment: Chapter 8 in (1) substituted "created in 15-35-108 for cultural and aesthetic projects" for "created in 15-35-108(3)(e)". Amendment effective July 1, 1992.

1989 Amendment: In (1) changed reference to 15-35-108(3)(f) to reference to 15-35-108(3)(e). Amendment effective July 1, 1989.

Preamble: The preamble to Ch. 626, L. 1989, provided: "WHEREAS, elimination of the allocation of coal severance tax revenues in section 15-35-108, MCA, to the alternative energy and energy conservation research development and demonstration account would allow those revenues to be deposited in the state general fund from which the Legislature can appropriate that money to fund the Department of Natural Resources and Conservation."

1985 Amendment: In (3) deleted requirement that grant proposals be heard before legislative appropriations subcommittee that hears budget requests of the Montana arts council and Montana historical society.

22-2-305. Allocation and disbursement of funds.

Compiler's Comments

1987 Amendment: At end of (2), after "funds", substituted "in accordance with the provisions of the appropriation act" for "as follows:

(a) Projects of an ongoing nature during the full course of the grant period must receive the first priority for allocation of account funds. For purposes of this section, "ongoing project" means a project designed to operate throughout the grant period with a full-time staff and obligations to be met monthly.

(b) All other projects must be allocated the remaining funds on a percentage basis. The percentage must be determined for each such project by dividing the amount appropriated for each such project by the total amount appropriated for all such projects."

1985 Reappropriation — Reversion of Funds Not Disbursed: Section 6, Ch. 732, L. 1985, provided: "(1) On January 1, 1986, all project funds reappropriated from the 1985 biennium, but not disbursed, shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1987, any unencumbered balance of the 1987 biennium grants shall revert to the cultural and aesthetic projects account provided for in 15-35-108." See also sec. 5, Ch. 732, L. 1985, reappropriating funds and providing for allocation and disbursement of funds notwithstanding any provision of 22-2-305 to the contrary.

22-2-306. Grant conditions — additional funds — accounts and reports.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1989 Amendment: Inserted last sentence of (6) regarding holding 30% of a grant award pending receipt of final reports; and made minor changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: Inserted (4)(c) relating to grant budget award modification.

1985 Amendments: In (3), deleted from second sentence that read: "If the grant award proves to be inadequate for the administration of the project as originally submitted, the grantee may submit, prior to the beginning of the grant period, modifications to the proposal and an operational budget supporting the modifications", and at beginning of last sentence substituted "All funds granted to" for "All granted funds to be expended by"; and in (4) substituted language relating to disbursements to grantees based on need and revenues for former text that read: "No project may receive more than 25% of the total grant award during any 6-month period, except that a grantee may accumulate grant payments. The second and each succeeding payment may be made only after an examination of the costs incurred and expenditures made to date by the grantee and a determination of any remaining balance from prior grant periods is made."

22-2-308. Application procedure — grant criteria.

Compiler's Comments

1993 Amendment: Chapter 479 near beginning of first sentence of (1), after "owned", inserted "and operated" and before "support" deleted "and in-kind", inserted second sentence providing that a grant for a facility owned by a county or municipality but operated by a nonprofit organization have at a minimum in-kind support from the county or municipality, and at end of third sentence, after "project", inserted "and the facility"; and made minor changes in style.

1991 Amendment: At beginning of (1), before "financial", substituted "A grant for a facility owned by a county or municipality must require financial and in-kind support for the facility from the county or municipality" for "As set forth in subsections (1)(a) and (1)(b), certain grants require local financial or in-kind support" and deleted third sentence that read: "In the following circumstances, local support is required"; and deleted (1)(a) and (1)(b) concerning county or municipally owned facilities receiving in-kind support from local governments in order to receive cultural and aesthetic grant funds and concerning private museums, art centers, and cultural facilities receiving local in-kind support in order to receive grant funding.

Administrative Rules

ARM 10.111.702 Application form for grant proposals.
ARM 10.111.704 Eligible projects.

22-2-309. Grant categories.

Compiler's Comments

1989 Amendment: Near end of (4), after "bequests", inserted "and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor"; and made minor change in phraseology. Amendment effective July 1, 1989.

1987 Amendment: At end of (1)(b), after "2 years", inserted remainder of subsection referring to budgets; inserted (2) authorizing Montana Arts Council to require matching funds or services for special project and operational support grants; and at end of (4) inserted last two sentences referring to match in form of cash, wills, devises, and bequests.

Part 4
Art for State Buildings

22-2-401. Short title.

Compiler's Comments

Source and Name: Although many states have acts entitled "Percent-for-Arts", Montana's Act is unique and not modeled after any of them.

22-2-403. Definitions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

22-2-406. Administration — selection of works of art.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Sale of Fine Art by Art Dealer

Part Compiler's Comments

Source: This part is derived from sections 1738 through 1738.9 of the California Civil Code.

Saving Clause: Section 6, Ch. 534, L. 1985, provided: "This act does not apply to a written contract executed prior to October 1, 1985, unless:
(1) the parties agree that this act will apply; or
(2) the contract is extended or renewed after the effective date of this act."

Part 6
American Indian Monument and Tribal Flags

22-2-601. American Indian monument and tribal flags.

Compiler's Comments

2019 Amendment: Chapter 281 in first sentence after "grounds of the capitol complex" deleted "a monument to American Indians and a Montana tribal flag circle" and at end inserted "either or both of the following"; in (1) at beginning inserted "a monument" and at end inserted "in consultation with the advisory committee established in 22-2-602"; in (2) substituted current text regarding flags authorized by the governor for former text that read: "The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle"; and made minor changes in style. Amendment effective May 3, 2019.

Contingent Effective Date Repealed: Section 3, Ch. 281, L. 2019, repealed sec. 3, Ch. 569, L. 2003, which provided a contingent effective date for the 2003 amendments to this section. Effective May 3, 2019.

2003 Amendment: Chapter 569 in (1) at end inserted "including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 3, Ch. 569, L. 2003, provided: "[This act] is effective on the date that the state treasurer certifies to the governor that sufficient private funds have been received to finance the construction of the monument and tribal flag circle. The state treasurer shall provide a copy of the certification to the code commissioner."

Preamble: The preamble attached to Ch. 569, L. 2003, provided: "WHEREAS, American Indians have participated with distinction in United States military actions for more than 200 years and, according to the United States Department of Defense, as an ethnic group, have the highest record of service per capita; and

WHEREAS, prior to being granted official United States citizenship in 1924, American Indians voluntarily participated in the War of 1812, fought as auxiliary troops for both the North and South in the Civil War, served as Indian scouts for the United States Army in the late 1880s, rode with Teddy Roosevelt after being recruited to become members of the Rough Riders during the Spanish-American War in 1898, accompanied General John J. Pershing's expedition in pursuit of Pancho Villa in 1916, and volunteered in numbers exceeding 12,000 to fight in World War I; and

WHEREAS, it is estimated by the United States Department of Defense that more than 44,000 American Indians, out of a total population of 350,000, served with distinction in World War II between 1941 and 1945; and

WHEREAS, more than 42,000 American Indians, 90% of whom were volunteers, fought in Vietnam and saw combat duty in Grenada, Panama, Somalia, and the Persian Gulf; and

WHEREAS, according to the 2002 United States census, 12% of Montana's total population of American Indians are military veterans who have served with distinction in every military campaign, with many receiving the Purple Heart, the Silver Star, and other campaign and commendation medals for their valor; and

WHEREAS, a tribute to American Indians from throughout Montana would highlight the contributions of individual soldiers, including a great-grandson of Salish Chief Charlo, Private First Class Louis Charles Charlo, who died on Iwo Jima after being one of the original Marines to plant a flag on Mount Suribachi, which action later was memorialized and serves as the basis for the Iwo Jima U.S. Marine Corps Memorial in Arlington, Virginia; and

WHEREAS, it is fitting that the Legislature honor the sacrifice, patriotism, and long tradition of military participation by its American Indian citizens by specifically recognizing past, present, and future American Indian veterans in the construction of the American Indian monument and Montana tribal flag circle."

Effective Date: Section 4, Ch. 755, L. 1991, provided that this section is effective July 1, 1991.

22-2-602. Advisory committee — composition — duties.

Compiler's Comments

2021 Amendment: Chapter 240 in (1)(b) after "representative from each of the" substituted "federally recognized Indian tribes in Montana" for "seven Indian reservations in Montana and the Little Shell Chippewa tribe". Amendment effective April 19, 2021.

2019 Amendment: Chapter 281 in (1) substituted "22-2-601(1)" for "22-2-601" and substituted "12 members" for "11 members"; in (1)(b) at end inserted "in Montana and the Little Shell

Chippewa tribe"; deleted former (2) that read: "(2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design"; in (2) in two places after "monument" deleted references to a flag circle, near middle of first sentence substituted "appropriate design and site" for "appropriate site", and at end of second sentence substituted "from the tribal flags authorized in 22-2-601(2)" for "on the grounds"; in (3) after "placement of the monument" deleted "and the flag circle"; and made minor changes in style. Amendment effective May 3, 2019.

2009 Amendment: Chapter 164 in (1)(d) at beginning substituted "state director" for "governor's state coordinator" and before "designee" substituted "state director's" for "coordinator's". Amendment effective April 6, 2009.

Effective Date: Section 4, Ch. 755, L. 1991, provided that this section is effective July 1, 1991.

Part 7
Traditional Arts and Crafts

22-2-701. Traditional arts and crafts account — funding — use.

Compiler's Comments

Effective Date: Section 4, Ch. 289, L. 2007, provided that this section is effective on passage and approval. Approved April 26, 2007.

Subsection Not Codified: Section 1(3), Ch. 289, L. 2007, was not codified because of the temporary nature of the provision. It provided: "(3) The department of fish, wildlife, and parks shall transfer $1,015 to the account and transfer any inventory purchased through the American master Indian artists state parks partnership pilot program to the Montana arts council by June 30, 2007."

CHAPTER 3
ANTIQUITIES

Chapter Compiler's Comments

Moss Mansion — State Interest for Payment of Inheritance and Estate Taxes: The preamble attached to Ch. 54, L. 1987, provided: "WHEREAS, House Bill No. 701 (Chapter 736, Laws of 1985) was adopted during the 49th Legislative Session; and

WHEREAS, House Bill 701 provided for the in-kind payment of estate and inheritance taxes by the transfer to the state of unique objects, sites, or buildings of significant or unique historical interest; and

WHEREAS, House Bill 701 further provided for a rigorous application and review process before property could be accepted as in-kind payment of estate and inheritance taxes; and

WHEREAS, the Montana Historical Society has made application to the Department of Revenue for in-kind payment of inheritance and estate taxes in the form of the Moss Mansion; and

WHEREAS, the Moss Mansion was the family home of the P.B. and Mattie Moss family in Billings, Montana, and is a site of unique and significant historical interest to the State of Montana; and

WHEREAS, the rigorous review process specified in House Bill 701 involves direct participation by the Montana Historical Society, the Department of Revenue, the Legislature's Revenue Oversight Committee, and others; and

WHEREAS, the results of the application and review process are a recommendation by the Montana Historical Society, the Department of Revenue, and the Legislature's Revenue Oversight Committee to the 50th Legislature that the Department of Revenue be allowed to accept as in-kind payment for $113,000 due in estate and inheritance taxes an ownership interest in the Moss Mansion."

Part 1
Historical Society

Part Administrative Rules

Title 10, chapter 120, ARM Montana Historical Society — organizational rules.
Title 10, chapter 121, ARM Montana Historical Society — procedural rules.

22-3-101. Historical society.

Attorney General's Opinions

Daly Mansion Restoration Subject to Public Construction Contracts: The Daly Mansion is a "building" within the definition in 18-2-101, and work on the mansion constitutes "construction" under the statute. Therefore, restoration and repair of the state-owned Daly Mansion are subject to 18-2-102 and 18-2-103 regarding public construction contracts. 42 A.G. Op. 66 (1988).

22-3-104. Appointment and qualifications of board of trustees.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

22-3-105. Compensation and expenses of trustees.

Compiler's Comments

1985 Amendment: Substituted language relating to payment of compensation and expenses as provided in 2-15-124 for: "Each member of the board of trustees is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for their travel expenses."

22-3-107. Authority of board.

Compiler's Comments

2005 Amendment: Chapter 148 in (9) at beginning of second sentence after "Money" deleted "in the amount of less than $500" and deleted former third sentence that read: "Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of $500 or more must be deposited in the acquisitions trust established in 22-3-113." Amendment effective April 7, 2005.

1993 Amendment: Chapter 4 in (9), at beginning of second sentence, substituted "Money in the amount of less than $500" for "Moneys" and inserted third sentence requiring deposit of amounts of $500 or more in the acquisitions trust; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Near beginning of (8) inserted reference to 5-11-210. Amendment effective March 20, 1991.

1983 Amendment: Inserted (16) authorizing trustees to publish Montana roadside history.

Administrative Rules

ARM 10.120.101 Organizational rule.

ARM 10.121.101 Model procedural rules.

Title 10, chapter 121, subchapter 5, ARM Acquisitions policy.

Title 10, chapter 121, subchapter 7, ARM Collections loan policy.

Title 10, chapter 121, subchapter 8, ARM Montana Historical Society cultural and aesthetic project grants.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

Attorney General's Opinions

Authority to Classify Positions of State Librarian and Director of Montana Historical Society: Although repeals by implication are not favored, it would frustrate the purpose of the classification and pay plan law to hold that the positions of state librarian and Director of the Montana Historical Society are exempt from classification when the Legislature has not expressly approved such exemption in 2-18-103. Thus, the provisions of 22-3-107 and 22-1-102, which authorize the Board of Trustees of the historical society and the State Library Commission to set salary, are superseded by the classification and pay plan law, Title 2, ch. 18, parts 1 through 3. The Board and the Commission retain the authority to hire and to assign duties and responsibilities. 40 A.G. Op. 68 (1984).

22-3-108. Function of director — employment of assistants.

Case Notes

Power to Remove Director: Power to remove Director of State Historical Society lies in the Board of Trustees. It may do so without notice or opportunity to be heard because when provision is made for appointment of an officer, but no definite term is prescribed, the appointing power may remove the appointee at will. State ex rel. MacGilvra v. District Court, 148 M 182, 418 P2d 874 (1966).

22-3-113. Acquisitions trust.

Compiler's Comments

2001 Amendment: Chapter 34 near beginning after "account in the" substituted "governmental fund category permanent fund type" for "fiduciary fund category nonexpendable trust fund type". Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 4, L. 1993, provided: "WHEREAS, the Montana Historical Society fulfills a unique and vital role in the preservation and presentation of historical Montana records through the acquisition and maintenance of items and collections of public interest; and

WHEREAS, timely acquisitions are vital to the Montana Historical Society's ability to maintain the viability of collections and items for research and exhibit; and

WHEREAS, it is to the benefit of the Montana Historical Society's role and in the interest of all Montanans that the Society have a readily available source of funds to purchase important historical records, items, and collections as they become available."

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue.

Compiler's Comments

2005 Amendment: Chapter 148 in (2) at beginning deleted "Unless otherwise provided by the donor, donations of $500 or more received pursuant to 22-3-107(9) and"; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendment: Chapter 34 in (1) substituted "permanent fund" for "permanent, nonexpendable trust". Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 4, L. 1993, provided: "WHEREAS, the Montana Historical Society fulfills a unique and vital role in the preservation and presentation of historical Montana records through the acquisition and maintenance of items and collections of public interest; and

WHEREAS, timely acquisitions are vital to the Montana Historical Society's ability to maintain the viability of collections and items for research and exhibit; and

WHEREAS, it is to the benefit of the Montana Historical Society's role and in the interest of all Montanans that the Society have a readily available source of funds to purchase important historical records, items, and collections as they become available."

Effective Date: Section 6, Ch. 4, L. 1993, provided: "[This act] is effective July 1, 1993."

22-3-115. Montana historical interpretation state special revenue account.

Compiler's Comments

Effective Date: Section 4, Ch. 358, L. 2011, provided: "[This act] is effective July 1, 2011."

22-3-116. Montana historical society membership special revenue account — use — statutory appropriation.

Compiler's Comments

Effective Date: Section 5, Ch. 423, L. 2015, provided: "[This act] is effective on passage and approval." Approved May 5, 2015.

Termination: Section 6, Ch. 423, L. 2015, provided: "[This act] terminates June 30, 2025."

22-3-117. Montana original governor's mansion special revenue account — use — statutory appropriation.

Compiler's Comments

Effective Date: Section 5, Ch. 423, L. 2015, provided: "[This act] is effective on passage and approval." Approved May 5, 2015.

Termination: Section 6, Ch. 423, L. 2015, provided: "[This act] terminates June 30, 2025."

22-3-120. Montana 250th commission.

Compiler's Comments

Effective Date: Section 5, Ch. 599, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 18, 2023.

Termination: Section 6, Ch. 599, L. 2023, provided: "[This act] terminates December 31, 2026."

Part 2
Preservation of Records

Part Administrative Rules

Title 10, chapter 121, subchapter 5, ARM Acquisitions policy.

22-3-201. Public policy.

Compiler's Comments

1993 Amendment: Chapter 420 in three places inserted references to local governments; and made minor changes in style. Amendment effective April 20, 1993.

22-3-202. Archives created — appointment, duties, and compensation of archivist.

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, near middle after "state", inserted "and local governments"; and made minor changes in style. Amendment effective April 20, 1993.

22-3-203. Preservation of noncurrent records of permanent value.

Compiler's Comments

1993 Amendment: Chapter 420 in first sentence, after "value", inserted "to the state and is responsible for the ultimate preservation of local government records of permanent value" and in second sentence, after "state government", inserted "and in local governments"; and made minor changes in style. Amendment effective April 20, 1993.

Part 4
Antiquities

Part Compiler's Comments

Severability: Section 15, Ch. 563, L. 1979, was a severability clause.

Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "HB 785 formally establishes the Historic Preservation Office and identifies its duties and responsibilities. This bill is not creating a new office, but simply renames the old one to conform with the accepted title shared by similar offices in states throughout the country. The duties and responsibilities are also the same and are those established by federal rules and regulations for Historic Preservation offices in all states and trust territories. Such duties and responsibilities are necessary for the state to qualify for historic preservation grant monies appropriated by Congress each year.

HB 785 requires that the State Historic Preservation Office maintain the required staffing to assure that federal funds will continue to come into Montana. As written, the committee is assured that the State Historic Preservation Office must meet the requirements, even if changes should be made when the legislature is not in session.

The proposed bill departs from the current Antiquities Act in the establishment of a Preservation Review Board, in concert with the federal designation.

The proposed Review Board will be increased to nine members, of which a majority are professionals trained in fields relating to historic preservation and archaeology. The bill mandates that one member will be the State Liaison Officer for the federal Land and Water Conservation Fund, and although it is not a federal requirement, the inclusion of the Liaison Officer is particularly important in Montana. The Liaison Officer is the Parks Director at the Department of Fish and Game [now the Department of Fish, Wildlife, and Parks], and since many of the state parks and monuments are established around historic sites, participation of the Liaison Officer on the Review Board is crucial in coordinating efforts in the state.

The proposed legislation continues the Antiquities Permit section as exists in the current Antiquities Act, but this bill will clarify provisions for who qualifies for a permit and the permit system is expanded to include all state lands rather than only registered properties.

HB 785 will substitute the National Register of Historic Places for the little-known state register as the official listing of important historic or heritage properties. The adoption of the National Register designation will simplify the registering system and avoid needless duplication of efforts.

The proposed bill continues the penalties sections but increases protection for private landowners and allows prosecution for violation on private lands.

Most importantly, the bill provides for state agency participation in the protection of heritage properties through a coordinated effort with the Historic Preservation Office. Coordination and cooperation is essential in assuring adequate consideration of heritage properties and paleontological remains in the everyday affairs of state government."

Part Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

Part Law Review Articles

The Antiquities Act: A Century of American Archaeology, Historic Preservation, and Nature Conservation, Blonder, 47 Nat. Resources J. 502 (2007).

Has Sandoval Doomed the Private Right of Action Under the National Historic Preservation Act?, Famulare, 16 B. U. Pub. Interest L. J. 73 (2006).

22-3-421. Definitions.

Compiler's Comments

1995 Amendment: Chapter 343 inserted definitions of affected property owner and applicant. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: In (1), after "granted for", substituted "excavation, removal, or restoration" for "exploration or field investigations".

22-3-422. Duties of preservation review board.

Compiler's Comments

2011 Amendment: Chapter 187 inserted (6) requiring board acceptance of reports on heritage properties; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

Attorney General's Opinions

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-423. Duties of historic preservation officer.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 60, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2011 Amendment: Chapter 187 inserted (13) requiring report of information gathered pursuant to 22-3-422(6); and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

1995 Amendment: Chapter 343 at beginning of introductory clause inserted "Subject to the supervision of the director of the historical society"; inserted (10) regarding response to requests for consultation; inserted (11) regarding development of procedures and guidelines for evaluation of heritage property and paleontological remains; and made minor changes in style. Amendment effective April 10, 1995.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

1987 Amendment: Inserted (10) relating to duty of historic preservation officer to protect from public disclosure the location or character of heritage properties if such disclosure would create a risk to the properties.

1983 Amendment: Inserted (9) authorizing historic preservation officer to adopt rules outlining procedures for agencies without rules to consider state-owned heritage properties or paleontological remains and avoid actions altering such properties.

1983 Statement of Intent: The statement of intent attached to SB 246 (Ch. 351, L. 1983) provided: "The primary purpose of the bill is to ensure that systematic consideration of heritage properties on state-owned land occurs in state agency planning and actions. The bill provides that agencies that do not choose to prepare their own regulations to afford systematic consideration to heritage properties on state lands adhere to general rules prepared by the Historical Society.

The rules promulgated pursuant to this bill should ensure that:

(a) the decision on whether to undertake a professional cultural resources inventory or site evaluation prior to a potentially harmful action is made by the agency in consultation with the Society;

(b) any heritage properties identified on state land are afforded direct consideration in an agency's decision on whether or how to undertake an action; and

(c) when feasible, damage to heritage properties is avoided or subject to an appropriate form of mitigation.

The rules are not intended to require a single course of action by the agency or absolute protection of all identified heritage properties.

The rules promulgated by either state agencies or the Historical Society should have as common elements:

(a) a requirement that prior to taking an action affecting state land or property, state agencies will check with the Historical Society to determine the presence or absence of previously identified historic or prehistoric resources, the relative value of any previously identified sites or buildings, and whether a field inventory or further site evaluation needs to occur to determine whether heritage properties might be impacted;

(b) a requirement that the Historical Society provide the information requested within a specified time and in a precise format;

(c) a requirement that each state agency have a system for making and documenting decisions on whether heritage properties identified as being affected by an agency decision or action can be afforded protection, avoidance, reuse, rehabilitation, or recording prior to impact and that the system adopted permits the Historical Society [to] comment to the agency on their decision; [and]

(d) a method for adjudicating differences in instances where the value of jeopardized sites appears to be high.

This bill would be applicable to state agencies in two separate contexts: decisions on remodeling or demolition of historic state-owned buildings and decisions made by state land managing agencies relative to leases, easements, access, [and] development.

In the case of the Montana University System, "rule" means procedures included in the Montana University System Policies and Procedures Manual through the formal and public process used by the Regents for that purpose."

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Section 6 [22-3-423] authorizes the historic preservation officer to carry out and enforce the provisions of sections 3 through 16 [2-15-1512(part), all sections in this part, repealer, and severability clause]. This may be done by rule."

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

Determination of "Heritage Properties" on State-Owned Land Within Exclusive Authority of Preservation Review Board: The state antiquities law gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties" within the meaning of the law. 41 A.G. Op. 8 (1985).

22-3-424. Duties of state agencies.

Compiler's Comments

2011 Amendment: Chapter 187 in introductory clause inserted "including the Montana university system"; inserted (4) regarding heritage properties; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 187, L. 2011, provided: "WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources."

1983 Amendment: In (1), changed "Adopt policies for the preservation" to "In consultation with the historical society adopt rules for the identification and preservation", substituted "to avoid" for "and avoid", and inserted "or, in the absence of such rules, act in compliance with rules adopted under 22-3-423".

1983 Statement of Intent: For the 1983 statement of intent see compiler's comments under 22-3-423.

1979 Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 [22-3-424, 22-3-433, and 22-3-434] require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

Administrative Rules

Title 10, chapter 121, subchapter 9, ARM State Historic Preservation Office procedural rules.

Title 12, chapter 8, subchapter 5, ARM Cultural resources.

Title 36, chapter 2, subchapter 8, ARM Antiquities on state lands.

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

22-3-428. Heritage property — procedures and guidelines required.

Compiler's Comments

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-429. Requests for consultation — public notice — appeal of findings.

Compiler's Comments

2021 Amendment: Chapter 535 in (7) in first sentence after "finding to the district court in" deleted "either Lewis and Clark County or". Amendment effective October 1, 2021.

2017 Amendment: Chapter 148 inserted (8) prohibiting a state agency from requiring historical or archeological survey on applications related to reconstruction or maintenance of irrigation ditch or appurtenant structures or equipment when certain conditions are met. Amendment effective October 1, 2017.

1997 Amendment: Chapter 42 in (2) substituted "16 U.S.C. 470f" for "16 U.S.C. 470(f)". Amendment effective March 12, 1997.

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-430. Avoidance and mitigation of impacts.

Compiler's Comments

Severability: Section 8, Ch. 343, L. 1995, was a severability clause.

Effective Date: Section 9, Ch. 343, L. 1995, provided that this section is effective on passage and approval. Approved April 10, 1995.

22-3-431. Registration of heritage properties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (2)(a) substituted "private properties" for "properties not owned by the state" and after "officer" substituted remainder of (2)(a) (see 1987 Session Law) for former language that read: "may, upon approval by the preservation review board and with the written concurrence of the owner or owners of the property, nominate heritage properties to the register. In the case of a historic district, the historic preservation officer may nominate the property only with the concurrence of:

(a) a majority of the property owners of the district; and

(b) the owners of more than one-half of the property in the district"; inserted (2)(b) providing a process for determination of eligibility for registration of property not nominated due to owner objection; inserted (2)(c) requiring historic preservation officer to follow federal procedures relating to heritage property registration; in (3), near beginning after "state", inserted "a county, or a municipality" and in second sentence, after "appropriate", substituted "governmental agency" for "state agency" and after "when any" inserted "such governmental"; and made minor changes in phraseology.

1983 Amendment: Near middle of (2), after "review board and" changed "after written approval by the landowner" to "with the written concurrence of the owner or owners of the property"; and inserted last sentence of (2), (2)(a), and (2)(b) establishing requirements for nomination of a historic district.

Attorney General's Opinions

Responsibility for Identification of Potential Heritage Property: The historic preservation officer is required by 22-3-423 and 22-3-424 to share with state agencies the responsibility for identification of potential heritage properties on state-owned lands, and that responsibility may not be limited by an agency policy which restricts or abolishes the historic preservation officer's identification authority. 41 A.G. Op. 53 (1986).

22-3-432. Antiquities permits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 297, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

22-3-433. Environmental review process.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 785 (Ch. 563, L. 1979) provided in part: "Sections 9 through 11 [22-3-424, 22-3-433, and 22-3-434] require state agencies to participate in this program through development of procedures to include evaluation of heritage properties and paleontological remains in agency decisionmaking. These procedures may be adopted by rule."

Part 5

Museum Loan Act

Part Compiler's Comments

Source: The provisions of this part are derived from section 1899 of the California Civil Code.

22-3-522. Uniform Unclaimed Property Act superseded.

Compiler's Comments

1991 Amendment: Near end substituted "5 years" for "7 years"; and made minor change in style.

Part 6

Local Management of Historic Properties

22-3-603. Management of historic sites and buildings — contracts.

Compiler's Comments

2005 Amendment: Chapter 10 in (4) near middle of second sentence substituted "reviewed biennially" for "audited quarterly" and inserted last sentence concerning audit of funds. Amendment effective March 15, 2005.

1997 Amendment: Chapter 42 in (4), near middle of first sentence, substituted "subsection (2)" for "subsection (3)"; and made minor changes in style. Amendment effective March 12, 1997.

Part 7

Law Enforcement Officers' Memorial

22-3-701. Creation of law enforcement officers' memorial.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 45, L. 1991, provided: "WHEREAS, the law enforcement officers of Montana are our guardians of life, property, and well-being; defenders of the individual right to be free men and women; and soldiers in the war against crime and are dedicated to the preservation of life, liberty, peace, and the pursuit of happiness; and

WHEREAS, the State of Montana desires to honor and remember the valor, service, and dedication of its seldom recognized peace officers, former and present; and

WHEREAS, it is known that over 90 local, county, state, and federal officers have died in the line of duty in Montana since 1863."

Part 8

Human Skeletal Remains and Burial Site Protection

Part Compiler's Comments

Severability: Section 16, Ch. 748, L. 1991, was a severability clause.

Effective Date: Section 17, Ch. 748, L. 1991, provided in part that this part, except 22-3-804 and 22-3-811, is effective July 1, 1991.

22-3-804. Board — composition — rights — responsibilities.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 106, L. 2023. Amendment effective September 1, 2023.

2021 Amendment: Chapter 240 in (1)(a) after "representative of each of the" substituted "federally recognized Indian tribes in Montana" for "seven reservations"; deleted "former (1)(b) that read: "(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians"; and made minor changes in style. Amendment effective April 19, 2021.

2015 Amendment: Chapter 99 in (5) substituted current text for "Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503"; and made minor changes in style. Amendment effective July 1, 2015.

2001 Amendment: Chapter 483 in (4) after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1991 Statement of Intent: The statement of intent attached to Ch. 748, L. 1991, provided: "A statement of intent is required for this bill because [section 4] [22-3-804] grants to the burial preservation board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing and maintaining a registry of burial sites located in the state;

(3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials."

Effective Date: Section 17(1), Ch. 748, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

22-3-805. Discovery — reporting requirements — field review.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

22-3-806. Scientific analysis — permit required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

22-3-811. Disposition of fees, grants, and donations.

Compiler's Comments

2015 Amendment: Chapter 99 at end substituted "the board's expenses" for "expenses for board meetings or expenses incurred in conducting field reviews". Amendment effective July 1, 2015.

Effective Date: Section 17(1), Ch. 748, L. 1991, provided that this section is effective on passage and approval. Approved May 15, 1991.

Termination: Section 18, Ch. 748, L. 1991, provided that subsection (2) terminates June 30, 1993.

Part 9

Repatriation of Human Remains and Funerary Objects

Part Compiler's Comments

Effective Date: Section 15, Ch. 558, L. 2001, provided: "[This act] is effective on passage and approval." Approved May 2, 2001.

Part Law Review Articles

"Kennewick Man" or "Ancient One"?—A Matter of Interpretation, Flood, 63 Mont. L. Rev. 39 (2002).

Part 10

Heritage Preservation and Development

Part Compiler's Comments

Severability: Section 21, Ch. 469, L. 1997, was a severability clause.

22-3-1001. Purpose.

Compiler's Comments

2015 Amendment: Chapter 78 in first sentence before "manage" deleted "acquire and" and at end deleted "and demonstrate the ability to become economically self-supporting"; in second sentence substituted "managing the properties for which it is responsible" for "purchasing fee title interests in real and personal property and by managing those properties" and at end substituted "stability" for "independence"; and made minor changes in style. Amendment effective October 1, 2015.

2001 Amendment: Chapter 308 in first sentence near beginning after "acquire" inserted "and manage" and at end of second sentence after "property" inserted "and by managing those properties in a manner that protects the properties and encourages economic independence". Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

22-3-1002. Montana heritage preservation and development commission.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 61, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2015 Amendment: Chapter 78 inserted (2)(b) regarding appointment when president of the senate and speaker of the house do not appoint members within 6 months of a vacancy; in (2)(c) in second sentence and in (3) in first sentence inserted references to subsection (2)(a); in (3) substituted "Members appointed by the president of the senate and the speaker of the house or by the governor under subsection (2)(b)" for "Legislative appointees"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 485 in (1) in second sentence substituted "department of commerce" for "Montana historical society" and inserted reference to 2-15-121 and inserted third sentence relating to setting a specific indirect administrative rate; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 308 in (1) in third sentence increased commission membership from 11 to 14, in fifth sentence increased commission members appointed by governor from 7 to 9, and near end of sixth sentence added director of department of commerce to commission membership; inserted (2)(g) requiring that two governor-appointed members be from the public at large; inserted (4)(a)(iii) authorizing employment of staff necessary to manage commission properties; at end of (4)(b) inserted "and other commission staff"; and made minor changes in style. Amendment effective October 1, 2001.

Initial Appointments: Section 14, Ch. 469, L. 1997, provided: "The initial appointments to the commission must be for the following terms:

(1) the member with experience managing facilities that cater to the needs of tourists, 3 years;
(2) the member with experience in community planning, 4 years;
(3) the member with experience in historic preservation, 5 years;
(4) one member with broad experience in business, 3 years, and one member, 4 years;
(5) the tourism advisory council member, 5 years;
(6) the Montana historian, 5 years; and
(7) the legislative appointments, 2 years."

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

22-3-1003. Powers of commission — contracts — rules.

Compiler's Comments

2015 Amendment: Chapter 78 in (1)(f) after "encourage the" deleted "profitable" and at end inserted "in a manner that results in economic stability"; deleted former (3)(b)(i) that read: "(i) Until the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust"; in (3)(b) at beginning deleted "Once the balance in the cultural and aesthetic trust reaches $7,750,000"; deleted former (3)(c) that read: "(c) It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature"; in (4) before "management" deleted "purchase"; in (8)(b) substituted "economically stable" for "self-supporting"; in (11) deleted last sentence that read: "Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property"; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 403 in (1)(c) after "projects" inserted "or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction"; in (2)(a) in first sentence increased construction limit without legislative consent from $200,000 to $300,000 and inserted second sentence requiring funding to pass through directly to commission; in (2)(b) increased amount for preservation, stabilization, or maintenance without legislative consent from $200,000 to $300,000; and made minor changes in style. Amendment effective May 3, 2007.

2003 Amendment: Chapter 542 in (3)(c) substituted "58th legislature" for "57th legislature"; in (4) after "sources" inserted "including the federal government"; inserted (5) concerning volunteers and their status; inserted (6) providing that volunteers are not salaried but may be reimbursed; inserted (7) concerning subcommittee to review and recommend sale of personal property; in (8) at end of first sentence inserted "and sales of real and personal property" and in second sentence after "acquisition" inserted "or sale"; in (8)(e) after "acquisition" inserted "or sale"; inserted (8)(f) through (8)(h) concerning support of historical society director, preservation covenants, and design review ordinances; inserted (9) concerning deposit of sale proceeds; in (10) in first and second sentences after "acquisition" inserted "or sale of real property" and in first sentence after "acquire" inserted "or sell"; inserted (11) concerning trust funds; in (12) at end inserted clause concerning acquisition or sale of any assets; and made minor changes in style. Amendment effective April 30, 2003.

Transfer of Title: Section 3, Ch. 542, L. 2003, provided: "Title to the real and personal property acquired by the 55th legislature and commonly referred to as the "Bovey assets" is transferred from the Montana historical society to the state of Montana."

2001 Amendment: Chapter 308 at beginning of (2)(a) inserted exception clause; inserted (2)(b) authorizing the commission to enter into contracts under certain conditions for amounts exceeding $200,000 without legislative consent; in (3)(c) near beginning substituted "57th legislature" for "55th legislature"; in (7) near middle after "legislature" inserted "as provided in 5-11-210"; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

Administrative Rules

Title 8, chapter 112, subchapter 1, ARM Acquisition rules.
Title 8, chapter 112, subchapter 2, ARM Sale rules.

22-3-1004. Montana heritage preservation and development account.

Compiler's Comments

2021 Amendment: Chapter 563 deleted former (3) that read: "(3) The accounts are statutorily appropriated, as provided in 17-7-502, to the commission to be used as provided in this section"; and made minor changes in style. Amendment effective July 1, 2021, and terminates June 30, 2027.

2015 Amendment: Chapter 78 deleted former (2)(a) that read: "(a) the purchase of properties in Virginia City and Nevada City"; in (2)(b) before "restoring" deleted "purchasing"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 542 in (1)(a) at end inserted reference to the federal special revenue fund; inserted (1)(b) concerning deposit of federal money; in (2), (3), and (4) substituted "accounts" for "account"; in (4) at beginning inserted "Unless otherwise prohibited by law or agreement"; and made minor changes in style. Amendment effective April 30, 2003.

2001 Amendment: Chapter 308 inserted (4) requiring interest earned on the heritage preservation and development account to be deposited in a special revenue fund to the credit of the commission. Amendment effective October 1, 2001.

Effective Date: Section 23(1), Ch. 469, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval." Approved May 1, 1997.

Part 11
Historic Sites

22-3-1101. Tower Rock — historic site.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 12
Montana Centennial Farm and Ranch Program

Part Compiler's Comments

Preamble: The preamble attached to Ch. 399, L. 2009, provided: "WHEREAS, farmers and ranchers produce more than just food; they also contribute to the state's economy, maintain open spaces, and support family businesses; and

WHEREAS, Montana farm and ranch families have played a vital role in Montana's past and will continue to be important to our future; and

WHEREAS, many Montana farm and ranch families have withstood pressure from development, drought, and tough economic times in order to maintain their rural heritage."

Effective Date: This part is effective October 1, 2009.

Part 13
Montana Museums Act of 2020

Part Compiler's Comments

Effective Date: Section 16, Ch. 459, L. 2019, provided that this part is effective January 1, 2020.

Applicability: Section 17, Ch. 459, L. 2019, provided: "[This act] applies to sales of accommodations or campgrounds that occur on or after January 1, 2020, and to the use of accommodations or use of campgrounds on or after January 1, 2020, even if the sale occurred before January 1, 2020."

22-3-1302. Authorization to construct Montana heritage center.

Compiler's Comments

2019 Amendment — Coordination: Section 12, Ch. 422, L. 2019, a coordination section, substituted the current text in (2) and (3) for: "The department of administration shall determine the most cost-effective and efficient manner in which to construct the Montana heritage center based on the funding available. The department may construct the Montana heritage center in phases." Although Ch. 422, L. 2019, was effective May 10, 2019, pursuant to sec. 16, Ch. 459, L. 2019, the enactment of this section is effective January 1, 2020.

22-3-1303. Account — Montana heritage center construction.

Compiler's Comments

2021 Amendment: Chapter 8 near end of second sentence substituted "December 31" for "December 30". Amendment effective October 1, 2021.

22-3-1305. Historic preservation grant program — proposals — recommendations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 710, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2025.

22-3-1306. Priorities for funding — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 710, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 330 in (2) in second sentence near middle substituted "Montana coal endowment program" for "treasure state endowment program". Amendment effective October 1, 2021.

Part 14
National Heritage Areas and National Historic Trails

22-3-1401. Legislative approval of national designations.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Preamble: The preamble attached to Ch. 538, L. 2021, provided: "WHEREAS, National Heritage Areas and National Historic Trails are designated by the United States Congress as places where natural, cultural, and historic resources form a nationally important landscape; and

WHEREAS, the proposed boundaries for areas and trail designations can include federal, state, and private property; and

WHEREAS, the State of Montana and private property owners have no ability to remove their property from this designation; and

WHEREAS, a National Heritage Area or National Historic Trail designation is a federal legislative process with no application or nomination process, and designations should instead be made through grassroots, community-driven efforts; and

WHEREAS, there is significant opposition to including private property in a National Heritage Area, as it will be managed or controlled by a private, unelected, unaccountable entity and will interfere with state and private property rights; and

WHEREAS, National Heritage Areas are administered by the National Park Service, and National Historic Trails are administered by the National Park Service, the United States Department of Agriculture Forest Service, and the Bureau of Land Management, depending on the trail; and

WHEREAS, national designations can accept and administer money paid by the United States Secretary of the Interior; and

WHEREAS, financial assistance components, legal agreements, accountability measures, and performance requirements for National Heritage Areas and National Historic Trails can create undue burdens for state and private property under federal oversight."

development, drought, and tough economic times in order to maintain their rural heritage; and

[illegible]

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22-3-1302. Authorization to construct Montana heritage center.

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